



## A guide for employees

SEXUAL HARASSMENT IN THE WORKPLACE

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Dear employee,

Sexual harassment in the workplace shows a lack of respect, infringes dignity, can demotivate the person on the receiving end or even make them ill. Various statutory regulations require your employer to take steps to ensure that things do not get this far. But you might be exposed to sexual harassment nevertheless. This brochure shows you what action you can take if this happens.

In the pages that follow you will find out

- what sexual harassment is and what forms it can take,
- what consequences sexual harassment can have,
- what action you can take to counter sexual harassment suffered by you or your colleagues,
- what the legal position is.

The term sexual harassment in the workplace covers any behaviour with a sexual aspect or based on gender that is unwanted by and humiliating to the recipient. Harassment can take place during working hours or at company events. It can be carried out by employees, people working for partner firms, or by the company's customers.

Sexual harassment can take the form of words, gestures or deeds. It can be committed by individuals or by groups. In concrete terms, this might mean:

- > Insinuating and suggestive remarks about the appearance of employees.
- > Sexist comments or jokes about sexual characteristics, sexual behaviour and the sexuality of women or men.
- > Showing or displaying pornographic material in the workplace.
- > Issuing unwanted invitations with unmistakable intent to colleagues.
- > Unwanted bodily contact.
- > Stalking employees at work or outside work.
- > Attempting to get close to an employee in a way which involves promises of advantage or threat of disadvantage.
- > Sexual assault, coercion or rape.

#### What is sexism?

**Sexism is defined as any form of discrimination based on gender. Mocking women or men because of their appearance, behaviour or sexual orientation, for example, or making insinuating remarks to them, is sexist behaviour.**

### WHAT CONSTITUTES SEXUAL HARASSMENT?

There is a simple rule which can be applied to decide whether an observed act is harmless flirtation, a developing relationship between colleagues, or sexual harassment: the key point is not the intention of the person carrying out the act, but how their behaviour is received by the other party, i.e. whether it is welcomed or unwanted.

### WHAT LIES BEHIND SEXUAL HARASSMENT?

The main motivation behind sexual harassment is the exercise of power and dominance. It has nothing to do with erotic feelings or sexual attraction. The sexual route is chosen simply because victims are very sensitive to sexual matters. Insults are aimed at keeping the victim in a subordinate position, preventing them from progressing in their career, etc.

### WHAT IS THE DIFFERENCE BETWEEN FLIRTING AND SEXUAL HARASSMENT?

#### FLIRTING

- > is mutual
- > boosts self-esteem and gives confidence
- > is wanted by both parties
- > makes people feel good about themselves
- > is enjoyable
- > brightens up the working day
- > respects personal boundaries

#### SEXUAL HARASSMENT

- > is unilateral
- > is humiliating and insulting
- > is unwanted by one party
- > undermines self-esteem
- > is annoying
- > poisons the workplace atmosphere
- > does not respect personal boundaries



### CONSEQUENCES FOR VICTIMS

Sexual harassment can be damaging to victims in many ways, and can have the following effects:

- > Work is no longer enjoyable.
- > Trust in colleagues is lost.
- > The ability to concentrate and work well declines.
- > Professional skills and opportunities are no longer exploited to their full potential.
- > Feelings of shame and guilt develop.
- > There is a noticeable effect on physical and mental health. This may involve headaches, insomnia, back pain, stomach complaints, depression, feelings of disgust and helplessness, fear, helpless rage and so on.
- > Victims may feel forced to leave the company.
- > Private life is affected.

### Preconceptions

“She likes it really.” “He’s not a real man, he can’t take a joke.”

“It’s all in her imagination.”

“She asks for it.” “She sleeps with anyone.” Comments like these are often heard in discussions about sexual harassment in the workplace. They put the responsibility on the shoulders of the victim, and absolve the perpetrators of guilt. Many victims also believe that it is their fault. They accuse themselves instead of defending themselves. They often don’t realise that they can say no, and that “no” should be taken for an answer.



↑ Schnellhub ↑ Levée rapide ↑ Quicklift ↑





Anyone can fall victim to sexual harassment in the workplace, irrespective of gender, age, marital status, appearance, level of education or position in the company. A study carried out in Switzerland in 2007<sup>1</sup> found that 28 percent of women and 10 percent of men who were questioned had been upset by sexual harassment or similar behaviour in the context of their work.

The study shows that three-quarters of cases of sexual harassment in which women are victims are carried out by men (usually individual men, but also groups of men). Women also report harassment by mixed groups (men and women), and in isolated instances by women.

