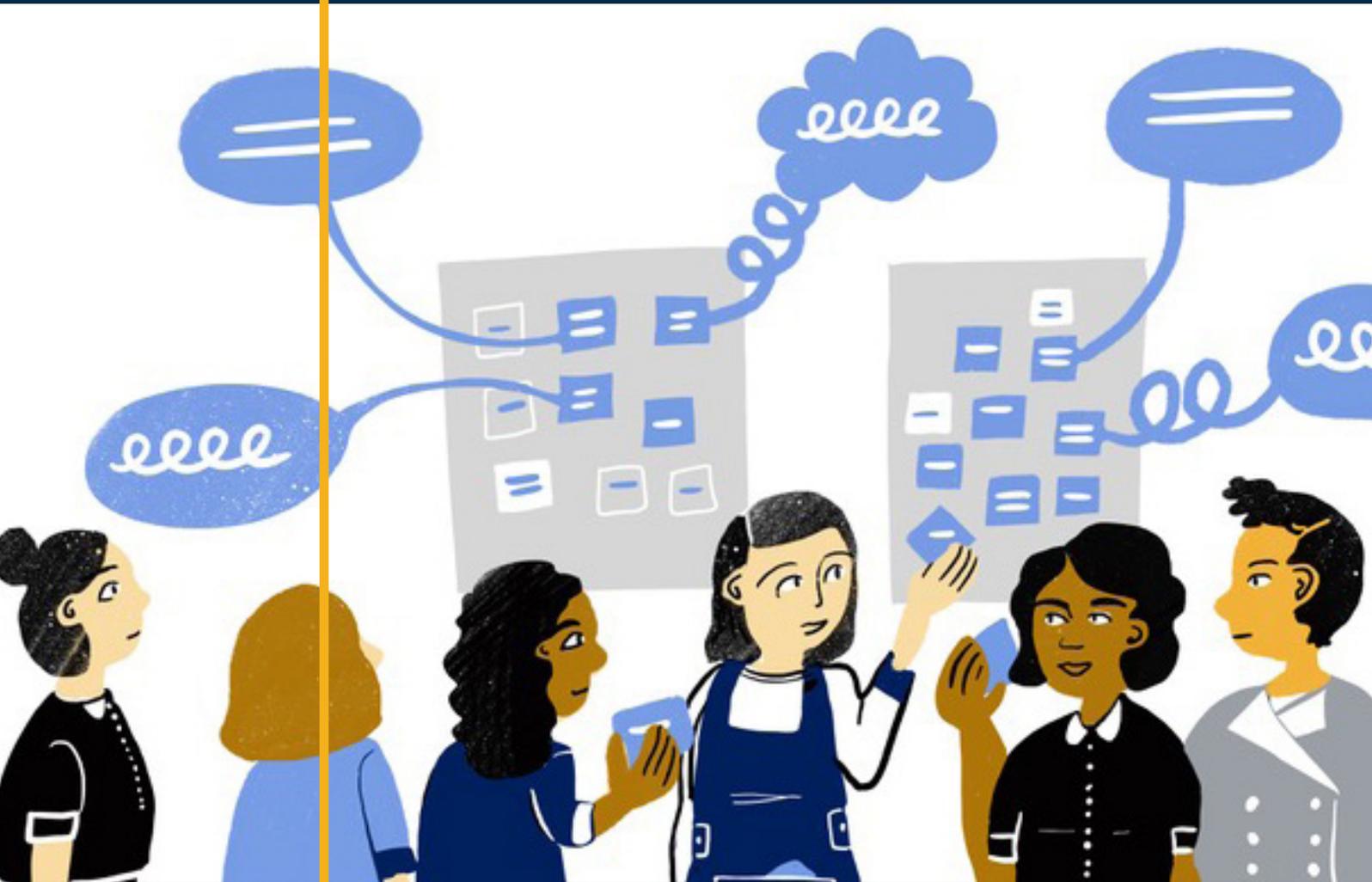


**POSITION  
PAPER**  
MARCH 2022

# TACKLING SEXUAL HARASSMENT IN LOW-PAID AND INSECURE WORK



**FOCUS ON  
LABOUR  
EXPLOITATION**

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Please cite as **Focus on Labour Exploitation (2021) Position paper: Tackling sexual harassment in low-paid and insecure work.**  
London: FLEX. Available at: [www.labourexploitation.org](http://www.labourexploitation.org)

**Acknowledgements:**

This position paper was written by Meri Åhlberg with input and guidance from Lucila Granada. Focus groups with workers were conducted by Alice Barker, Georgiana Murariu, Eleonora Paesani, and Marisol Urbano. Interviews with workers were carried out by Alice Barker, Tatiana Carnato, Juliana Daraia, and Marisol Urbano.

We would like to wholeheartedly thank everyone who participated in the process leading to this paper for their valuable time and insights, especially those who shared their experiences with us. Thank you also to Mandy Bhattal, Sian Elliott, Mark Gale, Josie Irwin, Cathy McIlwaine, Dolores Modern, Ester Sample, Deeba Syed, Gisela Valle, and Liana Wood for sharing their expertise through the Working Group on Women Workers. A further thank you to South West London Law Centres, the Employment Legal Advice Network and the Anti-Trafficking and Labour Exploitation Unit for providing guidance on access to legal aid for discrimination cases.

**Focus on Labour Exploitation (FLEX)** is a research and policy organisation working towards an end to labour exploitation. FLEX seeks to achieve this vision through the prevention of labour abuses, protection of the rights of those affected or at risk of exploitation and by promoting best practice responses to labour exploitation through research and evidence-based advocacy.

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**FOCUS ON  
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**TACKLING SEXUAL  
HARASSMENT IN  
LOW-PAID AND  
INSECURE WORK**

# 1

## INTRODUCTION

The purpose of this position paper is to inform the development of an effective labour market enforcement strategy for tackling sexual harassment in the context of low-paid and insecure work. It seeks to nuance the discussion around sexual harassment in the workplace by bringing attention to the intersecting vulnerabilities that create increased risk of sexual harassment for certain groups of workers and additional barriers to enforcing their rights at work. It calls for a shift in strategy from a system that relies almost entirely on individuals to enforce their rights, to one that recognises the need for a better balance between individual and state-led enforcement.

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The purpose of this position paper is to inform the development of an effective labour market enforcement strategy for tackling sexual harassment.”

This paper is particularly timely considering that the UK government has recently announced it will be ratifying the International Labour Organisation (ILO) Violence and Harassment Convention 2019 (No.190) (HC Deb 15 November 2021, c 18WS). The Convention (ILO, 2019: art.2) states that each ratifying country shall adopt “an inclusive, integrated and gender-responsive approach for the prevention and elimination of violence and harassment in the world of work” and that this should include “ensuring effective means of inspection and investigation of cases of violence and harassment, including through labour inspectorates or other competent bodies”. Once the convention is ratified, the UK must “ensure that labour inspectorates and other relevant authorities, as appropriate, are empowered to deal with violence and harassment in the world of work” (ibid.: art.10). This paper seeks to support that process.

This paper is based on engagement with a total of 376 people working in cleaning, hospitality and app-based food and goods delivery, consisting of: 65 semi-structured interviews and 12 focus groups with a total of 46 workers, and survey data from 263 workers. Of our total research participants, 36% worked in cleaning, 44% in hospitality, and 20% in app-based food and goods delivery. All in all, 62% identified as women, 37% as men, and 1% as non-binary. The vast majority (90%) were migrants. The survey data was collected through two separate surveys, one which covered both cleaning and hospitality and ran in five languages, and one which covered app-based delivery work and ran in two languages.

