



**Coimisiún na hÉireann  
um Chearta an Duine  
agus Comhionannas**  
Irish Human Rights and  
Equality Commission

## YOUR RIGHTS INFORMATION NOTE

### HARASMENT AND SEXUAL HARASSMENT IN THE COURSE OF EMPLOYMENT

#### ABOUT “YOUR RIGHTS”

“*Your Rights*” is a service operated by the Irish Human Rights and Equality Commission (“**IHREC**”) to provide individuals with information in respect of their rights and remedies that may be available should they believe they have suffered a breach of equality and/or human rights law in Ireland. IHREC can only provide information through this service, and cannot provide advice or comment on individual cases. This is not a legal document and it is not a substitute for legal advice.

#### DISCLAIMER

The contents of this document are provided for information purposes only and do not constitute a legal analysis of any individual’s particular situation. While we seek to ensure that the information provided is accurate and up to date, it is not a legal interpretation of the law and should not be relied on as such. For any professional or legal advice, all individuals should consult a suitably qualified person.

#### RELEVANT LEGISLATION

## EMPLOYMENT EQUALITY ACTS 1998-2015 (“EEA”)

Where a person believes they have been the subject of harassment or sexual harassment in the course of their employment, the applicable legislative framework is the [Employment Equality Acts 1998-2015](#) (“EEA”).

Harassment can be understood as any form of unwanted conduct related to any of the discriminatory grounds which has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. The nine discriminatory grounds are as follows:

Harassment is defined in section 14A(7) of the EEA as any form of unwanted conduct related to any of the prohibited grounds which has the purpose or effect of violating a person’s dignity and creating an intimidating, degrading, humiliating or offensive environment for the person. The nine prohibited grounds are as follows:

### Gender (male or female, transgender and/or non-binary)

Where a complainant is one gender and a comparator is another, and they have been treated less favourably on that basis.

### Civil status (single, married, separated, divorced, widowed or in a civil partnership)

Where a complainant has a different civil status to a comparator, for example, where a person is divorced while a comparator is married.

### Family status (a pregnant person, a parent, acting parent of a child, or a carer of a person with a disability who requires continued care)

Where a complainant has a different family status as compared to another person, for example, where one is pregnant and a comparator is not (it should be noted, this example may also fall within the gender ground).

## Sexual orientation (heterosexual, homosexual or bisexual orientation)

Where a person is treated less favourably because they have a different sexual orientation to that of their comparator, for example where a complainant is a bisexual person while the other person is not.

## Age (only applies to those who are aged eighteen years and over)

Where a person is treated less favourably because they are older or younger than their comparator without an objective justification.

## Religious belief (including religious background and those who have no belief)

Where a person is treated less favourably, for example, because they are Jewish as compared to their comparator who is Roman Catholic or a person who has no religious belief.

## Traveller community

Where a person who is a member of the Traveller community is treated less favourably than a person who is not a member of the Traveller community.

## Race (colour, nationality, ethnic or national origin)

Where a person who is a particular colour, nationality or ethnicity is treated less favourably than a person who is another colour, nationality or ethnicity.

## Disability (intellectual, mental and/or physical disability)

Where a person who has a disability is less treated less favourably than someone who does not have a disability (see also: IHREC information regarding "[reasonable accommodation](#)".)

Harassment or bullying that is not linked to one or more of the discriminatory grounds is not covered by the EEA. The conduct at issue may not be specifically directed at a particular employee but nevertheless has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. The protection of the EEA extends to situations where the employee does not have a relevant characteristic related to a prohibited ground but the perpetrator believes that s/he has that characteristic. For example, if the perpetrator believes the employee is gay and the employee is not, or that the employee has a disability such as schizophrenia and the employee does not. Many forms of behaviour, including spoken words, gestures or the display/circulation of words, pictures or other material, may constitute harassment. A single incident may constitute harassment and behaviour may constitute harassment of an employee even though it is not directed specifically at that employee.

Sexual harassment is defined in section 14A(7) of the EEA as any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which has the purpose or effect of violating a person's dignity and creating an intimidating, degrading, humiliating or offensive environment for the person. The conduct at issue may not be specifically directed at a particular employee but nevertheless has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. Many forms of behaviour can constitute sexual harassment. A single incident may constitute sexual harassment.

## Who is covered?

The protection against harassment afforded under the EEA covers all public and private employees, whether full-time, part-time, permanent or temporary, working under a contract of employment, or through an agency. It also extends to persons providing personal services in another person's home. However, it does not extend to volunteers. Other civil law remedies may be available to volunteers in this regard.

## Harassment may be carried out by

- the employer;
- fellow employees;
- clients;
- customers and service users; and/or
- other business contacts including any person with whom the employer might reasonably expect the employee to come into contact in the course of employment. This may include those who supply or deliver goods/services to the employer, cleaners, maintenance workers and other types of professional contractors, students and volunteers.

## The provisions on harassment also apply to employment agencies and vocational training.

Non-workplace harassment (Section 14A(1) EEA). The scope of the sexual harassment and harassment provisions extends beyond the workplace, for example to conferences and training that occur outside the workplace. It may also extend to work-related social events, such as for example, a work-related party and social media sites.

