

# SEXUAL HARASSMENT PREVENTION POLICY

Based on Screensafe policy templates: <https://screensafe.co.nz/guidelines/sexual-harassment-guidelines/> and Soundcheck templates: <https://www.soundcheckaotearoa.co.nz/sexual-harassment-policy>

Sexual harassment policy is your foundational framework that sets out how you will prevent and respond to sexual harassment at work. You can also use a policy to demonstrate your commitment to ensuring safer work spaces in the live performance sector in Aotearoa, and to start conversations about how you can work together across the industry to bring about cultural change.

WorkSafe states that anyone who is a 'person conducting a business or undertaking' (PCBU) should have a policy, whether they are a large company, a not for profit organisation, self-employed, or a sole trader.

Although WorkSafe has a template policy and other resources, this policy is designed for the live performance sector in mind and in some areas go further than WorkSafe.

## POLICY TEMPLATE:

### WHAT IS THIS POLICY AND WHO IS COVERED BY IT?

This policy sets minimum standards within our organisation to create and maintain a safe working environment free from sexual harassment. It applies to all people at all levels, whether they are volunteers, contractors, employees, students, interns, suppliers and visitors.

Note that in this policy, we will call everyone "workers", whether they are company executives, employees, contractors, suppliers, students, volunteers or visitors.

The policy applies wherever and whenever we do our work. This includes:

- at our place of work, including in venues, in theatres and performance spaces, in drama classes, on and off-set, or anywhere where we are in order to carry out our work
- work events, such as opening nights or wrap parties and
- outside of our workplace, including being in transit to and from location, in accommodation on tour, private homes or public meeting spaces, whenever it's related to our work.

Sexual harassment will not be tolerated at ( organisation/company.) Disciplinary action, up to and including dismissal, or termination of contract may result following an investigation that finds that sexual harassment occurred.

## WHAT IS SEXUAL HARASSMENT?

Sexual harassment is any unwelcome or offensive sexual behaviour that is repeated, or is of such a significant nature to have a harmful effect, or which contains an implied or overt promise of preferential treatment, or an implied or overt threat of detrimental treatment.

### A worker is sexually harassed if someone:

- asks the worker for sex, sexual contact or other sexual activity, with a:
  - promise (it can be implied) of better treatment in their employment, or
  - a threat (it can be implied) either of worse treatment or about current or future job security
- subjects (either directly or indirectly) the worker to behaviour that they don't want or is offensive to them (even if they don't let the employer or the employer's representative know this) and which either is so significant or repeated that it has a negative effect on their employment, job performance or job satisfaction:
  - by using (in writing or speaking) sexual language, or
  - by using sexual visual material (e.g. pictures, diagrams, photos, videos, etc), or
  - through sexual physical behaviour (e.g. gestures, indecent or inappropriate exposure).

### Examples of sexual harassment may include:

- personally sexually offensive comments
- sexual or smutty jokes
- unwanted comments, intrusive questions or teasing about a person's sexual activities or private life
- offensive hand or body gestures
- physical contact such as encroaching on someone's personal space, patting, pinching or touching
- staring or leering
- provocative posters with a sexual connotation
- persistent and unwelcome social invitations (or telephone calls or emails) from workmates at work or at home
- hints or promises of preferential treatment in exchange for sexual activity
- threats of differential treatment if sexual activity is not offered
- sexual assault and rape.

Sexual harassment can happen to and by someone of any gender. It can be subtle or more obvious.

## WHO HAS RESPONSIBILITIES UNDER THIS POLICY?

Everyone has a role in preventing sexual harassment.

### The organisation/ company will:

- establish a work culture that is fair and free of sexual harassment including instilling a zero-tolerance policy towards sexual harassment and ensure this zero-tolerance policy is visible and known to all workers, suppliers and visitors
- make supporting material (e.g. sexual harassment prevention posters, referral information) readily available and visible to help create a safe working environment
- identify factors that contribute to sexual harassment (e.g. isolation, power and gender imbalances, blurring of work and social situations) and put effective control measures in place to eliminate or minimise these risks so far as is reasonably practicable
- ensure there are processes and systems in place for reporting and responding to sexual harassment that are fit-for-purpose and regularly reviewed
- ensure all workers know what processes and systems are in place, what support, protection and advice is available, and their rights to representation
- have specific policies for handling sensitive and sexual material (e.g. adherence to Equity Intimacy Guidelines, engagement of intimacy coordinators) and communicate these to all workers involved
- encourage and invest in positive leadership style, focusing on behaviour rather than people, and promote harmonious and professional relationships across the company/organisation
- provide a supportive environment to both those who complain about sexual harassment and the respondent to such a complaint
- ensure employees know that they have the right to raise a personal grievance under the Employment Relations Act 2000 or submit a complaint under the Human Rights Act 1993 to the Human Rights Commission
- make sure independent contractors working under a contract for services know that they have the right to submit a complaint under the Human Rights Act 1993 to the Human Rights Commission
- provide training to key workers/heads of department on how to handle disclosures or complaints and give support and advice (sexual harassment contact persons)
- have clear and appropriate remedies and consequences for confirmed sexual harassment as well as false reports
- treat all complaints with strictest confidentiality, except where required by the law to do otherwise
- ensure that the organisation/company's Sexual Harassment Policy is updated regularly
- regularly review the effectiveness of its sexual harassment prevention measures (through activities like exit interviews or an annual anonymous survey of its workers).

