



平等機會委員會  
EQUAL OPPORTUNITIES COMMISSION



LEARN THE **LAW** KNOW YOUR **RIGHTS**

# **UNDERSTANDING SEXUAL HARASSMENT**

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# WHAT IS SEXUAL HARASSMENT?

## How does the law define sexual harassment?

The Sex Discrimination Ordinance ("SDO") defines two forms of sexual harassment:

### Targeted at a person

Engaging in conduct of a sexual nature in relation to a person, where:

- the conduct is unwelcome to that person;
- a reasonable third person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated by the conduct; and
- the conduct may include, but not limited to, making a sexual advance or a request for sexual favours to that person.



### Without a specific target

Engaging in conduct of a sexual nature, where the conduct:

- does not have to be directed at a person;
- can be committed alone or together with others; and
- creates a hostile or intimidating environment for another person.





## When is sexual harassment unlawful?

The SDO applies to key areas of public life, such as employment; common workplaces; education; the provision of goods, services and facilities; clubs; and the disposal and management of premises. **Sexual harassment is unlawful when it occurs in any of these areas *and* between persons in any of the relationships covered by the law.**



## Employment

If you are employed or applying for a job at an establishment in Hong Kong, it is unlawful for the employer or an employee of that establishment to sexually harass you. If you are the employer, it is also unlawful for an employee or a job applicant to sexually harass you.



**Note:**

- If you are a contract worker or a commission agent, it is unlawful for your principal, or a fellow contract worker or commission agent to sexually harass you.
- If you are a partner in a firm or seeking to be one, it is unlawful for an existing partner in the firm to sexually harass you.

**The acts in the following examples may be unlawful:**

- A department head tells sexual jokes in front of subordinates.
- A partner in a surveying firm makes repeated requests to an aspiring partner for sexual favours, despite a clear rejection from the latter.
- X hires a domestic worker to perform household chores and, on numerous occasions, pats the domestic worker on the hip without the latter's consent.

**Note:**

- If you are an employee and need to carry out your work in a premises, it is unlawful for a person living in the premises to sexually harass you. It does not matter whether your employer also lives in the premises, as long as the harasser (e.g. a family member or friend of your employer) lives there.

**The act in the following example may be unlawful:**

- Y owns an apartment where he lives with his brother. Y employs a foreign domestic worker to help with the housework. Y's brother asks the worker to watch pornographic videos with him. Even though there is no employment relationship between Y's brother and the worker, his act may constitute unlawful sexual harassment.



## Common workplaces

If you and another person are both “workplace participants” sharing a common workplace, it is unlawful for him/her to sexually harass you at that workplace.



### Note:

- “Workplace participants” include employers, employees, interns, volunteers, partners in a firm, contract workers and their principals, as well as commission agents and their principals.
- A workplace is defined as any place where a person works or attends as a workplace participant. This may cover both physical environments, such as offices, co-working spaces and consignment counters in supermarkets, and virtual spaces like an online work conference.
- The law applies even when the harasser and the victim belong to different companies or organisations.







### The acts in the following examples may be unlawful:

- In the office pantry, an employee leers at an intern and says, "You have such a great figure. It's turning me on."
- At an auto trade show, a venue staff member whistles and squawks at a female model posing next to a car, "Pull down your collar and show me more of your cleavage!"
- In the staff rest area of a department store, a makeup counter salesperson working for brand X forces a kiss on another salesperson who works for brand Y.
- Both X and Y are volunteers for a non-profit organisation. At a street booth during a fundraising event, X keeps showing Y sexually explicit images on his/her phone, even after Y looks away in disgust.

## Education

If you are a student, staff member, or member of the responsible body of an educational establishment, it is unlawful for another student, staff member, or member of the responsible body of the same educational establishment to sexually harass you.





### Note:

- If you are applying to be a student at an educational establishment, it is unlawful for a member of the responsible body, staff member, or student of that establishment to sexually harass you, even when your application has not yet been accepted.
- “Educational establishments” include universities; post-secondary colleges; public schools; secondary schools, primary schools, kindergartens and tutorial centres registered or provisionally registered under the Education Ordinance; as well as technical colleges, technical institutes, industrial training centres and skill centres.

### The acts in the following examples may be unlawful:

- During an orientation event in a residential hall of a university, some of the more senior students pressure the first-year students into playing a game where they have to burst the balloons tied to the former’s laps by sitting on them.