## IHREC'S CODE OF PRACTICE ON SEXUAL HARASSMENT AND HARASSMENT AT WORK 2022

[The Code of Practice](#) seeks to provide a guide as to how the EEA should be applied in working environments, and its aim is to give practical guidance on:

- what is meant by employment-related sexual harassment and harassment;
- how it can be prevented; and
- what steps ensure that adequate procedures are readily available to deal with the problem and to prevent its recurrence.

The Code of Practice is not itself a final interpretation of the law, this falls to the Workplace Relations Commission, the Labour Court, and the courts. However, it can be introduced into evidence before these institutions, in order to make the argument before WRC adjudicators, Labour Court members and judges, that the EEA should be interpreted in a certain way.

## THE FORUMS FOR COMPLAINTS

### EEA

## WHERE CAN A COMPLAINT UNDER THE EEA BE INSTITUTED?

[The Workplace Relations Commission](#) (“WRC”) was established by legislation, [the Workplace Relations Act 2015](#) (for more information, please see IHREC’s standalone guide entitled “*The Process for Instituting a Case at the Workplace Relations Commission Under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018*”) [How you bring a case to the Workplace Relations Commission under the Employment Equality Acts and the Equal Status Acts.](#)

All claims under the EEA, including claims for harassment and sexual harassment, may be instituted at the WRC. It is also possible to bring a case to the Circuit Court instead of the WRC, where the harassment and/or sexual harassment occurs as a result of a person's gender (for more information, please see IHREC's Guide entitled, *The Process for Instituting a Case at the Workplace Relations Commission under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018*. <https://www.ihrec.ie/documents/a-guide-the-employment-equality-acts/> There are no other circumstances where a case can start in the Circuit Court when it relates to conduct prohibited by the EEA.

Hearings at the WRC usually take place at Landsdowne House, Landsdowne Road, Dublin 4, but they can also take place at various locations across the country to facilitate participants who live outside or far from Dublin.

When a complaint is made and a hearing date is provided, the WRC will take into account the location of the Parties, for example, if a person's claim relates to their employer in Kilkenny, there is a possibility the case may be heard in Kilkenny or the South East.

The WRC procedure is designed to be as informal as possible. Parties do not necessarily need to engage legal representation, although many choose to do so.

Hearings and mediations at the WRC take place in boardrooms, with parties and adjudicators/mediators seated around conference tables. Unlike a courtroom, it is usual for those involved in these hearings and mediations to remain seated. Special arrangements can be made for persons with disabilities.

## COMMON TERMINOLOGY

### WHAT IS A "COMPLAINANT"?

In the context of harassment and sexual harassment under the EEA, a complainant is a person who claims they were harassed and who proceeds to make a complaint against the person or organisation they claim was responsible for the harassment.

## WHAT IS A “RESPONDENT?”

In the context of the EEA, a respondent will be a person or organisation or company that an individual claims is guilty of harassing or sexually harassing them or is responsible for others having done so. A respondent will be required to respond or defend a claim brought by a complainant. For more information on identifying the correct respondent to bring a claim against, please see IHREC’s Guide entitled, *The Process for Instituting a Case at the Workplace Relations Commission under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018* <https://www.ihrec.ie/documents/a-guide-the-employment-equality-acts/>

## WHAT IS “VICARIOUS LIABILITY”?

In some instances, an employer can be held legally responsible for a wrongful act, even where they themselves did not carry out the wrongful act. In this case harassment and/or sexual harassment, that is perpetrated by:

- an employee;
- someone who is not an employee but who is contracted by and/or who works in some capacity for the employer; or
- a person whom it could reasonably be assumed a complainant would come in contact with in the course of their employment, such as a customer.

## WHAT IS “EVIDENCE”?



Evidence may be introduced by a complainant or respondent at the hearing of a dispute at the WRC. Evidence may be, for example, in the form of documents, CCTV footage, text messages or emails, or it may be provided in oral testimony, by a person who witnessed events or who knew about them, commonly referred to as a “witness”.

Complainants should take a contemporaneous note of incidents as soon as it is possible afterwards, they should also include the date the note was taken on the document and the names of any witnesses. Where possible, complainants should also keep print outs and/or photographs of relevant information or interactions with the person that has subjected them to harassment or sexual harassment.

## WHAT IS AN “ADJUDICATION OFFICER”?

An Adjudication Officer is a person appointed by the WRC to investigate disputes and decide on claims that individuals make under the EEA. They chair the hearing of disputes, investigate the dispute and then come to a decision in relation to whether a complainant’s case has a basis or not.

An Adjudication Officer carries out a similar role to a judge in a normal court case, but they are likely to act in a less formal manner, and they should be addressed as “Chair” or “Adjudication Officer”.

## DISCRIMINATION

### WHAT IS DISCRIMINATION?

Discrimination means less favourable treatment on one of nine protected grounds under the EEA.

**Direct** discrimination involves a person being treated less favourably as compared to another person on the basis of a different personal characteristic or circumstance. An **example** of direct discrimination may arise, for example, where a person becomes pregnant and they are harassed or demoted as a result, in this instance it is likely to be clear that the discrimination occurred as a result of their gender. Direct discrimination can also occur, for example, when a boss directs someone under their management to discriminate against another.

