Quick FAQ

What is sexual harassment?

Sexual conduct (including comments and/or gestures) that is known or ought reasonably to be known as unwelcome. This could include a sexual advance made by an individual in a position of power to a subordinate. This could also include retaliating or threatening to retaliate against an individual after they rejected a sexual advance. Sexual harassment is a type of sex discrimination and is prohibited under the **Nova Scotia Human Rights Act**.

What is abuse of power?

Entering into a romantic or sexual relationship where there is an imbalance of power. The person in the position of power may be found to have engaged in misconduct. If a complaint of sexual harassment is filed, consent is not a defence.

An abuse of power can also happen in a platonic relationship where the person in the position of power is using their position to manipulate the employee who they have power over.

What is retaliation?

Retaliation is about getting revenge or getting even. It can take many forms and may include a threat or intimidation against any complainant, witness, respondent, or other member of the workplace for filing a complaint of sexual harassment in the workplace or for participating in an investigation. It may also include making or filing false complaints against any member of the workplace for the purpose of retaliation.

Employer FAQ

Why should employers have sexual harassment policies?

It is the right thing to do, and employers have legal obligations to ensure their workplaces are free from sexual harassment. Implementing a policy allows for a consistent response to complaints and lets employees know they can report unwelcomed behaviour. A policy promotes a culture of safety.

How can I inform employees about the sexual harassment policy?

Informing employees about the sexual harassment prevention policy can be part of the training process for new employees. Employers can ensure that new employees take the **Bystander Training** available through the Legal Information Society of Nova Scotia as part of their orientation. For existing employees, provide them with a copy of the policy and a link to the training available (**lms.legalinfo.org**).

TIP: Put a reminder in your calendar to ensure that all staff complete the Bystander Training and Sexual Harassment Prevention Training materials once a year.

Also, see the checklist included in the Employer's Best Practices Toolkit available through the Legal Information Society of Nova Scotia: **https://lms.legalinfo.org**

How can an employer prevent sexual harassment in the workplace?

- Ensure you have implemented a sexual harassment prevention policy;
- Ensure you and your supervisors responsible for administering the policy understand their roles and obligations;
- Ensure all members of your workplace understand what constitutes as sexual harassment;
- Conduct ongoing education for your employees about what is sexual harassment and make sure they understand the Sexual Harassment Prevention Policy and how to report sexual harassment;
- Perform a risk audit of your workplace's physical environment.
- Encourage conversations about the work environment including those related to sexual harassment;
- Let your employees know that you will not tolerate sexual harassment at the workplace and demonstrate your commitment to zero tolerance by taking immediate action, when appropriate; and
- Post the Sexual Harassment Prevention Policy in a prominent place and distribute the policy to all employees. Add discussion of the policy to the agenda for a staff meeting.

Can consensual sexual relations between a supervisor and an employee they supervise be considered sexual harassment?

Yes. While a consensual sexual relationship between a supervisor and an employee is not always prohibited, it will always have consequences. These may include complaints of sexual harassment, or a requirement for either the supervisor or the employee to be transferred to a different work location.

Some employers/organizations choose to prohibit these types of relationships altogether. It is important that managers and supervisors maintain high standards of fairness and impartiality in supervising employees. These standards may be compromised, or at least the appearance of neutrality will be compromised, if a manager engages in a romantic or sexual relationship with an employee.

It is difficult to give an impartial performance appraisal to someone when you are involved in a sexual relationship with them. Further, there is a power imbalance between the supervisor and the employee and it may be difficult for the supervisor to rely on consent if the employee later complains they were coerced into the relationship. The relationship between the supervisor and the employee may also form the basis for a sexual harassment complaint if it creates a hostile or toxic environment for others.

For professional reasons, these relationships should be avoided. If one occurs, both individuals may want to consider the possibility of transfer.

What should I do to support employees who have filed a complaint of sexual harassment?

When you receive a complaint of sexual harassment in the workplace, you can use the LISNS' sample interview form and checklist to guide you through the process at the Employer's Best Practices Toolkit: **https://lms.legalinfo.org**

In addition, here are some tips for supporting someone who has filed a complaint of sexual harassment in the workplace:

- Assure employees that you appreciate them bringing their complaint forward;
- Inform them of resources available through EAP and/or the community;
- Inform them that retaliation of any kind will not be tolerated. Let them know it is a violation of the policy and may result in discipline;
- Ensure employees are aware they can have one support person present throughout the investigation process.

