



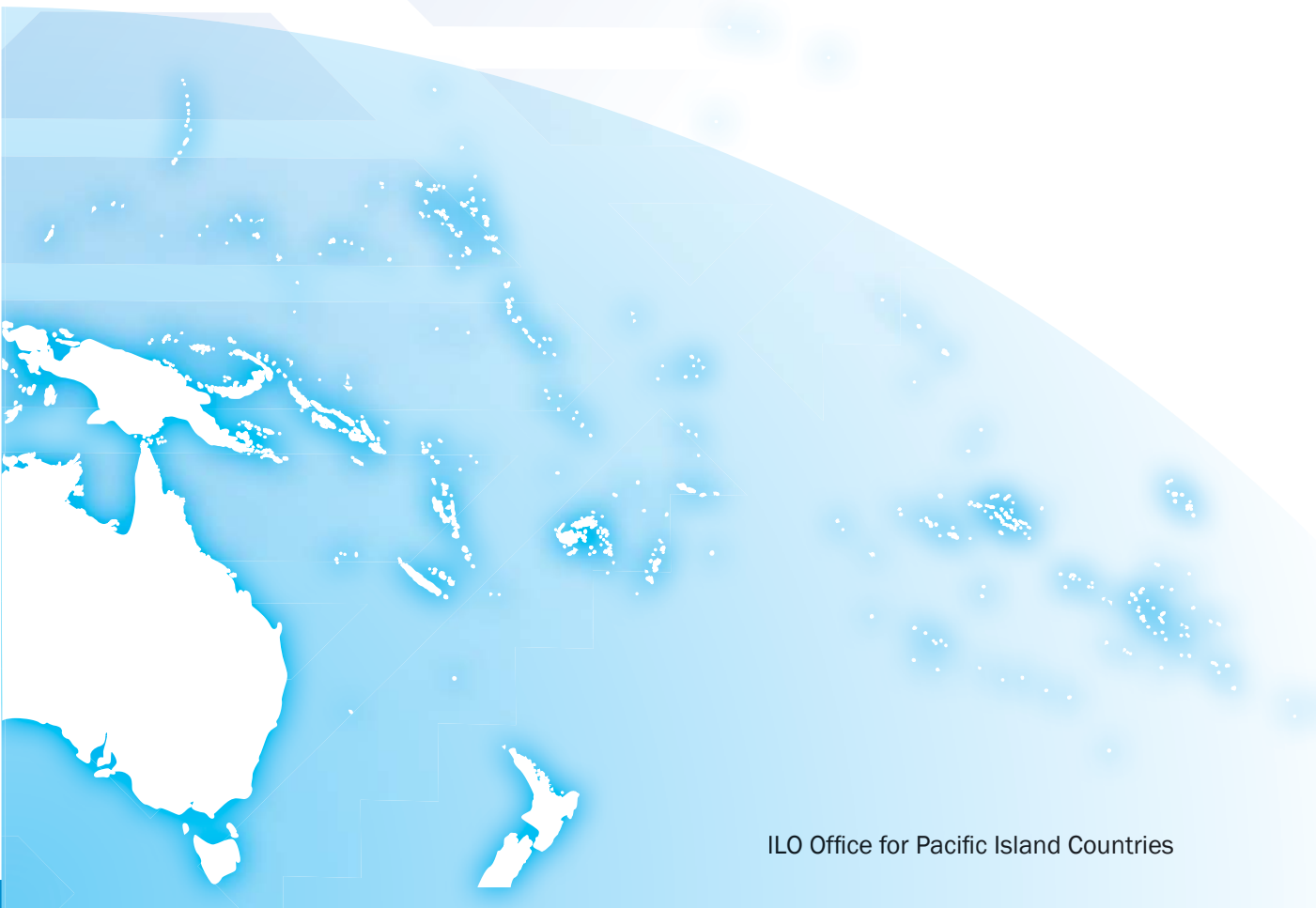
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# Eliminating sexual harassment in workplaces in the Pacific

**POLICY BRIEF**



ILO Office for Pacific Island Countries

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# Why this Policy Brief?