**Indirect** discrimination occurs where an apparently neutral provision disadvantages individuals as a result of a personal characteristic or a circumstance. An **example**, of indirect discrimination may be where an employer publishes an advertisement for an internal promotion which states that applicants have to be of a certain minimum height. While the advert does not refer to men or women specifically, a height requirement may put women at a particular disadvantage. The employer must be able to justify this requirement in an objective way and show that the requirement is necessary to be able to carry out the job in question.

Discrimination by **imputation** occurs where the worker is discriminated against because they are imputed (incorrectly assumed) to be a member of one of the protected grounds under the EEA. This might occur, for **example**, where a person is wrongly categorised as being a member of the Traveller community and are subjected to harassment and sacked from their job because of their boss's bigoted position in respect of Travellers, even though they are not in fact a member of the Traveller community.

Discrimination **by association** occurs where a person is treated less favourably because of their connection, relationship or association with another person who falls within the protected grounds. An example of this may be where a person is being harassed at work because one of their family members is gay, they are being discriminated against simply because they are related to a gay person. This is discrimination by association.

## WHY IS DISCRIMINATION RELEVANT TO HARASSMENT?

In order for conduct to constitute harassment (as opposed to sexual harassment) in the course of a person's employment, it must be related to one of the discriminatory grounds set out in the EEA.

It is not necessary to show that the harassment is related to one of the nine discriminatory grounds if it is sexual in nature.

In some cases, conduct can amount to both harassment and sexual harassment, and complaints may be lodged in respect of both categories of prohibited conduct. If a complainant is not sure which category the conduct falls into, they may wish to consider making two separate complaints, one for harassment and the other for sexual harassment.

## WHEN CAN HARASSMENT AND/OR SEXUAL HARASSMENT ARISE?

### Where a ground exists at the time of making the complaint

Where a person is being subjected to harassment or sexual harassment on the basis of one of the nine grounds at the time of making the complaint.

### Where a ground used to exist but no longer exists

Harassment and/or sexual harassment can also arise where a discriminatory ground used to exist but no longer does, for example, where a person has returned from maternity leave and they are still treated differently as a result of the fact they had been on maternity leave.

### Where a ground may exist in the future

Harassment and/or sexual harassment can also arise where the discriminatory ground has not yet come into being, but where it may do in the future. An example of this may involve a person being harassed or sexually harassed on account of the fact that they are not yet pregnant, but may be in the future.

### Where a ground is assumed to exist by the perpetrator but actually does not exist

Even if a perpetrator wrongly believes a victim to be part of a protected group and subjects them to prohibited conduct on the basis of their mistaken belief, this may still constitute harassment or sexual harassment. An example may be where a person is assumed to be Muslim but where they are in fact not.

### Where harassment or sexual harassment occurs as a result of association

Harassment or sexual harassment can occur where a person is subjected to prohibited conduct because of their connection, relationship or association with another person who falls within the protected grounds.

It is not necessary to demonstrate that any form of sexual harassment was associated with any of the nine grounds.

### Case Study – Harassment due to direct discrimination and discrimination by association.

In 2015, a teacher brought a claim to the WRC against her employer, a Church of Ireland school. The teacher claimed that she was discriminated against and harassed on two grounds:

- the fact that she is not a member of the Church of Ireland; and
- because her son is gay.

The second ground is an example of being harassed on foot of discrimination by association – the teacher herself was not gay but her son was and she was subjected to prohibited conduct for that reason. The Complainant claimed that the Principal of the School had made negative comments about Catholic children who had attended a school attended by the Complainant’s daughter. She also alleged that the Principal had made discriminatory statements about her gay son, examples included the Principal’s claim that he was not a “normal boy” because he enjoyed shopping and was critical of him attending at a church event because of his sexual orientation.

The Complainant was forced to resign as a result of the discrimination and harassment she suffered.

The WRC directed the school to pay the Complainant €3,000 in compensation, and arrange training for members of the Board of Management and all staff in relation to its employment policies relating to equality, discrimination and harassment.

## Case Study – Sexual harassment, harassment and discrimination in one claim.

The Complainant was a Spanish national who had moved to Ireland in July 2020, to work as an *au pair* (child minder). The Complainant lived and worked in the Respondent’s home, where her sole responsibility was to supervise and care for the Respondent’s child.

The Complainant claims she had been subjected to discrimination by way of sexual harassment and discrimination based on her gender.

While the Respondent's wife was on holiday with her child, resulting in the Complainant having to perform other tasks such as cleaning, when she was away from the home, the Respondent constantly text her. The nature of those texts were to ask her where she was, he commented on her appearance, and asked her to send photographs that were sexual in nature.

On one occasion, when they were both in the house, the Respondent moved towards the Complainant on the sofa and began touch her in a sexual manner. The Complainant tried to resist this.

The Respondent went on a short holiday and when he returned he sacked the Complainant from her employment and told her to leave the accommodation in September 2020.

The Adjudicator at the WRC said:

*"Cases of harassment and sexual harassment can range from relatively minor incidents of verbal harassment to very serious incidents of actual or attempted sexual assault. Issues sometimes arise as to whether an assault was in fact a sexual assault."*

The WRC decided the Complainant had suffered harassment, sexual harassment and discrimination. The Adjudicator told her employer to pay €9,100 to her within 42 days from the date of their decision.