Men stated that around half of all cases of harassment were perpetrated by men (individuals or groups), around a quarter by women, and also a quarter by mixed groups.

Most instances of harassment are carried out by colleagues, but customers often behave in a similar way. Superiors also engage in such conduct, but more rarely. Women report harassment on the part of superiors much more often than men. In contrast, men are more likely than women to suffer harassment by colleagues further down in the hierarchy.

<sup>1</sup> *Silvia Strub and Marianne Schär Moser (2008): Risiko und Verbreitung sexueller Belästigung am Arbeitsplatz. Eine repräsentative Erhebung in der Deutschschweiz und der Romandie, Bern. This study (full text in German and French, summary available in Italian) deals with the risk and prevalence of sexual harassment in the workplace on the basis of a representative survey conducted in German- and Romansch-speaking Switzerland. It was commissioned by the Federal Office for Gender Equality and the State Secretariat for Economic Affairs.*

## LEGAL BASIS

A number of laws, such as the Gender Equality Act (GEA), the Employment Act (EmpA), the Code of Obligations (CO) and the Swiss Criminal Code (SCC), govern the protection of employees against sexual harassment in the workplace, either specifically or as part of general protection of mental and physical well-being.

### > Article 4 GEA:

"Discrimination via sexual harassment. Any harassing behaviour of a sexual nature or other behaviour related to the person's gender that adversely affects the dignity of women or men in the workplace is discriminatory. Such behaviour includes in particular threats, the promise of advantages, the use of coercion and the exertion

of pressure in order to obtain favours of a sexual nature."

### > Article 5 paragraph 3 GEA:

"In the case of discrimination through sexual harassment, the court or the administrative authority may also award the person concerned compensation, unless the employee proves that it took measures that have been proven in practice to be necessary and adequate to prevent sexual harassment and which it could reasonably have been expected to take. The compensation must be fixed by taking all the circumstances into account and is calculated on the basis of the average Swiss salary."



**> Article 6 paragraph 1 EmpA:**

“Employers are obliged to take all the measures required to protect the health of their employees that experience has shown to be necessary, that may be used in accordance with the state of the art and which are appropriate to the conditions in the workplace. They must also take all the measures required to protect the personal integrity of their employees.”

**> Article 328 paragraph 1 CO:**

“Employers(...) must in particular ensure that employees are not sexually harassed and that any victim of sexual harassment suffers no further adverse consequences.”

**COMPLYING WITH TIME LIMITS**

Some protection standards may be invoked both during and after the period of employment. But there are time limits. Contact your canton’s conciliation board for more information.

See [www.sexuellebelaestigung.ch](http://www.sexuellebelaestigung.ch) for the address.

**> Article 198 Swiss Criminal Code:**

“Any person who causes offence by performing a sexual act in the presence of another who does not expect it, any person who sexually harasses another physically or through the use of indecent language shall on complaint be liable to a fine.”



## DEFEND YOURSELF – IT'S YOUR RIGHT!

Your employer has a legal duty to create a harassment-free environment. If you feel sexually harassed at work, you are entitled to defend yourself. It doesn't matter in the least what your position is in the company. Remember that you did not provoke the harassment and that it is not your fault. Don't just bottle up your distress, take it seriously.

### WHAT CAN YOU DO?

There are various options you can choose to defend yourself. Pick the one that suits you and the situation best.

### ASK THE PERPETRATOR TO STOP

Ask the person who is harassing you to stop immediately. Tell them clearly that their behaviour is unwanted and will not be tolerated. If this does not work, threaten to file a complaint if the harassing behaviour does not cease.

### Keep a record of events

It may take several steps to put a stop to harassment. This is why it is important for you to write down what has happened (who has harassed you, when and where the harassment occurred, what exactly happened).

You should also write down what you did to counter the harassment. Make a note of whether there were any witnesses to the incident(s). Talk to them and ask them whether they would be prepared to make a statement.

### WRITE A LETTER

If you are afraid to confront the person who is harassing you directly, or if this does not work, try writing a letter. In this letter you should state what is upsetting you and ask the recipient to refrain from such behaviour in future. Make a copy of this letter.

### GET YOUR COLLEAGUES INVOLVED

Talk to other colleagues in the workplace. You may not be the only person who is being harassed, and you could join forces with others.