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This paper also builds on discussions with the Working Group on Women Workers convened in December 2020 and January 2021 by FLEX, which brought together academics, trade unions, legal experts, migrant community organisations, and other civil society actors. Participants included: an academic from King’s Collage London, the Latin American Women’s Rights Service (LAWRS), Leigh Day, Rights of Women, the Trades Union Congress (TUC), UNISON, and Young Women’s Trust. The group held two workshops which focused on the causes and enablers of workplace sexual harassment in low paid and insecure work, the barriers workers in such sectors face in accessing redress, and possible solutions to these issues.

# 2

## SEXUAL HARASSMENT IN LOW PAID-WORK AND INSECURE WORK

### 2.1 EXISTING EVIDENCE ON PREVALENCE OF SEXUAL HARASSMENT AT WORK

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Sexual harassment is a key workplace issue that is not being adequately addressed in the UK.”

Sexual harassment is a key workplace issue that is not being adequately addressed in the UK. According to a 2017 survey, 40 per cent of women and 18 per cent of men have experienced unwanted sexual behaviour in the workplace (BBC, 2017). The Trades Union Congress found an even higher proportion affected, with one in two women having experienced sexual harassment at work (TUC, 2016). A 2020 government study focusing on recent experiences found that 29% of respondents in employment had experienced sexual harassment in their workplace or in a work-related environment during the last 12 months (Government Equalities Office, 2020).

While sexual harassment can affect anyone, regardless of gender, research shows that women are significantly more likely to experience it compared to men (TUC, 2016). Inequalities experienced by people in relation to their race and ethnicity, disability, age, religion, and sexuality also drive harassment, increasing incidence of sexual harassment and resulting in multiple or intersecting forms of harassment. For example, research by the TUC (2019) finds that young workers and LGBTQ+ workers are more likely to experience harassment with incidence rates of 63% and 68% respectively, and that sexual harassment experienced by black and minority ethnic women is often bound up with racial harassment (TUC, 2016). Disabled women also experience harassment at higher rates, with 68% saying they have been sexually harassed at work (TUC, 2021a).

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Incidence of sexual harassment are also linked to type of employment, with people in precarious jobs more likely to experience sexual harassment .”

Incidence of sexual harassment are also linked to type of employment, with people in precarious jobs more likely to experience sexual harassment compared to those in more stable forms of work (BBC, 2017; Reuter et al., 2020). In addition, sexual harassment is more prevalent in roles that are customer-facing: A Unite the Union (2018) survey with hospitality workers found that 90% had experienced sexual harassment at work, while a USDAW (2018) survey with women working in retail, call centres and manufacturing found that approximately 70% had experienced harassment at some point in their working life, while 60% had experienced it in the last 12 months.

### 2.2 BARRIERS TO REPORTING SEXUAL HARASSMENT AT WORK

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The UK’s system for addressing sexual harassment at work relies heavily on individuals enforcing their own rights.”

Currently, the UK’s system for addressing sexual harassment at work relies heavily on individuals enforcing their own rights, either by raising a complaint or grievance with their employer, which in many cases fails given the lack of adequate processes, or by bringing a claim to an employment tribunal (House of Commons Women and Equalities Committee, 2018). However, a study by the Equality and Human Rights Commission (EHRC, 2018a) found that approximately half of their survey respondents did not report their experience of harassment to anyone in the workplace. Of those who did report, half said their employer took no action as a result. A 2020 Government study found that only 15% of respondents who had experienced sexual harassment at work in the last 12 months reported it formally to their employer (Government Equalities

Office, 2020). Of those who did report, “satisfaction with the process and with the outcome were relatively low”, with 19% saying there were no consequences for the perpetrator.

Research by frontline organisations reflects the low rates of reporting found by the government and the EHRC. A survey by Rights of Women (2019a) found that 75% of respondents who had experienced sexual harassment in the workplace chose not to raise a grievance with their employer, while a Trades Union Congress (TUC, 2016) study puts this figure at about 80%. The statistics are even starker for minoritized groups, including young women, migrant women, people of colour and people with disabilities. Research by Young Women’s Trust (2019) finds that only 6% of young women who have experienced sexual harassment reported it. According to LAWRS (de la Silva et al., 2019), when their service users (all of whom are migrant women) working in cleaning, hospitality and domestic work reported sexual harassment to their employer, the responses were usually poor, with no formal procedure or investigation activated. Half the women who reported said their employer’s solution was to relocate them to a different work site, with no consequences for the perpetrator. Others who reported were dismissed for being ‘problematic’ or resigned as changes made to their working hours or job location made it unfeasible for them to continue in their job (*Ibid.*).

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Despite the reported dissatisfaction with employers’ responses to sexual harassment, there are very few sexual harassment cases brought to Employment Tribunals.”

Despite the reported dissatisfaction with employers’ responses to sexual harassment, there are very few sexual harassment cases brought to Employment Tribunals. The EHRC (2018b) estimated that in the year up to July 2018, there were only 18 cases in total. There are multiple reasons for the low number of cases, including fear of victimisation; legal costs, with no legal aid for representation available as a matter of course for discrimination complaints at Employment Tribunal and employers significantly ‘outgunning’ employees in terms of resources; and low compensation awards (House of Commons Women and Equalities Committee, 2018). The #MeToo global movement and campaigns such as #TimesUp and #NotTheJob, have mobilised women of all walks of life to highlight how pervasive and underreported workplace sexual harassment is. The normalisation of sexual harassment, along with the psychological impact it can have on victims, makes it extremely difficult for people to identify the abuse as such and have enough confidence in the system to report it.

Participants of the Working Group on Women Workers also raised language barriers, risk of re-traumatisation, intersecting inequalities affecting migrant, disabled, LGBTQ+, ethnic minority and young women workers, and the short time limits for bringing Equality Act 2010-related claims (currently set at three months minus one day from the act the claim is about) as additional barriers. As Rights of Women (2019a) point out, internal employer grievance processes can take longer than three months to complete, meaning those who opt to go through this route may be unable to take legal action at the end of the grievance process. The short time-limit for bringing claims is also a problem considering the trauma that sexual harassment can cause; people may need time to come to terms with what has happened to them before they are able to report it. Some groups of workers face higher barriers compared to others. For instance, as the Women and Equalities Committee (2018) notes:

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The lowest-paid workers are least likely to be able to take forward a case even though high levels of sexual harassment occur in low pay sectors.”

The lowest-paid workers are least likely to be able to take forward a case even though high levels of sexual harassment occur in low pay

sectors such as retail, hospitality and services, and among workers in temporary and casual work.

## 2.3 NEW MEASURES PROMISED BY THE GOVERNMENT

In July 2021, the government published its response to a 2019 Government Equalities Office consultation on sexual harassment in the workplace, announcing plans to implement two key policy changes (Government Equalities Office, 2021). The first is to introduce a preventative duty requiring employers to take “all reasonable steps” to prevent sexual harassment at work, which they can be held liable for even if no incident of sexual harassment has occurred. The second is to reintroduce protections against harassment by third parties, such as customers or clients, which were repealed in 2013. In addition, the government said it will “look closely” at extending the time limit for bringing Equality Act 2010 cases to employment tribunals.