### The management of the organisation/company will:

- ensure workers have clarity on what their roles entail, such as handling of sensitive material
- ensure workers have clarity on what their rights are, and those of others in the workplace

- call out and deal with any inappropriate behaviour before it escalates
- take prompt action in response to any report of sexual harassment, including seeking advice from both parties as to how they wish to deal with the situation, complaint or allegation.
- provide a supportive environment to those who believe they have been sexually harassed and the alleged harasser, including treating all parties fairly/impartially while allegations are dealt with
- record and investigate complaints impartially and in line with the organisation's/company's policies and processes.
- treat any complaints seriously, promptly and with strictest confidentiality so that information about a complaint is only provided to those people who need to know about it.

#### **Workers will:**

- build a common understanding about what sexual harassment is
- behave in a manner that does not sexually harass others
- challenge inappropriate behaviour if they feel safe and comfortable to do so and keep an eye out for other people (e.g. providing support when seeing a person isolated, unsafe or experiencing reprisals)
- tell a sexual harassment contact person if they experience or witness any sexual harassment – if the complaint relates to that person, then they will advise contact person
- follow the organisation's/company's processes when reporting sexual harassment including keeping a copy of the report for your reference and treating all complaints with strictest confidentiality.

<sup>1</sup> In situations where there is a significant and imminent safety risk the organisation/company may be forced to break confidentiality to preserve the workers' safety. In any such case the company will inform the complainant before it takes this action. Otherwise, information about a complaint will be provided only to those people who need to know in order to deal with the complaint.

#### **WHAT HAPPENS WHEN SEXUAL HARASSMENT MAY HAVE HAPPENED?**

If workers experience or see sexual harassment, any one or more of the following four actions can be taken.

##### **1. Seek advice and support**

Talk with a trusted person (e.g. a friend, whānau member) about what happened. Seek advice and support from others working on the production such as a colleague, their head of department, or one of our sexual harassment contact people.

Seek advice and support from Equity or other organisations (e.g. helplines, counsellors, lawyers etc).

##### **2. Deal with it themselves**

If the worker feels safe and comfortable to do so they may want to approach the other person(s) involved to explain that their behaviour is or has been unwelcome, inappropriate, or offensive, and needs to stop or change. This could be in person and/ or in writing. Workers may wish to have a support person with them when they do this.

Workers should not approach someone directly about their behaviour if by doing so they would feel unsafe or threatened in any way. There is no requirement for a worker to tell the other person that their conduct is inappropriate.

### 3. Report sexual harassment to the organisation/company

To report the sexual harassment, workers can make a written or verbal report. The organisation/company will take all reports seriously.

When making a complaint, any details you can provide will help the process. Clearly state what happened, the context, where and when it happened, how you felt, and the names of any witnesses and, if you wish to, what you would like to happen. Any information you provide will be shared with the person alleged to have behaved inappropriately to allow them to understand the alleged behaviour and to respond.

### 4. Report the sexual harassment to an outside agency

Workers can decide to seek help from an outside organisation, such as the Police for sexual assaults, physical assaults and criminal harassment, or a sexual violence support provider such as HELP.

If you wish to make a formal complaint to an external agency your available avenues depend on whether you are an employee or a contractor.

- Employees can raise a personal grievance under the Employment Relations Act 2000 with the company, or lodge a claim with the Employment Relations Authority (within 90 days), or you could submit a complaint under the Human Rights Act 1993 with the Human Rights Commission (within 1 year).
- Independent contractors can direct their complaints to the Human Rights Commission (within 1 year).

In any of the above options, workers may wish to have a support person present, such as an in-house support person, union delegate, guild representative, colleague, whānau member or, legal representative. To avoid potential conflicts of interest, the same support person should not support both parties involved.