In 2014, the International Labour Organization (ILO) commissioned baseline research on sexual harassment in workplaces in the Pacific Island member States.<sup>1</sup> Sexual harassment in the workplace was found to be a problem for the following reasons:

1. Sexual harassment in the workplace is not widely-recognised as a problem and there is little quantitative research, some evidence suggests that it is in fact prevalent but underreported.
2. Very few Pacific Island States have comprehensive sexual harassment in the workplace legislation.
3. Employers are not legally required to have policies on sexual harassment in the workplace.
4. Complaint mechanisms for sexual harassment in the workplace, where they exist, are difficult to understand and apply.

The purpose of this brief is to set out what sexual harassment in the workplace is and identify some good practices in the Pacific for tackling this important issue. This Brief also provides practical suggestions to governments and employers' and workers' organisations on how to deal with sexual harassment in the workplace.

Although gender-based violence, of which sexual harassment is one example, also occurs outside the workplace, this brief focuses on sexual harassment in the workplace.

Even though sexual harassment in the workplace is not reported or discussed in the Pacific, it is a problem. In the only comprehensive study carried out on sexual harassment in the workplace in the Pacific, it was found that **1/3 of women were victims of sexual harassment** in the workplace.

Fiji Women's Right Movement, Survey 2002

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<sup>1</sup> Fiji, Tuvalu, Kiribati, Vanuatu, Samoa, Papua New Guinea, Republic of Marshall Islands, Palau, Solomon Islands

# What is sexual harassment?

## Conduct that is sexual harassment:

- Unwanted touching, hugging, kissing or physical contact
- Sexual or suggestive jokes
- Comments about the role of women or how they dress
- Unwanted and persistent invitations to go out
- Sending sexually explicit messages
- Displaying sexual images in the office
- Request for sexual favours in exchange for rewards at work
- All forms of sexual violence

Sexual harassment is **unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated.**

Sexual harassment is not physical assault but includes words or behaviour that refer to sexual activity such as comments about someone's sexual activity.

Although such conduct is obviously inappropriate, it is important to note that there cannot be an exhaustive list of what conduct constitutes sexual harassment, as this depends on how it is perceived by the recipient and on whether the actions are **unwanted and unreasonable to the recipient**. Colleagues may joke or go out with each other provided both parties agree. It is when the behaviour is unwanted that it becomes sexual harassment.

There are generally two types of sexual harassment:

1. Quid pro quo – a person is under pressure to engage in sexual activity to keep her job or advance her career.
2. Hostile work environment - the conduct creates an environment that is hostile, humiliating and intimidating for the recipient.

## Why is sexual harassment an important issue?

Sexual harassment in the workplace is a global issue. According to UN figures, between 40 and 50 per cent of women in the European Union experience unwanted sexual advances, physical contact, verbal suggestions or other forms of sexual harassment at their workplace; in Asia-Pacific countries it is 30 to 40 per cent in the workplace.

Although sexual harassment has not been subject to comprehensive research in the Pacific, a study in Fiji in 2002 found that 33% of women had suffered sexual harassment in the workplace. There are reasons to think that its prevalence is as high, and perhaps even higher, in other parts of the Pacific due to other indicators of women's empowerment.

Sexual harassment in the workplace is an issue which needs to be assessed and addressed, for it creates unacceptable working conditions and prevents all workers from enjoying a safe and decent workplace. For the victim, it can cause trauma and sickness, which may result in lower productivity and loss of income. It prevents victims of sexual harassment from participating to their full potential in employment.

For the employer, sexual harassment also has an important detriment, including decreased work quality among the victim and other workers who are aware of the harassment. This negative climate can, in particular impact on motivation and teamwork in the workplace. It may also result in high staff turnover if workers feel uncomfortable in this environment, and also create or legal costs for employers who are sued for failing to take action.