## DOES A COMPLAINANT HAVE TO SHOW THAT THEY HAVE BEEN TREATED DIFFERENTLY IN COMPARISON TO A "COMPARATOR"?

Harassment and sexual harassment are distinct forms of discrimination as compared to other categories. It is not necessary for a victim to present a comparator in the same way that they might have to do for other forms of discrimination. It is sufficient to demonstrate that certain

criteria, detailed in the section entitled “Definition of Harassment and Sexual Harassment” below, have been satisfied (for more information in relation to “comparators”, please see IHREC’s standalone guide entitled *“The Process for Instituting a Case at the Workplace Relations Commission Under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018”*).

## DEFINITIONS OF HARASSMENT AND SEXUAL HARASSMENT

### WHAT SECTION OF THE EEA IS APPLICABLE?

[Section 14A, EEA](#).

### ARE THERE DIFFERENT TYPES OF HARASSMENT?

In the EEA, harassment is separated into two categories:

- harassment; and
- sexual harassment.

### WHAT IS HARASSMENT?

Harassment is defined as having the following three characteristics:

- it must be in the form of conduct which is unwanted by the person that is subjected to it;
- it must relate to one of the nine discriminatory grounds (please see the section entitled “Discrimination” above); and

- the conduct must be for the purpose or have the effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

There are a few things to note in relation to this definition.

The conduct in question must be unwanted. A complainant will know themselves whether they wanted to be subjected to the conduct or not. However, assessing whether conduct was wanted or unwanted will fall to the Adjudicator to examine and reach a conclusion on, after hearing evidence.

The conduct can either be for the purpose of or have the effect of violating the dignity of the person who is subjected to it, it can be one or the other. This means, while a person's dignity may not actually be violated as a result of the conduct, it will be sufficient to show that the purpose of the conduct was to violate the person's dignity.

However, it is still necessary to show the following two requirements are fulfilled:

1. it was for the purpose of or have the effect of violating a person's dignity;

and

2. it was to create an intimidating, hostile, degrading, humiliating or offensive environment for the person concerned.

## WHAT IS SEXUAL HARASSMENT?

Sexual harassment has similar characteristics, which are:

- it must be in the form of conduct which is unwanted by the person that is subjected to it;



- the conduct must be of a sexual nature;
- the conduct may be verbal, non-verbal or physical in nature; and
- the conduct must be for the purpose of or have the effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

There are a few things to note in relation to this definition.

It is not necessarily the case that a person be subjected to physical touching in order for another person's conduct to constitute sexual harassment. Using sexual language or making a sexual gesture towards someone may qualify as sexual harassment.

However, it is still necessary to show the following two requirements are fulfilled:

1. it was for the purpose of or have the effect of violating a person's dignity;

and

2. it was to create an intimidating, hostile, degrading, humiliating or offensive environment for the person concerned.

The conduct can either be for the purpose of, or have the effect of, violating the dignity of the person who is subjected to it – i.e. it can be one or the other. Therefore, while a person's dignity may not actually be violated as a result of the conduct, it will be sufficient to show that the purpose of the conduct was to violate the person's dignity – this may be shown by what the perpetrator's motivation is, for example, through the words they used.

The conduct in question must be unwanted. A complainant will know themselves whether they wanted to be subjected to the conduct or not. However, assessing whether conduct was

wanted or unwanted will fall to the Adjudicator to examine and reach a conclusion on, after hearing evidence.

## WHAT TYPES OF ACTS MAY CONSTITUTE SEXUAL HARASSMENT?

The EEA does not set down a narrow or rigid definition of what type of conduct may constitute sexual harassment, provided it is verbal, non-verbal or physical in nature.

However, it does provide examples of the type of conduct that may constitute sexual harassment, all of which must be sexual nature and include:

- acts;
  
- requests made to a person;
  
- spoken words;
  
- gestures; or
  
- production, display or circulation of written words, pictures or other types of material.

This is only a sample list of the type of conduct that may be sexual harassment and it may be that a person is subjected to other types of conduct that do not fit into the categories set out above, but which do constitute sexual harassment. In one case, placing photographs of a sexual nature in various locations around the office constituted sexual harassment against a young female employee.

There have also been instances where sexual harassment has been found to have occurred as a result of a hostile environment being created for an employee, even though the language or actions used were not what might be considered to be explicitly sexual in nature.

## Case Study

### Complainant

### Respondent

### Ground under the Act

### Outline

### Key Point

### Redress

One case involving an employee of a hotel demonstrates how such conduct, although not overtly sexually in nature, can still constitute sexual harassment.

The Labour Court decided that the employer was responsible for the actions of a male co-worker of the complainant employee, who held negative views about women and had treated the complainant in a negative way as a result. This was the case even though none of his actions could be described as sexual.

The acts involved the complainant employee (a woman) being labelled with offensive terms, being laughed at, and being generally excluded from conversations. The Labour Court decided that because the treatment arose as a direct result of the colleague's attitude towards women, it amounted to sexual harassment. This was the case even though none of his actions could be described as sexual.