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New measures against sexual harassment will make little difference if they, like existing protections, are not effectively enforced.”

The proposed changes, which the government has said will be introduced “as soon as parliamentary time allows”, are a significant step in the right direction and we hope to see more detail on them soon. However, we also believe that more needs to be done to bridge the gap regarding the law and its effective implementation in the workplace, especially in the context of low-paid and insecure work. New measures against sexual harassment will make little difference if they, like existing protections, are not effectively enforced.

## 2.4 THE UK'S CURRENT LABOUR MARKET ENFORCEMENT LANDSCAPE

There is currently a significant enforcement gap when it comes to sexual harassment in the workplace, especially in sectors where work is low-paid and insecure. The UK has no public body with the remit, power, and resources to effectively protect workers from sexual harassment and ensure employers are complying with their legal duties.

The EHRC, the public body responsible for enforcing the Equality Act 2010, has primary responsibility for regulating employers' actions to tackle sexual harassment. However, its enforcement powers are limited and used mainly to clarify the law, highlight priority issues or challenge policies or practices causing significant disadvantage across industries or sectors. Currently, the EHRC does not have the power to act to prevent or prosecute workplace harassment cases, nor can it issue fines (Hazards, 2019).

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The UK has no public body with the remit, power, and resources to effectively protect workers from sexual harassment.”

If the proposed duty for employers to prevent sexual harassment is introduced, the EHRC could take a more active role at the workplace level by investigating and taking enforcement action against suspected breaches of the duty. However, as noted by the Government Equalities Committee (2021), the EHRC is currently not set up for high volumes of enforcement action. It does not have a workplace inspectorate or a preventative inspection system and, since 2007/8, its budget has been reduced by 76%, from £70.3 million to £17.1 million in 2020/21 (Women and Equalities Committee, 2019; EHRC, 2021). The EHRC's staffing levels have also fallen from 530 in 2010 to 200 in 2021, a reduction of 62% (*ibid.*). Any increase in the EHRC's remit must be met with a sufficient increase in resources and funding to enable it to effectively carry out its role.

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The HSE has said they do not see sexual harassment as a mainstream health and safety issue under the Health and Safety at Work Act 1974.”

Another key organisation that could be supported to tackle sexual harassment in the workplace is the Health and Safety Executive (HSE) and its Local Authority counterparts<sup>1</sup>. The HSE (n.d.) has an explicit role in tackling violence at work, which it defines as: “Any incident in which a person is abused, threatened or assaulted in circumstances relating to their work. This can include verbal abuse or threats as well as physical attacks”. However, the HSE has said they do not see sexual harassment as a mainstream health and safety issue under the Health and Safety at Work Act 1974, arguing that the law on sexual harassment is exclusively for the EHRC and the police to enforce (Women and Equalities Committee, 2018). As a result, the HSE does not investigate, prosecute, or record cases of sexual harassment in the workplace (Hazards, 2019). Additionally, incidents of violence at work in which there was a domestic relationship between the offender and victim (e.g. current or former partners, relatives, or household members) are excluded from HSE reports and do not fall under Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) (HSE, n.d.).

Lack of resources is likely to be a key reason behind the HSE’s refusal to include sexual harassment within its remit: the body has seen a real-term funding reduction of 58% in the years between 2009/10 and 2019/20, from £239m to 121m, while its frontline staffing levels (including all inspectors) have fallen by 35% from 1,617 to just 1,059 full-time equivalent posts (Ewing *et al.*, 2021). This has had a significant impact on the HSE’s ability to enforce health and safety legislation, with inspections falling by 38%, enforcement notices by 36%, and convictions by 39%. For Local Authorities, who are responsible for enforcing health and safety legislation at most high-street businesses, the fall in enforcement activity has been even starker. Between 2010 and 2019, the number of health and safety visits by Local Authorities fell by 78%, with a 93% decline in preventative visits, while enforcement notices fell by 69%, and convictions by 70%. To have an active role in tackling sexual harassment in the workplace, the HSE and Local Authorities must be given the necessary resources.

A third labour market enforcement body that could play a role in tackling sexual harassment is the proposed new Single Enforcement Body for employment rights (SEB). The SEB, once established, will bring together the Gangmasters and Labour Abuse Authority (GLAA), the Employment Agencies Standards Inspectorate (EASI), and the HMRC National Minimum Wage teams to create a more unified and effective labour market enforcement system. In its response to the consultation on the SEB, the government said the EHRC should continue in its current role of tackling discrimination and harassment, including in the workplace, and that the SEB should not take over this role. Considering the EHRC’s expertise and authority on issues related to the Equalities Act 2010, it is important that it is not replaced by the SEB. However, this does not mean that the SEB cannot support them in their work. For example, the Women and Equalities Select Committee have recommended that the SEB be more ambitious in using its enforcement framework to tackle discrimination, suggesting it could have a role in enforcing areas including equal pay, direct discrimination, such as failure to make reasonable adjustment, and harassment and victimisation (BEIS, 2021). This would be in line with the Public Sector Equality Duty (see box 1 below), under which all public bodies “must have due regard to the need to eliminate unlawful

<sup>1</sup> Enforcement allocation between HSE and Local Authorities is based mainly on the type of activity carried out at a premises. Local authorities are the main enforcing authority of health and safety legislation for retail, wholesale distribution and warehousing, hotel and catering premises, offices, and the consumer/leisure industries.

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The Women and Equalities Select Committee have recommended that the SEB be more ambitious in using its enforcement framework to tackle discrimination.”

discrimination, harassment and victimisation” (EHRC, 2019a). The government has recognised that many vulnerable workers under the SEB’s remit have one or more protected characteristics and that this should be a key factor in determining the new body’s strategic approach, for example by seeking to understand and address additional barriers that some protected groups may experience when trying to seek help (BEIS, 2021).

### **Box 1. Overview of the Public Sector Equality Duty**

The Public Sector Equality Duty was created by the Equality Act 2010 and applies to all public bodies, including the UK’s labour market enforcement agencies.

In summary, those subject to the general equality duty must have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

These are sometimes referred to as the three aims of the general equality duty. The Act helpfully explains that having due regard for advancing equality involves:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.”

Source: <https://www.equalityhumanrights.com/en/corporate-reporting/public-sector-equality-duty>

# 3

## EXPERIENCES OF SEXUAL HARASSMENT IN LOW-PAID AND INSECURE WORK: PREVALENCE, DRIVERS, AND BARRIERS TO REPORTING AND REDRESS

This section presents data from our participatory research in cleaning, hospitality, and app-based deliveries, and from discussions held as part of our Working Group on Women Workers, to highlight the intersecting vulnerabilities that create increased risk of sexual harassment for workers in low-paid and insecure work, as well as the heightened barriers to reporting and accessing redress.

### 3.1 PREVALENCE OF SEXUAL HARASSMENT IN CLEANING, HOSPITALITY, AND APP-BASED DELIVERIES

Quantitative data indicates how prevalent sexual harassment at work is in cleaning, hospitality, and app-based deliveries. Of a total of 263 survey respondents, 36% had experienced sexual harassment in the workplace. Broken down by sector, this equates to 33% of participants working in cleaning, 37% in hospitality and 18% in app-based deliveries. Breaking this data down further by gender, focusing specifically on the experiences of women and non-binary respondents, these percentages increase significantly to 42% in cleaning, 44% in hospitality, and 57% in app-based deliveries. Our survey data from cleaning and hospitality also provides insight into the types of sexual harassment experienced by workers. These include concerning levels of harassment that violates civil laws, such as sexualised comments (47%) and unwanted sexual advances (38%), as well as what would usually be considered criminal offences, such as groping and unwanted touching (28%), stalking (20%), and attempted sexual assault (8%).