- A teacher tells a sexual joke in class.
- Two secondary school students push a feminine-looking male classmate into a toilet compartment, assault his genitals and tease him by saying, “Stop pretending to cry. We know you like it when we touch you.”
- A student sends messages, images or videos of a sexual nature on a mobile messaging app to a chat group consisting of other students.





## Provision of goods, services and facilities

It is unlawful for a person to sexually harass you while providing goods, services or facilities to you.

Conversely, it is also unlawful for a person to sexually harass you when you are providing goods, services or facilities to that person.



### Note:

- It does not matter whether the goods, services or facilities require payment or not.
- The relevant act would be unlawful even where it takes place on a ship or aircraft that is outside of Hong Kong at the time the act is committed, provided that the aircraft or ship is registered in Hong Kong, or if it belongs to or is possessed by the Government.





### The acts in the following examples may be unlawful:

- A customer at a restaurant says to a beer promoter, "Come over and let me pat you, then I'll order another six-pack."
- During a counselling session, a staff member of a religious organisation continues to caress a lay believer's private parts even after being pushed away by the latter several times.
- A passenger deliberately brushes a flight attendant's buttocks with his/her hands on a Hong Kong-registered aircraft while it is in international airspace.

## Clubs

If you are a current or prospective member of a club, it is unlawful for a member of its management committee to sexually harass you.





**Note:**

- A club refers to any association, incorporate or unincorporate, that is comprised of not less than 30 persons for social, literary, cultural, political, sporting, athletic or other lawful purposes, with its facilities provided and maintained partly or wholly from its funds.

**The acts in the following examples may be unlawful:**

- The treasurer of a sports club keeps asking a member for sexual favours in exchange for waiving membership renewal fees, even though the member has explicitly refused.
- X is the chairperson of a photography club, and Y has applied to be a member of the club. During a meeting with Y, X puts his/her hands on Y's waist and starts fondling him/her.

**Disposal and management of premises**

If you are renting or planning to rent a premises, it is unlawful for a person who manages or has power to dispose that premises to sexually harass you.



The act in the following example may be unlawful:

- The owner of a subdivided flat bumps into the occupying tenant in the corridor and suddenly touches her breasts.



The examples above illustrate the main protections against sexual harassment under the Sex Discrimination Ordinance. For a complete understanding of the applicable scope of the law, please refer to:

[www.elegislation.gov.hk/hk/cap480](http://www.elegislation.gov.hk/hk/cap480)

## TIME FOR SOME MYTH-BUSTING...






## Time for some myth-busting...

Misinformation abounds when it comes to sexual harassment. Can you debunk some of these myths?

**Sexual harassment is a criminal offence.**



Contraventions of the prohibitions against sexual harassment under the SDO would lead to civil liability. Certain acts of sexual harassment, such as touching another person's private parts without his/her consent, may also amount to the offence of indecent assault under the Crimes Ordinance.

**It is not sexual harassment if it was just a one-off incident.**



**n=1**

Under the law, whether an act amounts to sexual harassment has nothing to do with its frequency. An act can constitute sexual harassment even if it happened only once.

**It is always a "she said, he said" situation. It is difficult to prove sexual harassment, and harassers get off the hook all the time.**



While the claimant of a sexual harassment claim has the burden of proof to support his/her claim with reasons and evidence in legal proceedings, such claims are civil in nature, meaning that the standard of proof adopted by the Court would not be "beyond reasonable doubt" as in criminal cases, but "on the balance of probabilities". In adopting this standard of proof, the Court would evaluate the evidence presented by both the claimant and the respondent before determining whose account is more credible, and whether to accept the issues raised by the claimant and his/her claim. The standard of proof is therefore considerably lower than that in criminal proceedings.

**It is not sexual harassment if the harasser did not mean it.**



Intent is not a necessary element of sexual harassment under the law. A person making a sexual joke, for example, may consider it innocuous or a common practice in certain workplaces, but as long as it is unwelcome to the recipient or creates a hostile or intimidating environment for others, the act can amount to sexual harassment.

**Men cannot be sexually harassed.**



The law protects everyone, regardless of the gender of the victim.

**Sexual harassment never happens between people of the same sex.**



Sexual harassment can take place between men and women, among men, or among women. Gender is irrelevant as to whether an act amounts to sexual harassment.

**Some people mean "yes" when they say "no".**



When a person looks offended, pushes you away, or explicitly says "no" to you, it is a clear sign that he/she does not welcome whatever you are doing. When you are unsure, take the time to communicate with him/her, and always obtain consent before engaging in any behaviour that may otherwise constitute sexual harassment.