**IS THE PERPETRATOR'S INTENTION RELEVANT IN ASSESSING WHETHER CONDUCT CONSTITUTES HARASSMENT OR SEXUAL HARASSMENT?**

The definitions outlined above (for more information, see the sections entitled “*What is Harassment?*” and “*What is Sexual Harassment?*” above) demonstrate that in order to constitute harassment or sexual harassment, conduct may be for the purpose of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

However, where a victim can show that the conduct had the effect of violating their personal dignity, regardless of the intention of the perpetrator, the Adjudicator may also decide this is harassment or sexual harassment. This assessment is carried out from the Complainant’s point of view.

## IS IT NECESSARY FOR A PERSON TO SAY EXPLICITLY THAT THEY DO NOT WANT TO BE SUBJECTED TO CERTAIN CONDUCT FOR IT TO CONSTITUTE HARASSMENT OR SEXUAL HARASSMENT?

The answer to this question is no. In order to determine whether conduct amounts to harassment or sexual harassment the key issue is whether the conduct was unwanted (for more information in relation to how a respondent might be able to defend a claim, including where a complainant is subjected to unwanted conduct, please see the section below entitled “*Does an employer have a defence against a claim for harassment and/or sexual harassment?*”).

A person may communicate to a perpetrator of harassment and/or sexual harassment that they do not wish to be subjected to certain conduct, and this may result in it being very clear that the conduct is not wanted. However, it is not necessarily the case that they must do so. There will often be circumstances where a person feels too intimidated to express the fact that they do not want to be subjected to the conduct.

## PERPETRATORS AND VICTIMS OF HARASSMENT AND SEXUAL HARASSMENT

### WHO MIGHT BE RESPONSIBLE FOR HARASSMENT OR SEXUAL HARASSMENT PERPETRATED BY A COLLEAGUE?

Where harassment or sexual harassment occurs, a complainant may need to consider a number of options when deciding who to bring a case against.

Where harassment or sexual harassment is perpetrated against a person by a fellow employee, they may need to consider bringing a complaint against the individual who subjected them to the prohibited conduct and also their employer. Their employer may be a person or they may be a limited liability company (for more information in relation to identifying the correct name of the company, please see details provided below in this section).

Where harassment or sexual harassment is perpetrated by a colleague against another colleague, whether they are that person's boss or any other colleague, it is possible that their employer will be vicariously liable for the conduct of their employee (for more information, please see the section above, entitled "*What is Vicarious Liability?*"). [Section 15 of the EEA](#) sets out that an employer will be legally responsible for the acts of their employees where:

- the act is done in the course of his or her employment...whether or not it was done with the employer's knowledge or approval;
- the act is done with the authority, whether express or implied, of an employer at work or in an environment that is work related.

Where harassment or sexual harassment is perpetrated against a person by their boss or manager, they may need to consider bringing a complaint against their boss, who subjected them to the prohibited conduct and also their employer.

Where harassment or sexual harassment is perpetrated against an employee by their boss, and the boss is also runs the company or it appears to the complainant that their boss owns the company, that complainant will have to give consideration to another matter. They may need to bring a case against their boss as an individual but it may be, that their actual employer is a limited company or a public body, rather than an individual. If that is the case, it may be necessary to bring a case against their individual boss and also the limited company or public body that employs them.

Where it is necessary to institute a complaint against a limited company or public body, it is important that a complainant carries out a search on the [Companies Registration Office](#) website (for more information in respect of identifying potential respondents to complaints at the Workplace Relations Commission, please see IHREC's standalone guide entitled "*The Process for Instituting a Case at the Workplace Relations Commission Under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018*"). It is important to distinguish between the title of the limited liability company and the company's trading name.

A hypothetical example of this could be a limited company with the title "*JB Plumbing Limited*". However, the sign above the company's store front might read "*Joe Bloggs the Plumber*" and the general public may know the company as that. It is important that a complainant names the respondent by its company name, in this case "*JB Plumbing Limited*" rather than simply its trading name which, in this case is "*Joe Bloggs the Plumber*". To use this hypothetical example, a complainant would need to list the Respondent as, "*JB Plumbing Limited trading as Joe Bloggs the Plumber*".

Finding out who the employer is can be difficult at times, but this information may be included in a complainant's contract of employment or they may request this information if they are not sure.

Where a complainant is unsure who they should bring a case against in the WRC, they should err on the side of caution and name the individuals or entities that they believe may be responsible, even if it is possible this may not turn out to be the case. It is not possible for the WRC to order a complainant to pay the other side's legal costs even if they are unsuccessful against one or more parties. However, when instituting a case in relation to gender in the Circuit Court, if a person brings a case against the wrong person or entity, they may be told by the Judge to pay the other side's legal costs. Therefore, if a complainant is unsure about who they should bring the case against, they may wish to consider bringing the case in the WRC to avoid having to pay their opponent's legal costs.

## CAN AN EMPLOYER BE RESPONSIBLE FOR HARASSMENT OR SEXUAL HARASSMENT PERPETRATED BY A PERSON WHO IS NOT THEIR EMPLOYEE?

The answer to this question is yes.

However, this will depend on the particular circumstances of a situation. There have been cases where the Workplace Relations Commission and the courts have decided that a person's employer is responsible for the acts of a person who is not an employee, provided the employer has some level of control over that individual.