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Of a total of 263 survey respondents, 36% had experienced sexual harassment in the workplace.”

**Table 1. Types of sexual harassment experienced by cleaning and hospitality survey respondents**

Sexualised comments about physical appearance	47%
Unwelcome sexual advances	38%
Pressure for dates	38%
Spreading of rumours about sexual life	32%
Groping and unwanted touching	28%
Unwanted discussion of sexual relations, fantasies, or stories	26%
Stalking	20%
Kissing sounds	14%
Attempted sexual assault	8%
Sharing of unwanted sexually explicit photos, emails, or texts	8%
Exposure of genitals or performance of sexual acts (e.g., masturbation)	7%

n = 76 i.e., the number of respondents who answered 'yes' to having experienced sexual harassment at work (33 in cleaning; 43 in hospitality). Note, results do not add up to 100% as respondents often experienced more than one type of harassment. This typology of harassment is based on work by LAWRS (de la Silva *et al.*, 2019).

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In most of the sexual harassment cases experienced by our research participants, the perpetrator was in a position of relative power compared to the person they were harassing.”

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While power imbalances exist within most workplaces, in low-paid and insecure work they often intersect and are compounded”.

## 3.2 FACTORS ENABLING SEXUAL HARASSMENT AT WORK AND CREATING BARRIERS TO REPORTING

Sexual harassment at work is often linked to unequal power relationships in society, such as gender and racial inequalities, and in the workplace, for instance between workers and employers, or workers and customers. In most of the sexual harassment cases experienced by our research participants, the perpetrator was in a position of relative power compared to the person they were harassing. In cleaning and hospitality, harassment was mainly perpetrated by direct supervisors and managers and, in the case of outsourced workers, client company employees. In the app-based deliver sector, where couriers are usually classed as self-employed, perpetrators were mainly restaurant staff and customers, complaints from whom can result in couriers having their account terminated by the platform company, and whose tips and good ratings couriers often rely on.

While power imbalances exist within most workplaces, in low-paid and insecure work they often intersect and are compounded. This is because minoritized groups like women, migrants, and ethnic minorities – who already face intersecting vulnerabilities ranging from discrimination to language barriers, restricted labour market mobility, and limited access to social protections – tend to be overrepresented. In addition, the work itself, due to being low-paid and insecure, creates and perpetuates power inequalities. The effect of these power imbalances can be seen in the experience of Martha (case study 1 below), whose supervisor used his ability to determine her work schedule and decide the types of jobs she could access, as well as the vulnerability created by Martha’s lack of spoken English, to sexually harass her. Martha was prevented from reporting the harassment for fear of not being believed and because she was struggling to support herself and her son financially despite working long hours.

### CASE STUDY 1: CLEANING SUPERVISOR ABUSING POSITION OF POWER TO SEXUALLY HARASS WORKER

Martha had been working for an outsourced cleaning company for four years when a new cleaning supervisor started sexually harassing her.

*The other men couldn't get into the toilet when a woman was cleaning, but he was a supervisor, so he would come in and start with insinuations: "Are you doing it well?", "I don't want you to miss anything", "I want you to have everything that you need".*

The harassment escalated from insinuations and looks to groping and unwanted touching, always when Martha was cleaning alone.

*[H]e started coming behind me and saying, "I'll show you how to do it, you're not doing it right". He would come behind me and embrace me from behind and say, "I'm only showing you how to do it". Always when there was nobody around.*

When Martha said she would complain, he threatened her, saying he would discredit her. He took advantage of the fact that she did not speak English, claiming she would not be believed if she reported him.

*I once said, "I'm going to complain", and he said, "I'm only showing you how to do it right. If you complain, I'll explain that you are not cleaning well enough". And then he'd say, "Try, they won't understand your English, but go ahead and try".*



One of the clearest factors that compounds power imbalances at work (and therefore enables sexual harassment) is the risk, either real or perceived, of losing future work.”

Martha tried to avoid being alone with the supervisor by changing her schedule, but he prevented her from doing so.

*I changed the schedule to do the toilets when there were other people around. He noticed this and made me go back to cleaning the toilets at that time when he wanted me to do it.*

When an opportunity opened to clean offices rather than toilets for a few weeks, Martha jumped on it. She wanted to work with other people to get away from her supervisor and to practice her English.

*I needed to leave that job. I needed to speak to other people, to practice my English, because I was always alone with him, speaking Spanish, so I took the cover.*

At the end of the two weeks, the client Martha was cleaning offices for wanted to keep her on, but the cleaning supervisor lied to both Martha and the client to stop her from leaving.

*He told the client that I couldn't do the cover because I didn't want to do it, and he told me that the client had said that I couldn't do it because I didn't speak English.*

The supervisor told Martha that if she had not rejected him, he would have fought for her to get the job.

*He said, "See, if you would have gone out with me, even for a tea or a coffee, I would have fought for you to stay in this job, but now you'll [go back to] cleaning toilets".*

Fortunately for Martha, an employee of the client company happened to pass just as the supervisor was telling her this, and she could see that Martha was distressed. The client company employee called someone over to translate and Martha told her what had been happening.

*[The client] said, "But you never reported?". No, I never wanted to have any problems. [...] Yes, it did affect me, but I never looked for help [...] I was struggling financially. I was also working a lot of hours and I have a son.*

The client company took the matter to the cleaning company, but they did not take it seriously. The client company asked for the supervisor to be removed, but instead he was only banned from entering the specific area of the building when Martha was there. The client company then found more complaints and evidence of further issues with the same supervisor, but the cleaning company still did not address them. Eventually the client company decided to change cleaning contractor, as nothing was done about the perpetrator. He has since been promoted to Regional Manager.

**Focus group, 19 June 2020**

From our research, one of the clearest factors that compounds power imbalances at work (and therefore enables sexual harassment) is the risk, either real or perceived, of losing future work in retaliation for complaining about or reporting issues at work. Workers who can easily be made redundant or have their hours reduced (or, in the case of platform workers, have their account with the platform terminated) are less able to assert their rights at work, let alone advocate for better terms and conditions. Of our survey respondents working in cleaning and hospitality, 20% said they had been afraid of losing work or having their hours cut if they reported or complained about harassment or abuse at work. In the app-based delivery sector, 16% of respondents said they had been afraid

of having their account with a platform company closed for the same reason.

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Fear of losing work is further compounded for those workers, such as live-in domestic and care workers and farm workers, who have multiple dependencies on their employer.”

These findings reflect those from a report by Young Women’s Trust (2019), which found that 25% of young women who had experienced sexual harassment at work did not report it for fear of losing their job, while 20% did not report for fear of being given fewer hours at work. Not reporting for fear of losing work was even higher among young women of colour (30%) and young women with disabilities or long-term health conditions (37%), reflecting how intersecting inequalities often make some groups even more vulnerable than others (*Ibid.*). Fear of losing work is further compounded for those workers, such as live-in domestic and care workers and farm workers, who have multiple dependencies on their employer, relying on them not only for work but also for housing. If they report sexual harassment, they risk losing not only their job but also their home, which could lead to destitution and homelessness.