Research in the Pacific suggests that, as in many other regions, victims may not to raise complaints about this issue, including fear of losing their jobs; fear of being stigmatised or blamed for the harassment and simply a lack of awareness of their rights.

**“Sexual harassment undermines equality at the workplace by calling into question individual integrity and the well-being of workers, it damages an enterprise by weakening the basis upon which work relationships are built and impairing productivity.”**

*ILO Committee of Experts  
– Special Survey on the  
application of the Convention  
on Discrimination in  
Employment and Occupation  
(No.111)*



# What are States' obligations on tackling sexual harassment?

Although sexual harassment does impact on men, and in particular individuals in vulnerable groups such as young men or gay men, the majority of victims of sexual harassment are women. As such sexual harassment is considered a form of discrimination against women and a detriment to gender equality. In this regard, Pacific Island States do have certain international obligations to tackle sexual harassment.

All ILO member States in the Pacific are parties to the Convention of the Elimination of Discrimination Against Women (CEDAW). The Convention requires state parties to eliminate discrimination against women, including in the field of employment (article 11).

Further, the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which has been ratified by all Pacific member States of the ILO except Palau, Republic of Marshall Islands and Tuvalu, requires state parties to adopt a policy to eliminate discrimination on the basis of sex, including sexual harassment.

## Research commissioned by the ILO has identified some good practices and development areas on tackling sexual harassment in the Pacific

### Legislation

Some states, such as Fiji, have developed legislation that addresses sexual harassment and provides remedies for victims. Individuals can bring complaints of sexual harassment to the employment mediation service and tribunal in Fiji. Legislation requires all employers to have sexual harassment policies, though there is uncertainty as to whether this legislation is strictly enforced. In other countries such as Kiribati and Solomon Islands, the criminal law can be used to address certain aspects of sexual harassment in the workplace, such as sexual assault.

### Policies/Code of conduct

Some governments that do not have legislation on sexual harassment have developed policies or codes of conduct which aim to deal with sexual harassment within the public service. For example, Papua New Guinea and Solomon Islands have public service policies that prohibit sexual harassment.



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These policies include a definition of sexual harassment and remedies for victims, including dismissal of the perpetrator. Other states such as Republic of the Marshall Islands, have public service codes of conduct that prohibit behaviour which would cause unreasonable distress to another employee. Although sexual harassment is not specifically mentioned, it could be covered by the overall prohibition in these codes of conduct.

#### **Judicial remedies**

Tuvalu is the only country in the Pacific where a victim has successfully sued her employer within a formal court system after being sexually harassed at work. A complaint for sexual harassment is also pending before the Fiji employment tribunal.

#### **Statistics**

The only comprehensive survey on sexual harassment was carried out in 2002 in Fiji by a non-governmental organisation (Fiji Women Rights Movement (FWRM)). This study plays an important role in estimating the prevalence of sexual harassment in Fiji.





# Opportunities for further work on tackling sexual harassment

## Legislation

The vast majority of Pacific Island States do not have legislation to adequately deal with sexual harassment. Some legislation covers potential instances of sexual harassment such as criminal law but there is often no comprehensive legislation on sexual harassment in the workplace.

Legislation also fails to provide for adequate remedies for victims. Only one case in the Pacific has been successfully litigated on the basis of sexual harassment. This may be indicative of a lack of remedies for victims. This should not be taken to mean that sexual harassment is not happening but instead, that victims may be unable to access remedies.

Remedies should be available to victims through the formal court system, specialised complaints mechanism, such as human rights commission or ombudsperson, or the internal complaints procedures of every employer.

This would ensure that victims are able to at the very least make complaints and try to obtain redress for the harm they have suffered.

## Policies/Code of conduct

While some governments and companies have developed official guidelines and policies on sexual harassment, there is anecdotal evidence which suggests that remedies and procedures for complaints are often considered inadequate by potential users.

For example, the Solomon Islands Code of conduct for public servants does not include a section on making or investigating a complaint for sexual harassment. Therefore, it is unclear how an employee would know how to go about seeking redress under this code of conduct.