[Section 14 of the EEA](#) states that an employer will be responsible for harassment or sexual harassment that occurs either at the employee's workplace or elsewhere in the course of their employment (e.g., while the employee is working offsite or where they do not have a fixed place of work) where it is perpetrated by a person who is:

- a client;
- a customer;

- other business contact of the victim's employer; or
- any other person with whom the employer might reasonably expect the victim to come into contact with in the workplace or in the course of their employment, in circumstances where the employer ought reasonably to have taken steps to prevent it.

## Case Study

In one case, the Labour Court decided that a school was responsible for sexual harassment perpetrated against two teachers by school pupils.

This was because the employer/school controlled the environment in which the harassment had occurred and failed to take steps to prevent it from occurring or reducing the extent of it.

This decision demonstrates the very significant obligations placed on employers to take steps to either prevent sexual harassment from occurring or to reverse its effects.

## DOES HARASSMENT OR SEXUAL HARASSMENT HAVE TO TAKE PLACE IN THE WORKPLACE IN ORDER FOR IT TO FALL UNDER THE EEA AND/OR FOR AN EMPLOYER TO BE RESPONSIBLE FOR IT?

Harassment and/or sexual harassment does not necessarily have to take place in the workplace in order for it to fall within the EEA and/or for it to be unlawful. [The Code of Practice](#) states that the law in relation to harassment and sexual harassment extends beyond the workplace and may cover any of the following environments:

- conferences outside the workplace;
- training events outside the workplace;



- “work related social events” such as parties;
- social media sites.

These are only examples and there may be other environments covered by the EEA.

## Case Study

In one case, an employer was found to be liable for sexual harassment perpetrated at a Christmas party – an event organised by the employer and attended by employees. It was concluded that reasonably practicable steps had not been taken by the employer in order to prevent the sexual harassment from occurring in what was deemed to be a work related event.

## DOES A PERPETRATOR HAVE TO BE A DIFFERENT SEX OR GENDER AS COMPARED TO A VICTIM IN ORDER FOR CONDUCT TO CONSTITUTE HARASSMENT OR SEXUAL HARASSMENT?

It is no longer the case that a person being subjected to certain conduct must be of a different sex or gender from the person who is responsible for the conduct in order for it to constitute harassment or sexual harassment. For example, it is possible for a man to subject another man to sexual harassment, and it is possible for a woman to subject another woman to sexual harassment.

## DOES AN EMPLOYER HAVE A DEFENCE AGAINST A CLAIM FOR HARASSMENT AND/OR SEXUAL HARASSMENT?

A complainant will need to show the Adjudicator (if the case is brought in the WRC) or a judge (if the case is brought in the Circuit Court) that they have been harassed or sexually harassed, this is commonly described as proving their case (for more information, please see the IHREC's standalone guide entitled "*The Process for Instituting a Case at the Workplace Relations Commission Under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018*"). They may do this through a variety of means, they could give evidence themselves (in other words, tell the Adjudicator or the Judge what happened themselves), they may ask people who saw the harassment or sexual harassment occur to come and be witnesses and tell the Adjudicator or the Judge what happened, they may ask people who themselves had been subjected to harassment or sexual harassment by the same individual to come and be witnesses, they may wish to show the Adjudicator or the Judge text messages or emails, or they might have CCTV footage which shows the prohibited conduct occurring.

Even if it is proven by a complainant that they have been subjected to harassment or sexual harassment by a fellow employee or colleague or their boss/manager (if they are not the complainant's employer), in limited circumstances (set out in [section 14A\(2\) of the EEA](#)) an employer may nevertheless be able to defend themselves against the claim.

This can only occur where it can be shown they took such steps as were "reasonably practicable" to:

- prevent the alleged perpetrator from harassing or sexually harassing the alleged victim; or
- prevent the alleged victim from being treated differently in the workplace and where they are treated differently, and where it has occurred, to prevent its effects.

[The Code of Practice](#) states:

*"In order to rely on this defence, employers must have comprehensive, accessible, effective policies that focus on prevention, best practice and remedial action. They must also have accessible complaints procedures. It should be noted that an employer may become aware of*

*harassment or sexual harassment without a complaint being made (for example by way of exit interviews) and will therefore have a duty to act in the absence of a complaint...employers will not be able to rely on an excellent policy if it is not implemented.”*

[The Code of Practice](#) also provides very detailed information in respect of what should be included in an employer’s policies and/or how they should be implemented and communicated.

## Case Study – Where a respondent invoked a policy to successfully defend a claim

The Complainant was British and also a Protestant, worked for the Respondent as a production assembly operative, he claimed that his colleagues played “anti-British songs” in the workplace, and on the same occasion he claimed that one colleague shouted a sectarian chant at him. The Complainant claimed this was harassment on the basis of his religion.

The Complainant complained to the Human Resources Department two days later, and he claimed it was suggested to him that his colleagues did not understand the significance of the music. The Complainant had a formal telephone interview with a HR manager and his Production Manager, and it was said they had not yet identified who had played the music.