## GET HELP

Do not hesitate to seek help. Find out who is responsible for sexual harassment issues in your company. Many companies have designated contacts for victims of sexual harassment. These are individuals whom you can trust, and whom you can approach as a first step to discuss your situation and what can be done about it. They can also offer you psychological support. Whatever you say will be treated in confidence by the contact, i.e. no further action will be taken in the company without your consent. N.B.: the only exception to this is if the contact also has a supervisory role. In that case, he or she is obliged to take action in response to the incident. Under these circumstances the information you have given may no longer be treated confidentially. If this is the case, or if you discover that your employer has not designated a contact, you can approach specialist organisations outside your company, your trade union, the employees association or the cantonal labour inspectorate.

## LEGAL ACTION AS A LAST RESORT

If the body responsible for sexual harassment matters in your company does not take any action despite your reports, or if you would prefer to seek a solution outside the company, a number of options are open to you. If you are considering legal action, it is strongly recommended that you seek advice from specialist bodies such as equality offices and advice centres, your trade union or employees' association, or a lawyer.

The following list shows you what legal steps are theoretically available to you:

- Suspend work on the grounds of unacceptable working conditions (article 324 Swiss Code of Obligations).
- File a complaint against the company with the conciliation board, the court or the administrative authority. Complaints can be filed on the following grounds:
  - application for the harassment to be stopped, rectified and/or recorded (article 5 paragraph 1 GEA);
  - claim for compensation of up to six months average Swiss salary for failure to comply with duty of care (article 5 paragraph 3 GEA);
  - claim for compensation in monetary or other forms (article 5 paragraph 5 GEA or article 41 ff CO).
- Individuals who are dismissed because they have filed a complaint within the company or because they have approached the conciliation board or the court can object to dismissal before the end of the period of notice and demand provisional reinstatement, or alternatively go to court to claim compensation of up to six months salary within 180 days after the end of their employment (article 10 GEA and article 336a CO).
- Resign pursuant to article 337 CO (immediate termination of employment for serious reasons). In this case the employer is required to pay you the total salary that you would have received if you had resigned while giving the usual period of notice.
- Report the employer to the cantonal labour inspectorate so that it can investigate the company.
- Take civil proceedings against the person committing the harassment by submitting a complaint with a request for the behaviour to cease or for the illegal nature of the sexual harassment to be recorded, and claim compensation in monetary or other forms (article 28 ff. Swiss Civil Code and article 49 ff. CO).
- Take disciplinary proceedings against the person committing the harassment under the provisions of public employment law.
- Take criminal proceedings against the perpetrator.

## REACTING IS NOT ALWAYS EASY

People who defend themselves against sexual harassment do not always get a sympathetic hearing, and cannot always rely on support. Reactions range from trivialising the incident to taking the side of the perpetrator. Guilt is often placed on the shoulders of the victim. Attempts are sometimes made to shut them up and to threaten them.

But at the same time victims are also expected to take a firm stand against unacceptable behaviour and not to tolerate it. Yet if they complain, their reaction is regarded as disproportionate or they are described as prudish, inhibited individuals with no sense of humour. In addition to the harassment itself, victims might experience bullying, marginalisation and animosity.

However, it is important for you to defend yourself. If you don't feel strong enough by yourself, get help! Experience shows that harassment is more likely to stop soon if victims have the courage to react strongly. Active opposition will help you regain your self-respect and free yourself from the humiliating role of victim.



### HOW CAN YOU HELP COLLEAGUES WHO ARE BEING HARASSED?

What should you do if you observe sexual harassment going on near you? You can help the victim in the following ways:

- > Don't join in the laughter if someone makes a sexist joke or comment.
- > If you think that someone is being sexually harassed, talk to them.
- > Encourage them to take action to defend themselves.
- > Go with them to talk to a contact in your company or an external advice centre.
- > Don't do anything that the person concerned does not want you to do.
- > Tell supervisors about the harassment.
- > Agree to be a witness. You are protected against retaliatory dismissal.
- > Argue in favour of measures to prevent sexual harassment being taken in your company.

### Protection against dismissal

The Gender Equality Act specifies that people lodging a complaint and witnesses are protected against dismissal throughout the entire procedure (within the company and before a court) and for up to six months after the completion of the procedure.

# USEFUL ADDRESSES

## **ADVICE AND INFORMATION CENTRES:**

- > Advice centres for women suffering violence
- > Advice centres for female migrants
- > Trade unions and professional associations
- > Cantonal and municipal equality offices  
([www.equality.ch](http://www.equality.ch))
- > Cantonal labour inspectorates
- > Conciliation boards

You can find the addresses of these centres, organisations and bodies at:

[www.sexuellebelaestigung.ch](http://www.sexuellebelaestigung.ch).

This website is operated by the Federal Office for Gender Equality.