If an employee chooses to address the harassment informally by addressing the behaviour with the harasser, you should periodically check with the employee to ensure that the harassment has ceased, and that no retaliation has ensued.

What should I do to support an employee who is being accused of sexual harassment?

Remind the employee about any EAP or other programs offered by the organization. Remind them they can have one support person present throughout the investigation process.

There are times when an employee who is accused of sexual harassment needs to be temporarily removed from the workplace until the investigation is completed. Ensure that the employee understands that this is done for the safety of everyone involved, including themselves. Remind them that no decisions will be made until the investigation is complete.

What records should I keep?

We want to emphasize the importance of this. You should document your conversations with the parties involved in the complaint, keep any evidence of harassment, make any evidence available to the investigator, and document what actions you took to resolve the harassment situation, if any. Document what you witness, what you did, what you said, and who witnessed any conversations or behaviour. If you are ever called upon later to defend your actions, it is important that you can demonstrate you took appropriate action. Also, encourage the complainant to document all incidents of harassment and to make those records available to investigators.

What are possible disciplinary actions I can take against the harasser?

Actions range from a verbal warning to termination of employment. The level of discipline will depend on the context of each situation. To prevent sexual harassment in the workplace, a clear zero tolerance message must be sent to all employees. Nevertheless, disciplining employees always requires a review of all of the circumstances. If you believe that serious discipline is warranted but are uncertain whether to terminate an employee, you should seek legal advice.

When employees understand that incidents of sexual harassment in the workplace will be taken seriously, harmful behaviours will be reduced, employees will feel safer, and morale will improve.

What should I do if an employee is being sexually harassed by an “outsider” such as someone from the public, clients, customers, or vendors?

Managers and supervisors are responsible for ensuring that their employees are not sexually harassed by anyone they work with including the public, clients, customers, or vendors. Inform employees that such conduct will not be tolerated and that sexual harassment from anyone should be reported immediately. It may be necessary for you to have a conversation with the person alleged to be harassing employees, informing them that their behaviour is unacceptable. If the harassment is from a customer, you must still take appropriate action within your control to ensure that the offensive behaviour stops.

You may need to:

- Ask the alleged harasser to leave the premises;
- Contact security;
- Followup with the harassed employee;
- Follow your organization's policy(ies) for reporting sexual harassment;
- Create a policy for dealing with these specific types of situations.

Check out the sample **risk audit form** from LISNS. You can add a row that addresses these specific types of situations and record any steps taken to mitigate the risk to staff. You can find it at **legalinfo.org** under our *Workplace Sexual Harassment* section.

Should I protect the privacy of the complainant and/or the alleged harasser?

Yes. Confidentiality within a sexual harassment complaints process is essential. Managers and supervisors should respect the privacy of all parties concerned in a sexual harassment allegation.

However, you cannot guarantee complete confidentiality. Employees have a right to privacy regarding personal information. If you are reviewing a sexual harassment allegation, only involve those persons who can provide relevant information. Advise everyone involved in the review that the privacy of all parties must be honoured. Set an example for employees by only discussing information regarding a complaint of sexual harassment on a need-to-know basis.

It is a best practice to have anyone involved in a formal complaint process sign a confidentiality agreement. See a sample confidentiality agreement in the LISNS Employer Best Practices Toolkit at **https://lms.legalinfo.org/**.

Possible additional questions:

- Can I fire someone if a complaint is made against them?
- What should we do if there is no policy in place?
- Can we stop co-workers from discussing this on social media?
- How long does an investigation usually last?
- How much does an investigation usually cost?

Employee FAQ

What can I do if I am being sexually harassed in the workplace?

While each person needs to decide what action is best for them, many individuals have found informal action facilitates the fastest resolution with the fewest complications. You can start with telling the person involved to stop the behaviour.

Try to be as clear as possible. For example, "It makes me uncomfortable when you rub my shoulders, please do not do this." If this does not work, you should consider putting it in writing and tell the person what conduct you find offensive and what action you will take if it continues. For example, "I find your sexual jokes offensive. I consider these to be sexual harassment, and I will file a complaint if you continue to tell them to me." Date and sign the letter, keep a copy, and have a witness watch you deliver the letter. If this is done via email, BCC the witness.

