



An Employee's Guide to Sexual Harassment at work





ABOUT THE AUTHOR

Seán is the principal of Employment Matters, a boutique employee-focused law firm based in Waterford City but servicing the entire South East as well as Dublin.

Seán is a qualified solicitor with a Masters Degree in Marketing from the UCD graduate school. Seán also holds a Diploma in Commercial Law from the Law Society and a Diploma in the Law of eCommerce.

We are a specialty law firm focusing its practice on the areas of employment law, especially in the areas of Unfair Dismissal, Redundancy Matters, Discrimination, Protected Disclosure, Health & Safety at work, Agency work and Fixed and Part term contracts.

Our clients come to us because of our experience, knowledge, expertise, track record in and out of court, and our reputation for integrity and client satisfaction.

We emphasize practical, reasoned advice in an effort to minimize or prevent legal difficulties. When a client is involved in a dispute, our primary concern is to achieve an expeditious and economic result. When formal litigation or other dispute-resolution proceedings are necessary, we provide aggressive, high calibre advocacy.

In particular, we are focused on providing you with employment law advice and consultancy to help employees prevent or resolve employment issues where conflict has arisen or where there has been a breakdown in the employment relationship.



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If you have any specific questions about any legal matter, you should consult your lawyer or other professional legal services provider. You should never delay seeking legal advice, disregard legal advice, or commence or discontinue any legal action because of the information contained here.



#METOO

Introduction

Do you dread going to work not simply because it's your work, but because of the way you're treated by some creep?

Is there someone at your workplace who treats you inappropriately, says inappropriate things, touches you or makes you feel uncomfortable in other ways?

Do you lie awake at night fretting, or wake up in the morning with a sick stomach over what's going to happen next?

This type of behaviour is not "banter", it's not funny, right, or acceptable, and you shouldn't tolerate it. Going to work isn't anyone's favourite activity, but it shouldn't be something that makes you feel dirty, humiliated or ill with stress or anxiety. Everyone is entitled to a safe and supportive workplace.

This was really a point of principal for me. Sure I was compensated but money will never make up for what happened to me. I just wanted my former employer to know that what had happened to me was entirely inappropriate.

Lucy*, 28

If you have in the past or are currently experiencing sexual harassment in the workplace, we can help.

In this guide, we will navigate you through your rights and inform you on what is deemed as Sexual Harassment within the context of the law.

If you have been the victim of Sexual Harassment and would like to discuss your rights in a confidential and discreet manner, call us today on 1890 88 90 90 or email us at info@ormondesolicitors.ie

WHAT ARE YOUR RIGHTS

Too many people suffer in silence when experiencing sexual harassment at work. It only makes sense, especially in times of financial crisis, that people suffering from this type of thing put up with it out of fear of losing their jobs or being isolated for speaking out. A lot of our Clients say that they didn't even know that what was happening to them was against the law.

They felt embarrassed to speak, would they be seen as a trouble maker, a prude, sure it's only a bit of craic isn't it. But this type of hostile inappropriate work environment is unacceptable and does anything but actually provide comfort and security.

Another reason people put up with this type of unacceptable work environment is that such harassment has sadly become the new norm. Victims of these behaviours are less likely to take the steps necessary to defend themselves when these situations seem to be acceptable to everyone else in the office.

Those who don't actively participate in it are only too willing to turn a blind eye, possibly relieved they're not the ones being subjected to this treatment. Or if someone in a position of authority is doing the harassing, employees quickly become accepting or even encouraging of it out of fear for their own jobs.

If your boss and colleagues don't seem to be disgusted by these situations, we are. Talk to us. We want to help lift the stress you're carrying off your shoulders.





How do you know if you are being harassed at work?

Sexual harassment is any form of unwanted verbal, non-verbal, or physical conduct of a sexual nature, which violates your dignity and creates an intimidating, hostile, degrading, humiliating, or offensive environment for you.

The inappropriate conduct may consist of acts, requests, spoken words, gestures, or the production, display or circulation of written words, pictures, or other material.

It doesn't matter what the intention of the conduct is, what is important is the effect of it, and whether or not something is inappropriate is judged from the perspective of the person who is on the receiving end of it.

So, it doesn't matter if the perpetrator feels that what had been engaged in was just "banter", if the recipient of the conduct feels that the conduct is inappropriate then it is.

WHAT WE CAN DO FOR YOU

We can ensure that your Employment Rights are protected at this special time in your life, allowing you to focus on your child, your health, and your family.

Shocking as it may seem, there are instances when a parent returns to work after having a child only to find their job is no longer there for them.

It could be the employer expects them to resume working in a different or less favorable role, or it could be the employer has gone so far as to dismiss them outright for having a child.

The words that can be used to describe these two scenarios range from outrageous to audacious to mindboggling, and most certainly include completely unlawful and in breach of your Employment Rights.

At Employment Matters, we're here to help.



