

# The Spectrum of Workplace *Sexual Harassment and Assault*

Sexual harassment and assault exist on a spectrum.

This framework names each zone clearly so people can understand what is happening to them and what law may apply.

## **Definition of free and voluntary consent**

Under the Crimes Act 1961, s128A, consent to sexual activity is only valid if it is given freely and voluntarily. This means a person must have a genuine choice, free from pressure, manipulation, or fear. Consent given under duress, coercion, or as a result of a significant power imbalance is not free consent. Consent to one act does not constitute consent to another.

## **Why silence or stillness is not consent**

When a person experiences threat or shock, the nervous system can trigger a freeze response. The person may be unable to speak, move, or resist, even if they are fully conscious. Freezing is a physiological response, not agreement. This is recognised in New Zealand law: the absence of resistance does not constitute consent.

## **Grooming: why victims do not always recognise it**

Grooming is a gradual process in which a person in a position of trust or authority builds a relationship, gains confidence, and slowly normalises boundary violations over time. Because the behaviour escalates incrementally, many people do not realise what is happening until it is well established. Grooming is deliberate. It shifts responsibility from the perpetrator to the target, and creates shame and confusion that can prevent disclosure for months or years.

## **Understanding the power imbalance**

When there is a significant power differential between two people, such as a manager and a direct report, a senior leader and a junior employee, or a client and a contractor, genuine consent becomes difficult or impossible. The person with less power may feel they cannot refuse without putting their job, career, or reputation at risk. If a reasonable person in that position would have felt unable to say no, then what occurred was not consensual. This is explicit in New Zealand law. The fact that someone did not object, did not leave, or continued to work in the same environment does not mean they consented.

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## Inappropriate behaviour

Human Rights Act 1993,  
Employment Relations Act 2000

### Ambient & environmental

Workplace culture that normalises sexism through jokes, banter, imagery, or language. Often dismissed as harmless but establishes conditions for escalation.

### Verbal harassment

Unwanted comments about body, appearance, gender, or sexuality, including remarks framed as compliments. Repeated remarks escalate severity and legal exposure.

### Digital & written harassment

Unwanted sexual or suggestive messages or images sent via digital channels. Leaves a traceable record and extends harassment beyond the physical workplace.

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## Harassment

Human Rights Act 1993,  
Employment Relations Act 2000

### Coercive behaviour & misuse of power

Using seniority or authority to create conditions where someone feels unable to refuse sexual attention, even if they went along with it or stayed silent. If a reasonable person would have felt unable to refuse, it is harassment under NZ law.

### Stalking & persistent unwanted attention

Repeated unwanted contact, following, or monitoring across workplace and personal life. Causes fear and psychological harm even without physical contact.

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## Unwanted physical contact

Human Rights Act 1993  
Health and Safety at Work 2015

### Unwanted physical contact

Uninvited touching sexualised in intent or context, including hair, shoulders, waist, or face. Often framed as accidental to create deniability. You do not need to have objected at the time for it to be unwanted. Triggers formal investigation and immediate separation under HASWA 2015.

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## Sexual assault

Crimes Act 1961

**Criminal offences**

### Indecent assault — Crimes Act 1961

Unwanted touching of intimate body parts including over clothing. A criminal offence regardless of what was worn, whether alcohol was involved, or whether the person froze rather than resisted.

### Indecent exposure · Aggravated sexual violence

Exposing genitalia or performing sexual acts without consent. Sexual assault with aggravating factors including force, weapons, threats, or targeting a vulnerable person.

### Sexual violation — Crimes Act 1961 s128

Any penetration without free consent. Includes situations where the person was asleep, unconscious, intoxicated, or unable to say no due to fear or power dynamics. There is no time limit for reporting to NZ Police.

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