Organisations participating in the Working Group on Women Workers raised employment type as a key factor contributing to people’s fear of losing work. Under UK law (UK Government, n.d. -a), people classed as ‘workers’ have no right to minimum notice periods if their employment will be ending, for example if an employer is dismissing them, no protection against unfair dismissal, and no entitlement to Statutory Redundancy Pay. The lack of these key protections makes workers’ employment highly insecure, as they can easily be dismissed and/or replaced. This insecurity is further compounded for workers on casual or zero-hour contracts, as their employers are under no obligation to even offer them work and can simply choose not to put them on the following week’s rota. People classed as ‘employees’ have more rights than workers or the self-employed, but even they only have protection against unfair dismissal and access to Statutory Redundancy Pay after two years of continuous services (UK Government, n.d.-b; UK Government, n.d.-c).

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Couriers participating in the research described putting up with low-level harassment from restaurant staff for fear of jeopardising their relationship with restaurants and subsequently with the platform company.”

People classed as self-employed or independent contractors can also be easily dismissed, especially in the platform economy where people’s accounts and therefore employment can be terminated without explanation. Research by FLEX in the app-based delivery sector (2021d) shows that this can lead to people accepting conditions and treatment at work they might otherwise denounce. Couriers participating in the research described putting up with low-level harassment from restaurant staff for fear of jeopardising their relationship with restaurants and subsequently with the platform company if they complained or objected. This was especially true for couriers working in smaller towns where most orders come from one or two restaurants, though couriers working in larger cities also expressed this concern.

I don’t want to say anything because I don’t want to have a bad relationship with the restaurant, especially because my town is so small, like there are only a few places where you can pick up from. [...] I don’t know if the restaurant might make a complaint.

**Camilla, British App-based Courier (Focus Group, 18 January 2021)**

Furthermore, as is highlighted in the case study below, some participants were also reluctant to report sexual harassment to the platform company out of fear of being ‘noticed’ and potentially having their account terminated as a result.

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People may feel unable to complain about or report sexual harassment in the knowledge that doing so could lead to financial difficulties and even destitution.”

## CASE STUDY 2. SEXUAL HARASSMENT IN THE APP-BASED DELIVERY SECTOR

Erin works as an app-based courier delivering food from restaurants to customers through multiple well-known platform companies. She has experienced sexual harassment several times in her work, from customers and especially restaurant staff.

*Like in any kind of hospitality role, you have to deal with just total crap from men, and it's difficult to challenge. You kind of just have to grin and bear it.*

She has found it difficult to call out this behaviour because she does not want to damage her relationship with the restaurants that are so central to her work or draw attention to herself with the platform company.

*[N]ot only do I not want to push back too much and aggravate the restaurant [...] especially when it's quiet and you're working in a small place [...] but there's [also] fear of drawing attention to yourself with the company.*

She had previously had her account terminated with one platform company without receiving any explanation and was afraid it would happen again if she complained.

*I'm so scared of drawing attention to myself from [platform company A] at all. I was fired from [platform company B] for no reason that they gave so, because [platform company A] is my main source of income, I'm really scared to draw any attention to myself.*

Having another account terminated would mean even less access to work and lower earnings.

*I don't really want to burn any bridges on a financial level.*

Erin also did not believe that anything would be done if she did complain or report the harassment.

*And, even if I did, are they going to take me seriously? What are they going to do?*

Not being able to push back against sexual harassment, for instance by boycotting certain restaurants, or report it to the platform for fear of losing work and for lack of mechanisms for doing so, was a serious concern for Erin.

*I think that kind of unequal power balance between us and the restaurant, and us and the company, is so core. And the way that we just can't take it upon ourselves to take some action, like boycotting or telling them, "Actually, that's not appropriate, that's not ok". That really worries me, because how much of this do we have to put up with?*

**Focus group, 18 January 2021**

In addition to employment status, there are several factors that further exacerbate fear of losing work by compounding the impacts it can have. Low pay is one of these factors, as people with low earnings are less likely to have money left over for savings after covering necessities such as food and rent, making them financially more vulnerable and dependent on their job. Even a week off work can be disastrous for someone paid at or around the minimum wage, especially in urban areas like London where the cost of living is high. As a result, people may feel unable to complain about or report sexual harassment in the knowledge that doing so could

lead to financial difficulties and even destitution, as demonstrated in case studies 1 and 2 above and in case study 3 below.

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When losing work means risking destitution or even homelessness if you are unable to find another job, people are not in a position to assert their rights at work.”

Fear of losing work is also exacerbated for those workers who do not have access to social protections like Universal Credit, either to top-up low pay or provide a financial safety net in case of unemployment. An estimated 1.376 million migrants in the UK have a no recourse to public funds (NRPF) condition on their visa, and this does not include those with NRPF due to irregular immigration status (McNeil, 2020). People with Pre-Settled Status under the EU Settlement Scheme (EUSS) also do not automatically have access to benefits even if they are working (PILC, 2021: 22). When losing work means risking destitution or even homelessness if you are unable to find another job, people are not in a position to assert their rights at work.

In addition to losing work, people who complain about sexual harassment risk experiencing other forms of retaliation, including being branded a troublemaker at work or in their community. In some cases, harassment can escalate to other forms of labour abuse or be committed as part of that abuse. This is especially the case when the perpetrator has a position of authority and can abuse their power by creating difficulties for workers as a form of punishment for not responding positively to sexual advances or for reporting the abuse, as demonstrated in the quote below.

One day he tried to touch me, and I stopped him, and from that day everything started going wrong. He started changing my rota; he would post one rota on Monday and then change it in the middle of the week, so I missed shifts.

**Carlos, Colombian cleaning manager (Interview, 7 June 2019)**

Forms of punishment can range from being allocated the worst jobs and schedules (as in case study 1), to facing an increased workload, verbal abuse, and issues with pay. When labour abuses occur in the context of sexual harassment, it can be extremely difficult for people to speak up due to fear of retaliation and not being believed. When people do speak out about their experience, the focus is often on these other types of abuses rather than the sexual harassment, which may be harder to prove or which the employer may not know how to address (see case study 3 below).

### **CASE STUDY 3: SEXUAL HARASSMENT PERPETRATED BY AN ASSISTANT MANAGER ESCALATING INTO FURTHER LABOUR ABUSES**

Linda was working in a popular high street sandwich shop when the assistant manager started sexually harassing her.

*Since the beginning I struggled with the language barrier, so it was a bit complicated, but I did notice the looks, the insinuations, straight away.*

She tried to keep her distance from him, which he took offence at. He started being rude and disrespectful and would do things like deny Linda her lunch break or make her work alone in the kitchen despite this being against the company's rules.

*I felt that the fact that I didn't show him any fear made him feel angrier.*

The harassment continued for a year and a half and moved from unwanted sexual advances to other labour abuses, such as not being paid the full or correct wages.

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Of our survey respondents in cleaning and hospitality, 20% said they had been prevented from seeking help with work-related issues because of a language barrier.”

*There were always problems with my pay, it was always with me. They owed me money, or the payment was late.*

Linda put up with the harassment because she felt she could not afford to risk losing her job. She was also reluctant to complain about the harassment due to experiencing a language barrier.