The Complainant was made aware of the outcome of the complaint one month later, he was given a one line apology from the person who played the music, but the apology did not include the person’s identity. The Complainant was assured that no music of this nature would be played again on the shop floor. The Respondent took immediate steps to implement a new policy prohibiting personal music on the assembly floor and permitted music from radio stations only.

The Complainant appealed the outcome and one month later he had a telephone interview with the Head of HR for the region and also the Chief Operations Officer. The Complainant

was told no further action would be taken as the person who played the music was young and they did not intend to be malicious.

The Respondent also offered a mediation process which the Complainant engaged in.

Sometime later when he was due to return to work, the Complainant wrote to the Respondent's Regional Head of HR and said he could not work for "the IRA". When the Complainant went into work he was given a letter suspending him, he had a disciplinary process and was eventually dismissed.

The Respondent argued to the WRC that it had a multi-denominational workforce with employees of various nationalities and religious beliefs. They argued that they have a clear anti-harassment policy in place prohibiting discrimination and harassment on any ground, including religion.

The Adjudicator accepted that the Bullying and Harassment Policy that was in place at the time of the incident resulted in the Respondent being able to show that they had taken all reasonably practicable steps to prevent the victim from being treated differently in the workplace in the course of the victim's employment and, where it did occur, to reverse its effects.

The Adjudicator said:

*"I know the complainant was unhappy with how his complaint was taken initially, that the apology was not fulsome and that no action was taken against either of the individuals whose behaviour he complained of. However, I am satisfied that the respondent can rely on the defence in section 14A(2) of the Acts and find that the complainant was not harassed on the grounds of religion, within the meaning of the Employment Equality Acts."*

**Case Study – Where a respondent was unsuccessful in relying upon its policy as a defence**

The Complainant was a Polish national and a Catholic, and he was employed by the Respondent. The Complainant claimed that he was harassed as a result of his religion and nationality. The Complainant alleged that his supervisor (Mr A) had told him he planned to have an accident at work in order to obtain compensation from his employer. The Complainant told a different supervisor about what he had been told.

A number of incidents were alleged to have occurred, including the Complainant overhearing Mr A and another employer (Mr C) calling him a “rat” and a “snitch”. The Complainant complained to HR, but this was said to have made the situation worse, including Mr A dirtying windows the Complainant had cleaned. The Complainant told the Workplace Relations Commission Adjudicator that on one occasion, when he was changing his t-shirt, Mr C laughed at the tattoo of Jesus that the Complainant has, he laughed at the Complainant’s religious traditions and questioned how the Complainant knew that the Catholic faith was better than Islam. The Complainant told the WRC that Mr C had made derogatory comments about Christmas being celebrated on 24<sup>th</sup> December in Poland, and the Pope, and on a number of other occasions, he made negative comments about the Complainant’s religion. The Complainant said that he became depressed and went on certified sick leave as a result.

The WRC Adjudicator concluded that the Complainant had been harassed on the basis of his religion and nationality. The Adjudicator concluded that the Respondent could not rely upon its policies in order to defeat the Complainant’s claim, he said:

*“The respondent submits that the complainant received a copy of their Dignity at Work Policy. I note that I was provided with two different versions of the respondent’s Dignity at Work Policy but the respondent had no record that the complainant had ever received any such policy, no explanation as to why there were two different policies or when these policies actually were developed as there were no dates of origin of the policies. I believe it is further telling that when the complainant complained of bullying, the respondent failed to remind employees of their obligations under the respondent’s purported policies. The complainant also had to engage with the respondent through a recruitment website to report the first complaint which suggests he did not know what the procedure was. As set out in A Hotel v A*

*Worker (EDA0915) the ‘need for coherent policies and procedures to prevent harassment from occurring is self-evident’.*”

## DOES A COMPLAINANT NEED TO PROVIDE THEIR EMPLOYER WITH AN OPPORTUNITY TO FIX THE PROBLEM BEFORE BRINGING A CLAIM?

Where harassment or sexual harassment is taking place, and it is possible to do so, then a complainant should inform their employer. There are obvious difficulties associated with doing this if the perpetrator of the harassment or sexual harassment is a person’s boss and this may be explained to the WRC or the Circuit Court when the case is being dealt with.

In some cases, complainants have been unsuccessful in bringing their case because they did not complain or because they were offered a complaints or investigation procedure by their employer which they did not engage in. Therefore, complainants should carefully consider engaging in any complaints or investigation process offered to them.

However, it is very important that complainants are aware that they must institute a complaint within specific time frames (for more information, please see the section entitled *“Deciding to make a complaint”* below, and also the IHREC’s standalone guide entitled *“The Process for Instituting a Case at the Workplace Relations Commission Under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018”*). If the complaint/investigation procedure is delayed or it does not appear that it will finish within the timeframe for bringing a claim, a complainant will need to consider bringing the case even if the process has not finished and explain to the Adjudicator or Judge why they did so.

If a complainant does not bring the case within the necessary timeframe, in some instances, it may be possible to seek an extension of time within which to do so (for more information, please see the IHREC’s standalone guide entitled *“The Process for Instituting a Case at the Workplace Relations Commission Under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018”*). However, complainants should be very slow to rely on this possible safety net, as they may not always be successful in doing so).