## RESPONDING TO A REPORT OF SEXUAL HARASSMENT

If [ the organisation/company ] receives a report of sexual harassment, we will take the report seriously and will do the following:

- act promptly by setting timelines to deal with the report as soon as we can
- seek input from both parties as to how they wish to deal with the situation
- carefully and clearly consider response options for the specific circumstance (where appropriate promoting informal options over formal ones) including appointing an unbiased and appropriately trained person to look into the report of sexual harassment
- if there is to be a formal investigation, clearly communicating the process for the investigation including telling those involved what the process is and if there are delays to timelines
- protect all the people involved, including both sides of the complaint, support people and witnesses, from victimisation, which could include being punished, bullied, intimidated
- allow a support person(s) to be present at interviews or meetings, such as in-house support person, union delegate, guild representative, colleague, whānau support, legal representative

- maintain confidentiality and ensure details of the matter are only known to those directly concerned, including their representative or support person, and those involved in investigating and considering the reported behaviour
- make decisions based on the facts
- treat everyone involved fairly, including ensuring both the person(s) making the complaint and the person(s) responding to the complaint are given the opportunity for full disclosure and response
- clearly tell the people involved what actions will be taken, taking into account privacy
- keep good documentation, including ensuring actions and decisions are documented and all information is secured and access is restricted
- following up with parties to check the effectiveness of solutions put in place and work to repair the working relationship and promote positive work values
- if a decision has been made not to proceed with a formal investigation, let the people involved know and advise them of their legal rights.

Disciplinary action, up to and including dismissal from employment, termination of a contract, or being excluded from the workplace may result following an investigation that finds that sexual harassment occurred.

## APPENDIX 1: GUIDANCE AND PROCEDURES FOR MANAGEMENT OF COMPLAINTS

The following process flow provides guidance on how to determine the approach to be taken when receiving a report about sexual harassment.

- 1) **Receive a report about sexual harassment**
- 2) **Consider the information provided and appropriate way to proceed**
  - Get a clear description of the behaviour/incident, the more specific the better
  - Decide how best to investigate the concerns raised if required
- 3) **Decide what is reasonable to do after taking into account:**
  - The seriousness of the issue
  - The views of the person who experienced the reported behaviour
  - The response from the subject of the complaint (for example, the person exhibiting the behaviour has taken responsibility for the behaviour and the behaviour has stopped.)
  - The company could take one or more approaches
- 4) **Approaches the company could take**
  - The head of department talking directly to the subject of the complaint to remind them of the code of conduct, expected behaviour, misconduct and serious misconduct, and the values of the company (ie: sexual harassment is not tolerated)
  - The producer talking to the subject of the complaint about the reported behaviour
  - If appropriate and with agreement from those involved, the company organising early mediation or a restorative process with the aim of reaching an agreement understood by all parties
  - The company organising that a formal investigation be undertaken

**Inform** the subject(s) of the complaint as soon as possible after a complaint has been received.

**Support** everyone involved.

**Treat** the complaint confidentially providing information only to those who require the information including the person(s) making the complaint, the subject(s) of the complaint (who may provide the information on a confidential basis to support persons) and those who will investigate and consider the outcome of the complaint. Ensure that all parties understand the need for confidentiality.

**Decide** whether interim measures should be taken to ensure the safety and welfare of the people involved during the investigation. Depending on circumstances, options could include:

- Reassignment to other duties or relocation to another part of the company until the investigation is complete.
- The subject of the complaint taking voluntary leave of absence or being placed on paid leave of being suspended pending the outcome of the investigation (note: any action should be consistent with the terms and conditions of their contract/employment agreement.)
- The complainant taking leave.



5) **Prepare** a terms of reference document after consulting with the parties about the intended process detailing the nature of the complaint, the process to be followed to investigate the complaint, who the decision-maker will be.

**Engage or appoint** an investigator (ensuring the investigator is someone who is trained to carry out the investigation into sexual harassment complaints and is unbiased/not involved in the incident.)

**The investigator:**

- Confirms the process and timelines with everyone involved
- Interviews all parties involved and any witnesses, reviews any relevant documentation to determine the facts
- Gives the subjects of the complaint reasonable opportunity to respond to the allegations/concerns in writing and in person, including providing a copy of part or whole of the draft report before finalising in order to ensure that the investigator has accurately recorded the information provided by the parties to the report.
- Gives the decision maker the written report

**On receipt of the report the organisation/ company will:**

**Give** the people involved a copy of the findings from the report.

**Meet** with the people involved separately to discuss the report and the actions the company proposed to take (including any disciplinary action.) Seek the views of the people involved about this.

**Tell** the people involved what the decision is.

**Tell** the people involved what the processes are if either is unhappy with the outcome.

6) **During the investigation the company will:**

**Regularly check** the wellbeing of the people involved.

**Work to assist** the repairing of the working relationship and put things right if the situation has resulted in a tense or hostile work environment.

7) The company will **review and improve** control measures to ensure that the company is actively managing the risks from sexual harassment.

8) Following an investigation that finds that sexual harassment has occurred:

- A range of consequences, up to and including disciplinary action, dismissal from employment, termination of contract or exclusion from the workplace may result.