## Statistics/surveys

Because sexual harassment is not a well-researched area, there is a presumption that it is not a problem. Further research through anonymous surveys can help to estimate the extent of the problem, and helps companies and government to allocate resources to tackling the issue.

# Good Practice Framework for Tackling Sexual Harassment

Numerous initiatives exist to eliminate sexual harassment in the workplace. This section provides some suggested practices that have been effective in other regions and countries. An integrated approach should raise awareness and provide victims with different options for dealing with sexual harassment. For example, legislation on sexual harassment without training (including for employers and managers) on what it means and how to make complaints is likely to have little impact on the number of official complaints made.

## ❖ Legislation

Legislation on sexual harassment should include:

What is sexual harassment?	<ul style="list-style-type: none"> <li>✓ Definition should be broad enough to include various types of conduct against both women and men and include same sex harassment</li> </ul>
Who is responsible for the sexual harassment?	<ul style="list-style-type: none"> <li>✓ Should set out circumstances for when liability will extend beyond the direct perpetrator; for example, the supervisor, employer, etc.</li> </ul>
What are the employers' obligations?	<ul style="list-style-type: none"> <li>✓ preventative measures (training, sexual harassment policy and complaints procedure)</li> <li>✓ take action once it occurs</li> </ul>
What is the employers' liability?	<ul style="list-style-type: none"> <li>✓ failure to act in cases of sexual harassment</li> <li>✓ failure to have the policies and procedures on sexual harassment</li> </ul>
Examples of legislation to tackle sexual harassment	<ul style="list-style-type: none"> <li>✓ stand-alone Act on sexual harassment</li> <li>✓ labour law</li> <li>✓ occupational health and safety law</li> <li>✓ human rights law</li> <li>✓ tort law</li> <li>✓ criminal law</li> </ul>
Complaints procedures	<ul style="list-style-type: none"> <li>✓ easy to follow complaint procedures</li> <li>✓ confidentiality</li> <li>✓ special courts</li> </ul>
What are the remedies?	<ul style="list-style-type: none"> <li>✓ behaviour stops</li> <li>✓ counselling for perpetrator</li> <li>✓ compensation for victim</li> <li>✓ fines for employers</li> </ul>



## ❖ Code of Conduct

Codes of conduct are generally adopted by governments and are guidelines that set out for example, how to best handle sexual harassment cases. They provide guidance for employers on how to deal with sexual harassment. Although, a code of conduct is not legally enforceable, it will include similar provisions to legislation and is often a precursor to formal legislation.

## ❖ Workplace policies

Internal workplace policies are internal documents within an organisation that define sexual harassment, set up the specific steps for making complaints and obtaining compensation, provide counselling and support for victims, and provide sanctions for perpetrators of sexual harassment.

Internal policies also serve to boost and build on national legislation on sexual harassment by helping victims bring complaints and by recognising that employers have a duty to prevent and deal with sexual harassment. They are voluntarily enacted by employers. They often serve a preventative role by stopping harassment before it occurs or by responding to it early on, before the problem escalates. Dissemination of the policy within the organisation is vital to encourage victims to report cases and to inform and sensitize all workers, including management.

Having an internal policy is beneficial to the employer, as it shows a commitment to gender equality. Further, if an employer successfully deals with sexual harassment complaints, the company is more likely to have more productive staff and higher staff retention.

#### ❖ **Guidance**

Governments, employers' organizations and workers' organizations have a role to play in guiding others in developing sexual harassment policies. For example, workers' organizations can request that collective agreements include sexual harassment clauses and complaints procedures. Further, governments can produce manuals or other publications for dissemination to employers both in the public and private sector, as well as workers' organizations.

#### ❖ **Awareness-raising**

Governments and other interested groups should raise awareness about sexual harassment, through various activities including publicity campaigns and widespread dissemination of information.