*In a previous job [in another country] I also had a man harassing me. He would make vulgar comments, he invited me to go out. I resigned from that job. Here I couldn't do it, because I couldn't speak enough English to say: "You, horrible [expletive]". I also needed the money, so I couldn't say anything.*

Eventually, catalysed by a work-related injury, Linda sought support from a migrant community organisation and submitted a complaint to the company.

*It came to a point where I had to say, "I can't do this". I had never refused to complete a task before. I am a mother and out of need I adapt.*

The company started an investigation. However, the focus was on the other workplace abuses Linda experienced, while the sexual harassment claim was not investigated.

*The insinuating looks, the flirting, it's not illegal, so all I could demonstrate was the rest. His harassment, the looks, the flirting, I couldn't demonstrate that.*

The company did not take her experience of harassment seriously.

*They blamed the rhythm of the work: "Things are so busy at [the company] that it's normal for line managers to be slightly rude, to raise their voices". But he once even counted the times I was going to the toilet!*

She has been left feeling as though there is no recourse for people experiencing sexual harassment at work.

*I honestly think that fighting a case of sexual harassment is helpless in this country.*

**Focus group, 19 June 2020**

Further factors that create power imbalances and contribute to an environment that enables sexual harassment at work include physical isolation, for instance having to work alone or late at night with a perpetrator, and linguistic isolation due to language barriers. Research participants frequently said they felt unable to seek help or complain about sexual harassment because they did not speak enough English (see case studies 1 and 3 above, and 6 below). The fear of not being understood or being unable to explain the situation clearly, and therefore being in a disadvantaged position compared to the perpetrator, prevented many from speaking out. Of our survey respondents in cleaning and hospitality, 20% said they had been prevented from seeking help with work-related issues because of a language barrier.

The impact of immigration restrictions was another frequently raised issue, both by workers and frontline migrant community organisations. Immigration policy can create an enabling environment for labour abuse and exploitation, including sexual harassment, by restricting workers' employment options (e.g. visas that tie workers to a specific employer or sector of work), access to support (e.g. no recourse to public funds visa conditions), and entitlement to employment rights (e.g. the UK Illegal

Working Offence which, by criminalising what was already a civil offence (i.e. working without proper work authorisation, makes people ineligible for most employment protections). Having fewer employment options, limited access to support, and restricted rights reduces migrants' bargaining power at work and ability to push back against labour abuses, including sexual harassment.

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Undocumented migrants are particularly at risk of sexual harassment because there are so few channels by which they might report such behaviour.”

Undocumented migrants are particularly at risk of sexual harassment because there are so few channels by which they might report such behaviour. In only limited circumstances can undocumented workers pursue cases through Employment Tribunals on the grounds of discrimination and Acas offers little support to undocumented workers. Above all, the Government's hostile environment policies have a chilling effect on workers seeking help when suffering sexual harassment and discrimination. As recounted by Luca in the quote below and by Isabel in the case study that follows, some perpetrators purposefully abuse the vulnerabilities created by immigration policies, safe in the knowledge that their victims cannot complain or seek help for fear of immigration repercussions, such as being detained and deported.

[H]e also sexually abused female staff members. Like, he groped them and stuff like that. And he was quite racist toward some of our black co-workers. And a lot of the people there just couldn't escape the job because they needed the job. I know a couple of them were there illegally, and they had to stay in the job because they couldn't get anywhere else. Also, everyone else was stuck there for various reasons. And that guy just abused that power over all of us.

**Luca, 25, English-Italian bartender (Focus group, 5 June 2020)**

#### **CASE STUDY 4: ABUSING THE VULNERABILITY CREATED BY IMMIGRATION RESTRICTIONS TO SEXUALLY HARASS UNDOCUMENTED MIGRANT WORKERS**

Isabel worked for a cleaning company where the supervisor sexually harassed her and multiple other migrant women workers.

*[He] started calling me at three in the morning saying things like "I don't even know why I'm calling you, I just want to hear your voice".*

The supervisor would abuse the insecure immigration status of his workers, knowing they would be unable to complain due to not having the right to work in the UK.

*[H]e would hire people without documents. He would bring them into the company. The women, if they didn't agree to that treatment, he would fire them.*

Isabel eventually left because of the harassment. She now works for another outsourced cleaning company, where she has also experienced sexual harassment. The perpetrator was a colleague, who was also her ex-partner.

*He would intimidate me in the toilets, and then I had to submit a complaint.*

Isabel complained to the cleaning company, but her complaints were not taken seriously, even when she took them to a trade union.

*The manager ignored me; the regional manager also ignored me. I joined a trade union, and their response was, "What are you complaining about, he is your ex", justifying that kind of sexual harassment.*

**Focus group, 19 June 2020**

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We found little evidence of employers taking effective steps to address situations of sexual harassment.”

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The reaction of employers to people raising complaints is central, as it sets the culture of the organisation and determines what kind of behaviour is seen as acceptable.”

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Too often companies do not have formal processes to deal with sexual harassment, so when complaints are made, they do not get addressed properly.”

### 3.3 BARRIERS TO ACCESSING REDRESS FOR SEXUAL HARASSMENT THROUGH EMPLOYER REPORTING MECHANISMS

As demonstrated in case studies 1, 3 and 4 above, when people did report sexual harassment at work to their employer, the actions taken in response were severely lacking. Overall, we found little evidence of employers taking effective steps to address situations of sexual harassment. Instead, workers’ concerns and experiences of harassment were often brushed off:

My friend used to work in cleaning in a commercial building and she would receive compliments all the time on her outfit, lipstick, etc. She also got slapped on her bottom and touched in the breast area. She reported this to one of the owners of the business who said, “It’s not our fault if you’re sexy and elegant” – this despite the fact that she was required to wear make-up at work. She did not feel as if it would ever be resolved after she witnessed this attitude, and so she left the job. It felt as if she could not ‘fight against him’.

**Adelina, Romanian cleaner (Focus group, 15 February 2020)**

Participants in the Working Group on Women Workers noted that the reaction of employers to people raising complaints is central, as it sets the culture of the organisation and determines what kind of behaviour is seen as acceptable and whether people feel comfortable reporting it. As illustrated by the interview respondent below, sexual harassment thrives in workplaces where there is a culture of tolerance for misogyny:

Well, in [Company A], the managers were a little bit more [hesitates], ‘taking advantage of you being a woman’. [...] I think this is a bit disrespectful. They should be more serious. For example, in [Company B] there is respect. I think they are more severe, and they don’t touch on personal issues or make comments that imply something different.

**Natalia, Colombian cleaner (Interview, 7 October 2019)**

Too often companies do not have formal processes to deal with sexual harassment, so when complaints are made, they do not get addressed properly. In some cases, reporting sexual harassment leads to a completely different disciplinary process – often only an informal reprimand (see for example case study 5 below) – compared to other types of infractions. Some companies simply choose to separate the victim and perpetrator, often at the expense of the victim (see for instance case study 1 in section 3.2 and research by LAWRS in section 2.2.). If there is a criminal element to the sexual harassment, people who report to their employer are usually told to go to the police. Unfortunately, when they do so, the case is often dismissed as ‘no further action’ due to difficulties in meeting the threshold for evidence for a criminal case, which employers then take to mean that there is in fact no problem. Having bad experiences with reporting will not only affect the person who has experienced the harassment, but also discourage others from coming forward.