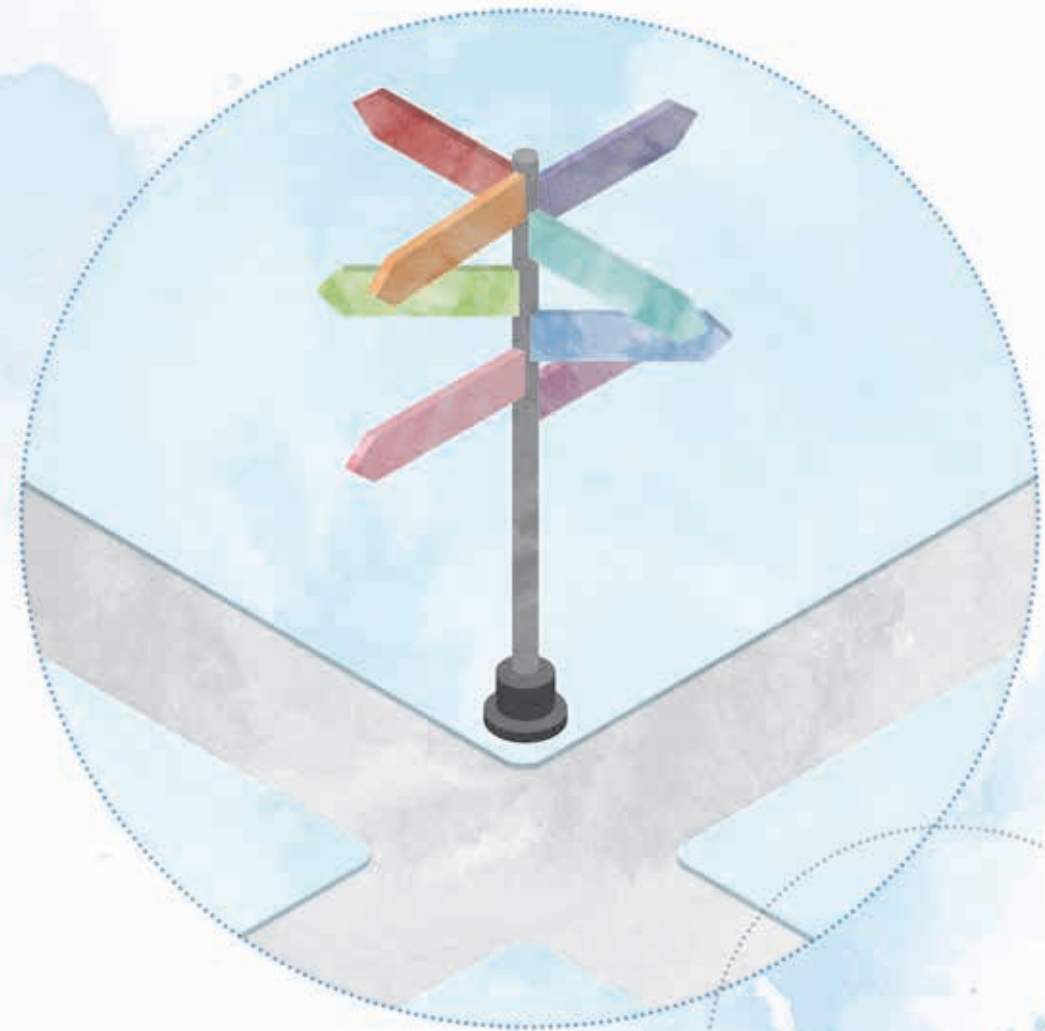
**Employers are not liable for acts of sexual harassment committed by their employees.**



Employers and principals of agents, as well as persons engaging interns and volunteers, will be held liable for any unlawful act of sexual harassment committed by their employees, agents, interns and volunteers respectively in the course of employment or the relevant internship and volunteer work, whether or not they knew about or approved the act.

The law provides for a defence for the employer or person engaging the intern or volunteer, where they can prove that they have taken “reasonably practicable steps” to prevent the employee, intern or volunteer from doing the relevant sexual harassment act (note: there is no equivalent defence for principals).

Such steps may include formulating a comprehensive anti-sexual harassment policy, informing all workplace participants of the policy through different channels, providing training and reviewing the policy on a periodic basis, as well as setting up a complaint-handling mechanism and designating staff to handle complaints. Ultimately, in the event of a civil claim, the Court will consider the specific circumstances of the case and decide whether the steps taken are sufficient.



