



## **SEXUAL HARASSMENT AT WORK – ZERO HOUR CONTRACTS\***

A quite disturbing but true article was written by Laura Bates of the Guardian on 19th March of this year. A significant number of the issues raised in that article are issues which those of us involved in employment law, as Solicitors, will regularly come across. Few of these cases ever get to full hearing because they are settled. But we believe it is important that articles such as the one Bates are published to highlight the issues.

While the articles written from the perspective of UK workers the same issues arise here in Ireland. In one case an individual who worked for a large pub chain in central London claimed that workplace harassment was so widespread that she described it as “continuous”. These include incidents of being groped by a customer while carrying plates of food past a table and even being asked to go to a hotel by a man who tipped £20 pounds during the course of the evening.

The particular worker who was interviewed claimed that because she was working on a zero hour contract she felt unable to report what was happening due to a fear that making too much fuss would result in a reduction of her hours where she was already struggling to support herself.

In another case a carer working on a zero hour contract was shown completely inappropriate photographs. That particular worker was afraid to report matters for fear of not receiving shifts.

The article refers to another woman who worked at a five star hotel and golf resort who was pressured by managers to accept behaviour including unwanted touching and groping to keep wealthy customers happy. She was told to look after the important customers.

In 2016 the Everyday Sexism Project and the TUC surveyed a number of women. The results revealed that more than half of women had experienced workplace sexual harassment. However, that figure was 67% of women in hospitality and leisure.

Many women, in our view, who are on zero hour contracts or work on a casual basis, are concerned that if they make a report of sexual harassment that their hours or shifts could be reduced. They are equally concerned that they could be dismissed.



For those women who find themselves in this type of dreadful situation they need to know that the Employment Equality Legislation in Ireland protects such workers from any form of victimisation for having made a complaint. This includes reducing their hours of work, not giving them shifts, and, in the worst case scenario dismissing them. They do not need any service period with an employer to get those protections.

Where any woman has suffered sexual harassment it is vitally important that a complaint is made. Unfortunately because some will deny ever having received the complaint it is always our advice that the complaint is set out in writing and is given to the employer. It is advisable that it is also sent by registered post and by email and that the receipts for the registered post and the email are retained.

In 2017 in the UK a ComRes survey of over 6000 people being men and women found that people employed by an organisation were significantly less likely being 29% to have suffered unwelcome sexual behaviour at work where they are on full time contracts. However, those engaged as freelancers, gig workers or on zero hour contracts saw the figure rise to 43%.

As in Ireland as in the UK unfortunately the attitude towards some women by employers is completely inappropriate. Now some employers, to be fair to them, simply see this as being part of the job or jovial banter where comments are made. The reality is that this is not acceptable. The revelations about sexual harassment in Hollywood, Westminster and elsewhere have triggered significant conversations about women's rights to respect and safety at work. A lot of the spotlight has been on high profile women. It is important to remember that the sexual harassment of women penetrates deeper. Those in less glamorous jobs are equally subjected to inappropriate sexual harassment. Those who are in precarious working situations often feel less able to raise issues.

Unfortunately sexual harassment occurs in every level of business. It affects both high profile women in the public spotlight, professional women and those in senior positions in major companies and professional firms are subjected to sexual harassment. Women in lower paid jobs are as equally vulnerable to sexual harassment. However, those in lower paid jobs often feel less able to speak out.



There are many Solicitors who undertake employment work in Ireland. We are simply one of them. Those who do are Solicitors to whom any woman can go who feels she has been subjected to sexual harassment. It does not matter whether they are high profile women in the public eye, professional woman or even national minimum wage workers. The legal profession and in particular the Solicitors profession is there to protect such women and to act for and advocate on their behalf. Sexual harassment of women is never acceptable. There is no excuse for an employer not putting in place sufficient safe guards to protect his or her staff from sexual harassment. The law protects women who have been subjected to sexual harassment. A claim of being sexually harassed can lead to an award of up to 2 years compensation of wages / salary. If however an employee has been victimised for having made a complaint such as being dismissed, having their hours reduced, having their pay reduced, not being given shifts or not being given work or even put under pressure to stop the claim proceeding then in those circumstances a claim to the Workplace Relations Commission or on appeal to the Labour Court gives them authority to award unlimited compensation for the act of victimisation. The Labour Court recently in a case, which did not involve sexual harassment of an employee, pointed out that victimisation of an employee for making a complaint under the Equality Legislation is one which the Labour Court takes extremely seriously. In the particular case the act of victimisation itself lead to an award of over one and a half years wages to the relevant employee.

This firm does find sexual harassment particularly abhorrent.

Some believe it is solely the role of women to speak out about this. We do not accept that proposition. We believe that it is the role of men and women to work together to highlight the fact that that sexual harassment in the workplace occurs and to work together to eradicate same.

This firm does issue many claims for sexual harassment. It is an area of our practice that we would quite happily see become redundant because of a change in attitude in businesses so sexual harassment becomes a thing of the past. We will work to highlight the fact that sexual harassment occurs and to work to see its eradication in the workplace. Some will say that it is a pipedream of ours that that would happen but we firmly believe that there is a role for men and women joining together to highlight the problem and to work to eradicate it in the workplace.



For employers we say to you that it is very bad business to have sexual harassment in the workplace. It affects the mental health of workers. It affects productivity. It affects morale not only with regard to the person or persons who are subject to harassment but others as well particularly when they see no action being taken to protect fellow colleagues and workers.

A workplace organised by an employer where the employer has a very clear policy of not accepting sexual harassment of any employee whether from customers or from other workers is going to create a more positive working environment with staff who are more likely to be supportive of the employer and ultimately happier and more content. Staff, who feel the employer will protect them from sexual harassment are likely to be more productive workers and therefore benefit the employer by increased productivity and through increased productivity and increased profits.

It is therefore simply good business for any employer to act to outlaw sexual harassment in the workplace.

To do this, the first step is to put in place an anti-harassment policy. The second step is to communicate it. The third step is to educate staff whether at management or support level within the organisation as to what the policy is and why it is there and the fourth is that the owner and managers in any business apply the policy.

There is another benefit for employers. Where an employer gets a complaint and is seen to act on it immediately and to take appropriate remedial action then in those circumstances where this is a first instance the employer can often avoid any award where they have been shown to be proactive in dealing with the complaint and addressing the issues. That is another good business reason for employers to have a policy in place so as to avoid claims going to the Workplace Relations Commission or on appeal to the Labour Court. This firm works with employees bringing claims. We also work with employers seeking to put procedures in place not only on paper but actually in practice to avoid claims ever arising. No employee should be afraid of bringing a complaint of sexual harassment to an employer because they should know that there will be legal representation if they need it if their complaint is not dealt with. Equally employers must know and recognise that sexual harassment does occur but if they put in place the proper policies and procedures and implement



those regardless as to whom the complaint is against in a fair and consistent manner and that this is known within the organisation that this would be done that they are more likely to completely eradicate sexual harassment in their workplace and therefore avoid any claims.

**\*Before acting or refraining from acting on anything in the guide, legal advice should be sought from a Solicitor.**

**\*\*In Contentious cases, a Solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**