If the informal approach does not work or you are not comfortable taking this route, see if your workplace has a sexual harassment prevention policy (this may also be referred to as a respectful workplace policy, code of conduct, harassment policy, or other similar titles). You can file a complaint under the policy. Review the policy to see who a complaint should be filed with and reach out to that person to start the complaint process.

You can access up to four hours of free legal advice regarding sexual harassment in the workplace through LISNS at **legalinfo.org/safeatwork**.

What if an employer does not respond to an employee's complaint about sexual harassment?

Sexual harassment is a form of discrimination under the Nova Scotia **Human Rights Act**. Your employer has a legal obligation to respond to complaints of sexual harassment in the workplace.

If you do not feel safe in your workplace due to sexual harassment that is not being addressed by your employer, you may need to inform your employer that you will not be attending your shift because you are not safe at work. This may not be a feasible option for some people, and you may need to seek other supports within the workplace.

Is there a supervisor or colleague that you trust to discuss the issue? You can try seeking their assistance in reaching out to your employer regarding the sexual harassment by copying them on an email or being present with you when you meet with the employer to raise the issue in person.

You can seek legal advice. You are able to access up to four hours of free legal advice regarding sexual harassment in the workplace through LISNS at **egalinfo.org/safeatwork**.

What can I do if I am being accused of sexually harassing someone in the workplace?

It is stressful to be accused of sexual harassment. You should access any employee assistance programs provided by your employer and/or reach out to your own preferred health care providers for support during the process.

Review any existing sexual harassment prevention policy to be sure you understand your obligations and rights within the process. If you do not understand, ask your employer for clarification.

Keep a written record of your interactions with the complainant. Document the steps taken by your employer in investigating the complaint to ensure that you are provided with your procedural rights under the policy.

You are entitled to have one support person with you in most processes to provide moral support. You may want to seek legal advice.

Can I compliment someone?

Yes, co-workers and supervisors can give compliments to their colleagues. Telling someone they look good today or complimenting a new piece of clothing is generally considered acceptable. It is inappropriate, however, if it is accompanied by a leering stare and/or a whistle, is continually given to only one particular person, and/or is accompanied by sexual comments or gestures. Any of these may be considered as sexual harassment.

Examples of inappropriate comments that could be considered sexual harassment are:

- “Hey, baby, you are sure looking fine today!”;
- “Why don’t all women look like you?”;
- “I love that outfit. It really shows your figure!”;
- “Everyone should have muscles like you.”

Can I date someone from work?

Consensual dating at work is permissible. However, awkward situations can occur. For example, if the relationship fails and you are still forced to work with this person on a regular basis, work-related interactions could become strained. Work performance could suffer. Frequently, the impact of the relationship is felt by co-workers, and depending on the nature of the relationship, this could contribute to toxicity in the workplace.

Consensual dating of a supervisor is also allowed in many organizations, but it is never advisable. Such relationships often give the perception of a conflict of interest and that the supervisor is "playing favourites." To counter this perception, supervisors have been known to overcompensate by giving too much work, for example, to their partner and, therefore, treating their partner unfairly. Also, employees who have dated their supervisors report that co-workers tend to discredit the valuable and legitimate goals an individual has achieved because they perceive that success was the result of favouritism.

Is flirting still allowed?

It is not illegal to flirt at work; the law does not require a sterile work environment with no human interaction. What is expected and necessary in our diverse community is professionalism, respectful behaviour, and awareness of how our behaviour affects others. A supervisor who flirts with subordinates would not be acting professionally even if the attention was appreciated. This could cause some employees to feel uncomfortable and/or not take this supervisor seriously, which is problematic.

What can I do if I witness sexual harassment in the workplace?

If you believe you have witnessed sexual harassment in the workplace, you should take these three steps: ***See, Evaluate, Act.***

You can reach out the person who you believe was sexually harassed and inquire about their safety. Based on your conversation with this person, you may want to provide the person with information on how to report sexual harassment and assist them in reporting the behaviour, or you may wish report what you witnessed yourself, or you may determine that no action needs to be taken.

More information on the role that bystanders can play in responding to sexual harassment in the workplace can be found at the LISNS' Bystander Training: **https://lms.legalinfo.org**