#### ❖ **Training**

Governments, employers' organisations and workers' organisations should conduct training on sexual harassment in the workplace for specific individuals including company executives, trade union leaders, human resources personnel and workers. Trainings should include explanations of the legal framework, how to develop policies or how to raise awareness within their own organisation.

#### ❖ **Research**

Research is vital in showing the extent of the problem of sexual harassment in the workplace and in analysing whether current measures are adequate.

All relevant organisations should conduct research and collect statistics in a systematic way to ensure a better understanding of the problem. This research will support and inform steps which the government, employers' and workers' organisations should take to minimise sexual harassment.

# Recommendations for Governments and Social Partners on Tackling Sexual Harassment

Governments have overall responsibility for eliminating sexual harassment in the workplace, and as such should be at the forefront of proposing legislation or drafting a national code of conduct on this issue. In addition, governments should lead by example and adopt internal work place policies for government employees and provide training on this issue.

Workers' and employers' organisations should take the lead in engaging with governments to help bring about these changes as well as educating their own members and offering support to victims of sexual harassment.

## Governments

### 1. Legislation on sexual harassment in the workplace:

- For those countries that already have sexual harassment legislation:** Review legislation to ensure it is comprehensive and to address the gaps in implementation.
- For those countries without legislation:** Adopt comprehensive sexual harassment policies, including complaints mechanisms

### 2. Code of conduct

- Adopt comprehensive code of conduct on sexual harassment in the workplace.
- Ensure wide dissemination of this code of conduct including training and awareness raising campaigns.

### 3. Policies/internal guidelines

- Adopt policies and guidelines on sexual harassment in the workplace for all government employees, including complaints mechanisms
- Widely disseminate these guidelines and hold sensitization training sessions on them, particularly for managers.
- Monitor how the policy is implemented

### 4. Awareness raising

- Devise regular and on-going publicity campaigns on sexual harassment in the workplace.

### 5. Training

- Provide regular and on-going training both within the government and to other interested organisations

### 6. Research/Statistics

- Systematically collect statistics about incidences of sexual harassment in the workplace, including number of reported incidents and outcomes.
- Require employers to collect such statistics and report them

## Employers' Organisations

### 1. Policies/guidelines

- Adopt internal policy
- Develop guidelines and policies for members in collaboration with workers' organizations, including complaints mechanisms
- Require members to adopt these policies

### 2. Training

- Provide regular and on-going training to members

### 3. Awareness raising

- Ensure that all members are aware of sexual harassment

### 4. Research/Statistics

- Require members to keep statistics and report regularly

## Workers' organizations

### 1. Policies/guidelines

- Adopt internal policy
- Develop guidelines and policies in companies in collaboration with employers' organisations
- Negotiate for the inclusion of sexual harassment policies as part of collaborative agreements

### 2. Training

- Provide regular and on-going training to members

### 3. Awareness raising

- Ensure that all members know their rights and how to make complaints

### 4. Support

- Provide support to individuals making complaints, either through their employers or through the formal court systems

### 5. Research/statistics

- Require members to keep statistics and report regularly

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## **About the ILO**

The International Labour Organization (ILO) is the United Nations agency devoted to promoting rights at work, encouraging decent employment opportunities for women and men in conditions of freedom, equity, security and human dignity, and enhancing social protection. It is unique in that it brings together representatives of governments, employers and workers to jointly shape policies and programmes and strengthen their dialogue.

The ILO develops international labour standards and works with members States to ensure they are respected in practice as well as principle.

The ILO Office for Pacific Island Countries based in Fiji, provides technical assistance to nine member States (Fiji, Kiribati, Republic of Marshall Islands, Palau, Papua New Guinea, Samoa, Solomon Islands, Tuvalu and Vanuatu), as well as to non-member States in the region as required, on a wide range of areas including: labour migration; the elimination of child labour; promotion of gender equality; labour law reform; protecting seafarers; labour market statistics; occupational safety and health; HIV/AIDs in the workplace; youth employment; and entrepreneurship development.

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