BERNADETTE'S* STORY

"Sure I was compensated but money will never make up for what I lost. I just wanted my former employer to know what had happened, they were a good company really and my boss was just a bad egg but they handled it all really badly. If it wasn't for Employment Matters I could never have done this. Now I can get on with my life". - Bernadette, 42, Lucan*

Our Client, Bernadette*, was working as a software developer with a well-known international software company. She was a top performer in the company and always had great appraisals and bonuses. She got on well with her colleagues and management and was on the fast-track up the corporate ladder.

All of a sudden, it seemed she couldn't do anything right. She was criticized in team meetings, humiliated in front of work colleagues, and isolated by her line manager. Her once glowing appraisals became subpar.

Bernadette* was side-lined. Yet as far as she could see, nothing had changed in her work performance.

What had changed, however, was that Bernadette's former line manager had been promoted and the new manager she was reporting to saw her as a threat. This could have been the result of a perceived slight, possibly even a basic personality clash.

Bernadette* raised the issue internally, but the company failed to address the problem.

Bernadette* ended up suffering severe work-related stress and requiring a prolonged period of sick leave. She was eventually diagnosed with depression and resigned from her position. That's when she came to us for help.

We initiated a claim for her with the Workplace Relations Commission under the Employment Equality Acts and threatened her employer with an action in the High Court.

We drafted all of the correspondence, pleadings, and submissions, and corresponded with her former employer and their solicitors on her behalf.

Our handling of this allowed Bernadette to get on with her life and focus on getting better.

With our help, the adjudicator came to the conclusion that her Employer was wrong and she was awarded €45,000 from the WRC.



LUCY'S* STORY

"This was really a point of principle for me. Sure I was compensated but money will never make up for what happened to me. I just wanted my former employer to know that what had happened to me was entirely inappropriate."

Our Client, Lucy*, worked with a well-known international contact center in the southeast. She was a top performer in the company and was well thought of there even though she was working her way through college and the job while rewarding was a stop-gap while she completed her degree. She really enjoyed working there and got on well with her colleagues and management.

One of Lucy's work colleagues took a shine to her and when his advances were rebuffed by her she found herself on the receiving end of some particularly distasteful conduct by her "admirer". He continued to pursue her despite her making it clear that she was not interested, and this led to him making comments about her but personally and in the presence of some of her work colleagues

Lucy raised the issue internally, but rather than address the matter through appropriate procedures, the company not only failed to address the problem but turned their sights on Lucy. Lucy was accused of making these things up and was in fact threatened with disciplinary action herself.

This was despite the company knowing categorically that she was telling the truth. So upset was Lucy that she ended up suffering severe work-related stress and requiring a period of sick leave.

She was eventually diagnosed with depression and anxiety and resigned from her position.

We initiated a claim for her with the Workplace Relations Commission for constructive discriminatory dismissal as well as sexual harassment.

We drafted submissions and corresponded with her former employer and their solicitors on her behalf. Our handling of these responsibilities allowed Lucy* to get on with her life and focus on getting better.

Her former employer initially fought their corner, denying there was any inappropriate treatment. This was complete nonsense, of course, and the adjudicator in the WRC agreed that Lucy had been wronged and awarded her compensation of €15,000.

"This was really a point of principle for me. Sure I was compensated but money will never make up for what happened to me. I just wanted my former employer to know that what had happened to me was entirely inappropriate. They were a good company really and my colleague was just a bad egg but they handled it all really badly. If it wasn't for Employment Matters I could never have done this. Now I can get on with my life"

Lucy* 28



WHAT'S NEXT?

When an accusation of sexual harassment has been made in the workplace, it is expected that the Employer conducts a thorough investigation of these claims to get a fair and accurate assessment of the situation from both the victim and the perpetrator.

The investigations should reach a reasonable and adequate outcome that provides recommendations to address the harassment and sexual harassment, should it be found to have occurred, and outlines a strategy to remedy and prevent the same from occurring in the future.

The existence of an anti-harassment policy that has been effectively communicated to employees may contribute to a defense for the employer; however, an employer will not be able to argue that, in the absence of an effectively communicated anti-harassment policy, that an informal procedure or general grievance procedure is sufficient.

Even if an employer takes steps to investigate alleged complaints of harassment, the fact that it does not have an effectively communicated anti-harassment policy at the time of the conduct appears to be fatal.

WE CAN HELP YOU

You must move quickly as generally there is a 6-month time limit on taking a claim in the Workplace Relations Commission.

Call us now on 1890 88 90 90 for a free no-obligation consultation or to arrange an appointment with us to review your case.

Don't put up with this type of treatment. It wasn't acceptable in school and it certainly isn't acceptable now. Make sure your employer knows that you won't tolerate it and make your voice heard.

Whether you are seeking general advice regarding your Employment Rights when you are being badly treated at work or if you are concerned your rights may have been infringed, it is important to take action now.

The background of the entire page is a dark, textured surface with several large, interlocking gears. The gears are rendered in a light, almost white, color, creating a high-contrast, industrial aesthetic. The gears are of different sizes and are positioned in a way that they appear to be meshing together. The largest gear is on the left side, with its teeth pointing towards the top and bottom. Another large gear is on the right side, partially obscured by the text box. A smaller gear is visible at the bottom center. The overall effect is one of mechanical complexity and precision.