**WHAT SHOULD I DO  
IF I WAS  
SEXUALLY HARASSED?**

## What should I do if I was sexually harassed?



### Say no

Make it clear to the harasser that you do not welcome the behaviour and it must stop, for example by yelling at him/her to stop, pushing him/her away, or sending a text message to voice your objection to such behaviour.

### Jot down what happened

Record the details of the incident as soon as you can, including the date, time and place, the events that took place (e.g. what the harasser did, how you reacted), and whether there were other people around. These notes may come in handy when you lodge a complaint, locate witnesses or decide to take legal action.



### Lodge a complaint

Make a complaint to your employer, school or the relevant organisation (e.g. a service provider) and ask that they handle it in a fair and impartial manner. If needed, seek assistance from the EOC, social workers, trade unions, NGOs, your friends or family.



### Get help from the EOC

Contact the EOC within 12 months of the incident and lodge a complaint in writing by post or fax, or by using the online form on the EOC website.







## File a lawsuit at the District Court

Issue civil proceedings at the District Court within 24 months of the incident.

If you previously lodged a complaint with the EOC and were unable to settle the dispute through conciliation, then the period that elapsed between the date you lodged your complaint and the date the relevant conciliation failed would be disregarded in the calculation of the 24-month limitation period.

## Make a report to the police

Some acts of sexual harassment may amount to criminal offences. You may report the incident to the police and lodge a complaint with the EOC concurrently.



## Don't be a silent bystander



If you see someone being sexually harassed, try to:

- Confront the harasser if circumstances allow, and point out what he/she is doing is inappropriate and may amount to sexual harassment.

If a victim comes to you for help, remember to:

- Listen to what he/she has to say and, when appropriate, suggest how to lodge a complaint.
- Show your support, for example by accompanying the victim when he/she lodges a complaint or giving a witness statement if you saw what happened.

## WE ARE HERE TO HELP





## We are here to help

### Complaint handling and conciliation

Upon receiving a written complaint under the SDO, the EOC will encourage the relevant parties to settle the dispute by conciliation where appropriate.



- Settlement terms are negotiated between the relevant parties. Examples include:



monetary compensation;



issuance of a letter of apology;



introduction of new organisational policies or improvements to existing practices, etc.

- Participation in conciliation is entirely voluntary. Information obtained in the course of conciliation is confidential and inadmissible in evidence in court proceedings except with the consent of the relevant person.

The law also provides that the EOC may decide not to conduct, or to discontinue, an investigation into a complaint for any of the following reasons:

- The EOC is satisfied that the alleged act is not unlawful by virtue of a provision under the relevant ordinance;
- The EOC is of the opinion that there is no desire on the part of the aggrieved person(s) for the investigation to be conducted or continued;
- More than 12 months have elapsed since the relevant act;



- The EOC is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance; or
- The EOC determines, in the case of a representative complaint, that the complaint should not be a representative complaint (in accordance with the relevant rules dealing with representative complaints).



## Other assistance

Under the law, where an individual has lodged a complaint with the EOC but there has not been a settlement of the case, he/she may apply to the EOC for other forms of assistance, such as legal assistance. Applications for legal assistance are decided by the EOC's Legal and Complaints Committee (LCC).



- The LCC considers a wide range of factors in deciding the applications, including but not limited to: whether the case raises a question of principle; whether the complexity of the case will make it too difficult for the applicant to deal with the case unaided; the strength of the evidence and the likelihood of success in court; whether litigation can bring about effective remedies for the applicant; and whether the case can set an important legal precedent and raise public awareness of issues relating to equal opportunities.
- The EOC will grant free legal assistance to successful applicants, which may take the form of offering legal advice, negotiating a settlement with the other party, or helping the assisted person issue legal proceedings as and when needed.



Visit our website for a look at cases conciliated by the EOC and digests of significant court cases:

[www.eoc.org.hk](http://www.eoc.org.hk)

## Contact us

Anti-Sexual Harassment Hotline: (852) 2106 2222

SMS Service: 6972566616538  
(for enquiries by people with hearing or speech challenges)

Fax: (852) 2106 2324

Address: 16/F, 41 Heung Yip Road, Wong Chuk Hang, Hong Kong

Office Hours: 8:45am to 5:45pm,  
Monday to Friday (except public holidays)



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