

Sexual Harrassment in the Workplace

by Melanie McMullan (June 1994)

Sexual harassment in the workplace is, unfortunately, something that women, in particular, may face during their working lives. Women go out of the home and into the workplace, expecting to be treated as workers and colleagues, and not as sex objects, or substitute wives, or to be reminded that they are women. Those who are transsexual, and particularly male to female transsexual, will be no exception to this, and may face reverse gender harassment.

The European code on sexual harassment defines sexual harassment as "unwanted conduct of a sexual nature or other conduct based on sex affecting the dignity of women and men at work." It can include unwelcome physical, verbal, or non-verbal conduct. The key is that behaviour is "unwanted by the recipient" but each individual is left to determine what behaviour is acceptable to him, or her, and what he, or she, regards as offensive. Sexual attention becomes sexual harassment if it is persisted in, once it has been made clear that it is regarded by the recipient as offensive. The European code is now persuasive on all industrial tribunals, as a result of the case of *Wadman v Carpenter Farrer Partnership* (1993), to the extent that all employers should now be considering the drafting of policies to combat sexual harassment in the workplace.

There is nothing to prevent an employer from introducing into his disciplinary code rules which would prohibit discrimination against employees on the grounds of their sexuality, or related reasons, such as transvestism or transsexualism. Many employers also include a promise not to discriminate on such grounds within their equal opportunity policy. As there is no legal provision in relation to sexuality, or to transvestism or transsexualism, there is no legislative framework around such matters. However, if there is such a provision in the disciplinary code, and a member of staff does harass an individual on the basis of his or her sexuality, which would include transvestism and transsexualism, then, provided that proper disciplinary proceedings are taken against them, and the harassment is sufficiently serious to warrant dismissal, that dismissal will be fair in the normal way. This approach was confirmed by an industrial tribunal in the case of *British Home Stores Ltd. v Burchell* (1978).

New provisions in section 40 of the Trade Union Reform and Employment Rights Act 1993 allow tribunals to impose limited reporting restrictions on parties' identities, which would greatly assist any transsexual taking a case before an industrial tribunal, although there are no cases as yet, other than the case already mentioned, which is to come before Oxford Crown Court, of a transsexual who has been indecently assaulted. Furthermore, section 1 of the Sexual Offences (Amendment) Act 1992 provides for victims of indecent assault and other serious sexual offences, in that it is an offence to publish reports identifying the victim, unless they give their consent to be identified. These respective provisions, together with the case of *P v S and Cornwall County Council* (1993), greatly assist the transsexual, by no longer having to worry about running the gauntlet of adverse newspaper publicity.

You may decide that the only way to end the harassment, or to gain some financial compensation for what you have endured, is to take legal action. You might consider legal action in the following circumstances, such as:

- The harasser refuses to stop.
- Your union and your employer do nothing to resolve the problem.
- Your employer offers an impossible solution such as moving you instead of the harasser.
- You are being victimised after having made a complaint
- You have felt forced to leave your job by the harassment and lack of action by your employer.
- You have been sacked.

However, most of us will want, when faced with harassment, to put a stop to it as quickly as possible, so as to create a pleasant working environment. You usually will want to stay in your job, if at all possible, and to solve the problem with a minimum of fuss. We want our relationships with our colleagues to stay smooth, and we want to limit the damage to our self confidence, and get on with living. The standard advice that is given by employment professionals in dealing with harassers is as follows:

- Make sure the harasser is informed by you or someone else that you dislike his or her behaviour.
- Tell him or her in writing and keep a copy.
- If you confront the harasser in person, you could take someone such as a union representative, or someone senior in the office with you.
- Keep a note of the date and time of each incident of harassment, with details of what the harasser did and said.
- Tell your union representative or women's officer.
- Report the harasser to someone in authority in your organisation. Even if the senior person takes no effective action, this is an important step should you have to consider legal action.
- If the harasser touches you on an intimate part of your body, you could report them to the police for indecent assault.

To take legal action in an Industrial Tribunal, you must do so within three months of the last incident of harassment. You must complete a form called Application to an Industrial Tribunal, which is known as the IT1, or "originating application"

which is available from job centres and citizens advice bureaux. You should also complete the "green form" for legal aid, so that you can obtain some free legal advice and assistance. If you have been sacked after sexual harassment, or were forced to resign because of it, you can appeal to a tribunal under EPCA claiming unfair dismissal.

{mospagebreak title=Further advice and Help}Further advice and help

You should try to obtain legal advice and representation, rather than doing it yourself, as there are many finer points of law which my article cannot cover. You can also contact the following organisations:

- City Centre, Telephone 0171 608 1338

City centre is a useful starting point if you are looking for informal advice over the telephone. They will provide advice, support and counselling, but will refer you elsewhere if you need legal representation.

- Women Against Sexual Harassment (WASH) Telephone 0171 405 0430.

They can give you advice, but cannot take your case or represent you at a tribunal. They produce an excellent guide titled Sexual Harassment in the Workplace: a Guide to Legal Action.

- Equal Opportunities Commission Telephone 0161 833 9244

They have a package available on request on sexual harassment.

- Law Centres Federation Telephone 0171 387 8570

They will give you details of your local law centre but cannot give you advice on your problem.

{mospagebreak title=References} References

Saunders v Scottish National Camps Association (1981) IRLR 277

Wiseman v Salford City Council (1982) IRLR 202.

Whitlow v Alkanet Construction Limited (1975) IRLR 321.

Turner v Vestric (1981) IRLR 23.

British Home Stores Ltd. v Burchell (1978) IRLR 379.

EA White v British Sugar Corporation (1977) IRLR 121.

This information sheet is based on an article which appeared in GEMS News in June 1994 which was later included in the book Transvestism, Transsexualism and the Law by Melanie McMullan and Stephen Whittle. This book is at present out of print but is being revised and rewritten. Contact the Gender Trust for details about publication of the revised book.

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