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EMPLOYMENT MATTERS

SPECIALIST SOLICITORS
FOR EMPLOYEES

ABOUT US

How do we know what we're talking about? Well, last year alone we cost Employers all over Ireland over €1 million in payments to disgruntled employees.

Over the last eight years, we've pretty much seen it all, and we know every trick in the book. We've represented employees in the Employment Appeals Tribunal, the Equality Tribunal, the Rights Commissioner Service, the High Court, the Circuit Court and the Labour Court. We've met judges, barristers (both senior and junior counsel), Tribunal chairs, rights commissioners, equality officers, adjudicators, winners, losers, the cook, the baker, the candlestick maker!

We've fought cases under the Unfair Dismissals Acts, Equality legislation, Data Protection Acts, for breach of contract and payment of wages. We've taken injunctions and prevented dismissals, negotiated settlements and compromises and achieved significant compensation awards costing employers a lot of money along the way.

One Client of ours was dismissed by his employer, a well-known hotel chain, for allegedly head-butting a work colleague at the staff Christmas party. We took on his case, although after viewing the CCTV footage provided to us under the Data Protection Acts we weren't particularly confident. However, following three days of hearing in the EAT our Client was awarded €35,000 for unfair dismissal. From his employer's perspective, they've been stung for €35,000 as well as three days of legal fees and the disruption to their business having their HR Director, General Manager, Head of Security and others at the hearing and away from their jobs for three days. Best of all for our Client though was how we made the HR Manager look pretty silly in cross-examination. She was ridiculed for not knowing or admitting to know the importance of a fair procedure in an employment context.

She was humiliated.

To our Client that was pay-back to a degree for how low and small she made him feel when they decided not to listen to his explanation for what had actually happened. You see our Client hadn't headbutted anyone. In fact, he'd been sober that night. But he wasn't particularly liked at work and when there was a scuffle with another member of staff, management saw their chance. They could get rid of our Client who had been a thorn in their side. So, it didn't matter what our Client said or did. No-one was going to listen to him, he'd headbutted someone and had to go...until we showed up.

Last year we represented employees in over 80 cases that went to hearing. We achieved awards of over €1 million, that's in awards alone. One million euro! That's not to mention the other costs of defending the case including of course legal fees and the intangible costs associated.

As I mentioned above though the tables are turning against claimants who are unrepresented or badly represented. It seems to me that the Government in introducing the new WRC process succumbed to the lobbying of big business and presumably part of that was to do with trying to make Ireland as attractive a destination as possible to foreign companies. The key to that often is to water down employment rights and make the employment market and in particular hiring and firing less off-putting for employers. And that is what the WRC has done in my view. So how is that you might ask? Well in my view the following is important in revealing how the system works against Claimants.

Hearings are conducted in the WRC in private. Now you might think that this is a good thing and certainly that's the way it was sold by the Government at the time but in reality there is no logical explanation for this and in fact it could be argued to be unconstitutional.

You see leaving aside the constitutionality of things (whether justice should be seen to be done) what employers hate more than anything is bad publicity.

Any case in the EAT, the Equality Tribunal or the Courts was bad for business. A carmaker doesn't want to alienate half their customers by being accused of discriminating against women. Under the new system, that threat is now gone.

The hearing are held in private and to compound this, the decisions are anonymised. What that means in reality is that even the worst offenders can take a chance at the early WRC adjudication stage and damn the consequences if they lose. We are seeing more and more of these cases running where previously they may have settled.

Secondly, while not a change per se, the fact that the WRC doesn't award costs is certainly more advantageous to the Employer than the Claimant. You see the Employer probably has a lawyer on retainer and they are doing lots of other things for which that lawyer is probably getting well rewarded so its easy for the Employer to get his lawyer into the saddle for a WRC hearing. Not so much for you, a claimant who may not have had to use a lawyer at any time in the past, how do you choose one? who do you choose? who will properly represent you?

Do they know what they are doing?

It should also be mentioned here that of course it's generally cheaper for an employer to retain a solicitor than it is for you because of course the employer gets to claim their VAT back making it about 23% cheaper for them than for you.

Another thing we see frequently is that employers will invariably roll out the big guns in Dublin, magic circle type firms. We've dealt with them all Arthur Cox, William Fry, A&L Goodbody, Matheson and Mason Hayes & Curran in the last year alone. We have also dealt with the mid-tier boutique firms like Daniel Spring & Co., Beauchamps and Byrne Wallace. These firms are all excellent, but do they know any more about the WRC than we do?

Some people come into and tell us that they met a lawyer who balked at the prospect of going up against the big boys and that makes me wonder why? So who do you want on your team? some guy who has never set foot in the Labour Court? or an expert who is well known there and who is respected by the other side?

Unfortunately, litigation is expensive. We're not saying we've got some silver bullet that's going to make all of your problems go away, that there's some magic dust that we'll sprinkle and it'll get the other side to pony up regardless of culpability.