## DECIDING WHEN TO MAKE A COMPLAINT AT THE WORKPLACE RELATIONS COMMISSION OR THE CIRCUIT COURT

### DOES A PERPETRATOR'S CONDUCT HAVE TO CONTINUE OVER A SUSTAINED PERIOD IN ORDER TO CONSTITUTE HARASSMENT OR SEXUAL HARASSMENT?

The WRC and the courts have made clear that harassment and/or sexual harassment may occur as a single event. It is not necessary to demonstrate that there have been repeated acts in order for certain conduct to constitute harassment.

### WHAT IF DISCRIMINATION IS ONGOING, HOW SHOULD THE TIME PERIOD FOR INSTITUTING A COMPLAINT BE DETERMINED?

A complaint must be filed at the WRC within six months of the last date of harassment and/or sexual harassment.

In many cases, where just one act of harassment and/or sexual harassment occurred as it is a standalone event, it will be easy to determine when the six-month time period (for more information, please see the IHREC's standalone guide entitled *"The Process for Instituting a Case at the Workplace Relations Commission Under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018"*).

However, there will also be situations where harassment or sexual harassment occurs and is

then repeated over a lengthy period. The question here is when the six-month time limit to refer a complaint begins and ends?

Even where a complainant believes there is continuing harassment and/or sexual harassment, it is important to institute a complaint as soon as possible, to avoid the risk of missing the six-month period to lodge the complaint.

In some cases, it will be obvious that there is continued harassment or sexual harassment and it may be the case that it is still occurring when the complaint is made (this is sometimes called a “continuing breach” of the law). In such a situation, the six-month time period will not have started to run and a complainant may make the complaint to the WRC at any time, so long as the harassment and/or sexual harassment continues.

Alternatively, it may be that sustained harassment and/or sexual harassment occurred over a period of time, but it stopped some time ago. In such a situation the time period under the EEA will run from the last event of harassment and/or sexual harassment.

Some situations are not so clear-cut and there will be occasions where significant gaps occur between events of harassment and/or sexual harassment and it is therefore more difficult to determine whether there is a “continuing breach”. In these cases, there may be a series of separate events, which result in harassment and/or sexual harassment.

In such circumstances, one or more events of harassment and/or sexual harassment may be outside the six-month time limit. But where the acts are sufficiently connected to discrimination that did fall within the time limit, it may be possible to consider them as part of a single line of events known as a “continuum”.

It is important to be cautious and make your complaint as early as possible. Different people may have different ideas about whether there has been a continuing breach.

There is no requirement to formally notify the respondent of your intention to make a claim before submitting your complaint to the WRC, although it is open to you to seek further



information from them before submitting a complaint, should they wish to do so (for more information, please see the IHREC's standalone guide entitled "*The Process for Instituting a Case at the Workplace Relations Commission Under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018*").

## REDRESS

If a complainant successfully demonstrates that they have been subjected to harassment and/or sexual harassment and that a respondent is responsible for it, what redress can they expect to obtain?

The outcome of a successful sexual harassment or harassment case can vary, depending on the circumstances of the case itself.

The maximum amount of compensation, or money, that can be awarded by the Workplace Relations Commission or the Labour Court is either 104 weeks of pay or €40,000 (whichever sum is greater).

Orders directing equal treatment or another specified course of action, for example, a direction that the victim be issued an apology or a direction that an employee who is responsible for harassment or sexual harassment undergo training or that a policy be created, may be made.

## APPEALS PROCESS

**IF A COMPLAINANT IS NOT SATISFIED WITH THE DECISION MADE AT THE WRC BY AN ADJUDICATION OFFICER, WHAT CAN THEY DO?**

Both complainants and respondents are entitled to appeal an adjudication officer's decision, and to seek a fresh decision.

The appeal must be lodged with the Labour Court and this must be done within forty-two days of the date of the Adjudication Officer's decision being communicated to a complainant and respondent.

The appeal form is available [here](#), and those wishing to appeal a decision of the WRC should attach a copy of the decision from the WRC.

An appeal to the Labour Court will result in a full rehearing of the case – in other words the case is heard from start to finish again.

The Labour Court is more formal than the WRC, with three members sitting in a panel to decide on the complaint, as compared to one adjudication officer in the WRC.

Any person that appeals a decision will be required to provide the Labour Court with written submissions within three weeks of lodging their appeal. These written submissions may contain:

- an outline of the factual background to the case;
- the issues which are disputed by a complainant and respondent;
- the legal issues and legal principles, and how they apply to a complainant's circumstances and why they should mean that a particular party should win their case.

A respondent will then have a further three weeks in which to furnish their written submissions.

A claim instituted in the Circuit Court may also be appealed, and a notice of appeal must be filed within 10 days of the Circuit Court having made an order or a judgment. The [Courts Service website](#) provides more information.

For more information, please see the IHREC's standalone guide entitled "The Process for Instituting a Case at the Workplace Relations Commission Under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018").

## CONTACT DETAILS FOR THE IHREC "YOUR RIGHTS" SERVICE

- Call us on 018583000
- Email us on [YourRights@ihrec.ie](mailto:YourRights@ihrec.ie)

You can also write to us at: Your Rights, Irish Human Rights and Equality Commission, 16-22 Green Street, Dublin 7.