### **CASE STUDY 5: MANAGER RESPONDS TO SEXUAL HARASSMENT REPORTED BY YOUNG WORKER BY SEXUALLY HARASSING HER HIMSELF**

Clara, one of our youngest research participants, had already experienced sexual harassment in two different jobs despite being only 18 years old. The first perpetrator was a chef at a restaurant in central London where she worked when she was 17.

*One day I was in the kitchen, getting some food, and one of the chefs touched my bum. I felt really bad. I was really quiet all day, so one of the managers asked me what happened.*

Clara told the manager, who spoke to the chef. The chef made excuses, saying the kitchen was small and that he had not touched her intentionally and the matter was left there. However, the manager then started sexually harassing Clara.

*After telling my manager about the touching, he then started asking me, "When will you be 18 so we can go out for dinner?". I was very uncomfortable, always saying no, no, no.*

After six months, Clara left the job, but the manager continued harassing her. He would send her text messages insinuating things and claiming that everyone thought they were in a relationship. Things were no different at Clara's next job, where the sexual harassment – once again perpetrated by a direct manager – started before she had even had her first shift.

*When I just arrived to [the restaurant, a well-known fast-food chain], the manager was about ten years older than me. He had been working in the company for three years already and had the highest rank. I went to the interview, and he said that he was happy about me, that I was very pretty.*

He then followed Clara on Instagram, two weeks before she was meant to start working.

*I followed him back and didn't pay much attention to it, but then he was always unfollowing me and then following me again. He did this many times. He was always doing it, and I never understood why. He would sometimes comment on posts: "You look very pretty", "You used to look better here", and things like that, so I ended up blocking him.*

At the time of the focus group, Clara was still working at the fast-food restaurant and the harasser was still her manager.

*He makes me feel very uncomfortable at work. When he sees me standing, he comes to see me. I have been there for four months, and he's been doing that since I started. [...] I always feel bad at work, I feel like the new person, I'm always quiet. [...] It's really hell, I just want to leave.*

**Focus group, 19 June 2020**

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In the case of outsourced workers, they often do not know their employer beyond their immediate supervisor or manager, which makes it difficult to report sexual harassment.”

Certain groups face additional barriers to accessing redress through employer reporting mechanisms. In the case of outsourced workers, they often do not know their employer beyond their immediate supervisor or manager, which makes it difficult to report sexual harassment especially if the manager is the perpetrator. Their situation is further complicated if the harasser is a client company employee or customer. In such cases it is often unclear for employees and employers alike where the responsibility for preventing or responding to harassment lies. Outsourced companies and agencies may claim to have limited control over the working

environment or the premises of the client company, and there is no incentive for them to have strong redress mechanisms that could potentially jeopardise their contract with the client. When asked whether it made a difference if the harasser was a client company employee, participants said they were afraid their employer would care more about the contract with the client than about addressing the harassment:

It makes a lot of difference. When the client is the harasser, you start thinking, "They [the cleaning company] don't want to lose their contract". It's a battle of my word against them.

**Martina, Ecuadorian cleaner (Focus group, 19 June 2020)**

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Both the direct employer and the client company should be responsible for preventing sexual harassment, have systems in place for workers to report it, and clear processes for resolving complaints.”

In the case of outsourced workers, both the direct employer and the client company should be responsible for preventing sexual harassment, have systems in place for workers to report it, and clear processes for resolving complaints. Two of our case studies show the important role that client companies can play in addressing sexual harassment of outsourced workers: in case study 1, the client company eventually ended its contract with the outsourced cleaning company because it refused to address multiple instances of sexual harassment by its cleaning manager, while in case study 6 the client company fired their own staff member for sexually harassing an outsourced cleaner.

#### **CASE STUDY 6: SEXUAL HARASSMENT BY A CLIENT COMPANY EMPLOYEE**

Martina works as a cleaner at an outsourced cleaning company and was sexually harassed by an employee of the client company she provides cleaning services to. The perpetrator would leave images of himself, naked, on mobile and computer screens for Martina to find.

*One day he left his phone on the desk, supposedly charging. He seemed nervous. When I was cleaning the desk, I realised that his screen was showing some images. It called my attention and when I looked at it, I realised that there was a picture of him, naked. He had taken a selfie, naked.*

The same thing happened again, this time on a computer screen.

*[A]gain, he was very nervous. He left the same photographs, but this time on the computer screen. I don't know if you've experienced something like this before? I pretended not to have noticed, but then I realised that this was the second time, and I got really nervous and left.*

A male employee at the client company noticed that Martina looked pale and distressed and asked her if she was ok. Martina told him what happened, and he laughed it off.

*[H]e started making jokes, making fun of the man, and started saying, "You can tell him that you need a microscope to look at it", and making jokes like that.*

A female employee of the client company happened to be passing by and, when she heard what had happened, reported it. The next day Martina was told that the perpetrator had been fired. She said she had never expected to experience this kind of harassment in the UK and would not have known what to do if the client company employees had not intervened.

*I was embarrassed! My colleague said: "You should have stopped him", but I was in shock, I couldn't speak about it. I know my rights in terms of*

*salary, payslips, etc., but when it came to knowing what to do when facing a situation like this, not at all! I had no idea.*

Language was once again a barrier.

*I then wanted to say a lot of things [to the client company employees], but they wouldn't have understood me in Spanish. Later on, I cried. I spoke to others, and then felt better.*

**Focus group, 19 June 2020**

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Platform workers classed as independent contractors are another group facing additional barriers to accessing redress for sexual harassment.”

Platform workers classed as independent contractors are another group facing additional barriers to accessing redress for sexual harassment through employer reporting mechanisms. App-based couriers who engaged in our research described situations of sexual harassment at work, sometimes enabled by the app they work through.

There have been times where I've felt uncomfortable, where I am aware I am alone at night, waiting for orders, realising I am the only female in the room. I had a few times where customers and restaurants accessed the app and got my personal contacts and called me in a non-working capacity. Customers contacted me hours after I have finished the order and that shouldn't happen. There is a third-party call centre that handles phone calls so that our phone number is anonymous.

**Erin, British Courier (Interview, 19 November 2020)**

Some chose not to report the sexual harassment to the platform company, citing reasons such as fear of having their account terminated (see section 3.2), while others tried to report it but could not find a suitable channel, or were brushed off to generic reporting channels not aimed at addressing sexual harassment.

I had an incident in my first year of working for [platform company, name redacted], where I'd gone to a customer's house who was drunk, who had grabbed me by the arm and asked me to come inside and fuck him. [...] I reported this to the company and said, "Look, can you put some kind of marker on this guy's address, so other couriers don't go there, especially female or non-binary couriers – this is not safe". And the response was just some bullshit about, "Oh yeah, you can report it like this, this is the help page where you go if you need to report something".

**Phoebe, British App-based Courier (Focus group, 18 January 2021)**

I was speaking to a female rider who was physically assaulted for the third time since she's been working, and it was another person working for the same platform, she said it was a car driver. She had the number plate; she knew what he looked like and stuff. And she couldn't find anywhere to report it, she was really struggling how to report it through the platform. Which I think is just awful. We should have more space to report these things and have them taken seriously.

**Katherine, British App-based Courier (Focus Group, 18 February 2021)**

It is currently not clear what the responsibilities of platform companies are when it comes to preventing or addressing sexual harassment of the people working through their platforms. Many classify their workers as

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More needs to be done by the government to proactively clarify the employment status of platform workers to ensure they are not wrongly deprived of their rights.”

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There are few incentives for workers to take sexual harassment cases to tribunal, as the legal processes are often long and complex, and the potential damages awarded are notoriously low.”

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As a result of legal aid not being readily available for discrimination cases, complainants must fund their own representation or represent themselves.”

independent contractors with the right to ‘substitute’, i.e. hire others or find a replacement to do their work, which means they are not covered by the Equality Act 2010 protections against sexual harassment (Acas, 2021). However, this classification is being successfully challenged in courts in the UK (Uber BV and others v Aslam and others) and globally, indicating that some platform companies do in fact have a duty to protect their workers. More needs to be done by the government to proactively clarify the employment status of platform workers to ensure they are not wrongly deprived of their rights, including protections against sexual harassment at work.

### 3.4 BARRIERS TO ACCESSING EMPLOYMENT TRIBUNALS

None of our research participants had taken a sexual harassment claim to employment tribunal, so our evidence of the barriers to accessing this system comes mainly from frontline organisations and legal professionals attending our workshops, as well as a review of secondary literature. Workshop participants highlighted several factors preventing workers in low-paid and insecure work from accessing employment tribunals. Many of these overlap with the reasons for why people do not report sexual harassment more generally, such as unequal power dynamics between employers and workers; fear of not being believed or of being branded a troublemaker; not wanting to recount a traumatic experience multiple times and potentially have its veracity questioned; and lack of information, including on how to access employer reporting mechanisms or the Employment Tribunal system.

For many, it is easier to find a new job than to report sexual harassment to their employer, let alone go to Employment Tribunal. There are few incentives for workers to take sexual harassment cases to tribunal, as the legal processes are often long and complex, and the potential damages awarded are notoriously low (EHRC, 2019b). Additionally, the process is often expensive, creating a considerable barrier especially for those in low-paid and insecure work. Though employment tribunal fees are no longer in place, legal aid for discrimination cases is generally not provided for Employment Tribunal representation. Section 10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 states that Exceptional Case Funding (ECF) may be available where it is necessary to avoid breaching an individual’s rights under the Human Rights Act 1998, but there are concerns that this scheme is not being used as intended. In 2019, the EHRC reported that between “2013/14 and 2017/18, ten applications were made for ECF but none were granted” (EHRC, 2019b: 8). In 2020, the Public Law Project conducted a survey of legal aid providers and found that “only 5% of respondents strongly believed the scheme operates effectively to ensure clients can access legal aid” (PLP, 2020). In addition, the ECF application process has been said to “disadvantage people with vulnerabilities who are navigating the process alone” (Rights of Women, 2019b: 8).

As a result of legal aid not being readily available for discrimination cases, complainants must fund their own representation or represent themselves, often against an opponent with more resources and professional legal representation (EHRC, 2019b). People funding their own discrimination cases are no longer able to recover certain legal costs from the respondents if their case is successful, and “risk having to pay the defendant’s full costs if they lose” – factors which discourage people from taking their claims to tribunal or court (*Ibid.*).

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Legal aid is not readily available: providers are facing sustainability issues due to low rates of pay, which are resulting in ‘legal aid deserts.’”

Outside of representation, legal aid is available for advice on discrimination for those who meet the eligibility criteria. However, the eligibility criteria are stringent and “even some people living below the poverty line are not financially eligible for legal aid” (*Ibid.*). Additionally, legal aid is not readily available: providers are facing sustainability issues due to low rates of pay, which are resulting in ‘legal aid deserts’ in certain areas (Justice Committee, 2021).

Furthermore, as mentioned in section 2.2, the short time limit (set at three months minus one day) for bringing discrimination cases to Employment Tribunal acts as a major barrier to justice. Many people are simply unaware of it and, as the EHRC (2019b: 18) highlights, three months does not give people “sufficient time to recover, consider what has happened to them, make a decision to pursue the claim, seek legal advice and start the legal process”. This is especially true if the person who has experienced harassment has been traumatised by their experience, works during unsociable hours, cannot immediately afford legal costs, is not familiar with the avenues of support available, or does not speak English and must therefore find specialist support in a different language (FLEX and LAWRS, 2019).

Workshop participants also raised several issues that affect migrant workers in particular, such as language barriers, fear of information sharing with immigration enforcement, and the length of time it takes for cases to be heard. This last point affects in particular those workers with limited leave to remain in the UK, as their case may not be heard before they have to leave the country. For instance, workers on the UK’s two short-term visas, the Seasonal Worker visa and the Overseas Domestic Worker visa, only have leave to remain in the UK for up to six months.

# 4

## STEPS NEEDED TO TACKLE SEXUAL HARASSMENT AT WORK

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It is clear from our research that for sexual harassment at work to be effectively tackled, it cannot be treated as a standalone issue.”

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The shift from employer liability after the incident of harassment to a preventative duty is a step in the right direction.”

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However, there needs to be official guidance on what the duty will entail, its enforcement, and what the penalties for non-compliance will be.”

It is clear from our research that for sexual harassment at work to be effectively tackled, it cannot be treated as a standalone issue. This is especially true in low-paid and insecure jobs in sectors where low union representation and high rates of outsourcing combine with a workforce that disproportionately experiences poverty, discrimination, language barriers, and immigration restrictions, among other drivers of risk, creating an environment that both enables harassment and prevents people from reporting it. For example, while providing more information and training on sexual harassment is clearly needed, these actions will not address the fact that a large proportion of workers in insecure jobs are afraid of losing work or having their hours reduced if they report or complain about harassment at work, or the fact that many are prevented from seeking help because of a language barrier.

### **THERE ARE SEVERAL STEPS THAT MUST BE TAKEN TO EFFECTIVELY TACKLE SEXUAL HARASSMENT IN THE WORKPLACE:**

- 1. Implement the changes to sexual harassment legislation put forward in the Government Response to the 2019 Government Equalities Office consultation on sexual harassment in the workplace, ensuring that protections extend to all workers, regardless of their terms of employment.**

The government has already committed to introducing a new duty for employers to prevent sexual harassment at work, to reintroduce protections against third party harassment, and to consider extending the time limits for bringing Equality Act 2010 cases to Employment Tribunals (Government Equalities Office, 2021). This is a positive development responding to long-standing calls from campaigns such as the TUC’s #ThisIsNotWorking (TUC, 2021b), and we hope to see these changes implemented without delay. The shift from employer liability after the incident of harassment to a preventative duty is a step in the right direction to reduce the incidence of sexual harassment in the workplace, and the EHRC’s new statutory Code of Practice on sexual harassment and harassment at work can help employers identify appropriate steps to meet their new duty.

However, there needs to be official guidance on what the preventative duty will entail, its enforcement, and what the penalties for non-compliance will be. Furthermore, there needs to be clarity on how this duty will work in non-traditional employment contexts, such as 1) outsourcing; 2) agency work; and 3) self-employment, including employment through online platforms or ‘apps’. For example, an outsourced hotel housekeeper may be sexually harassed by a guest, an employee of the client company (i.e., the hotel), or by a worker employed by another company outsourced by the same hotel (e.g., security) – who in this context is best placed to prevent the harassment from taking place?

Outsourced companies and agencies must be required to have policies in place to deal with incidences of sexual harassment experienced by their workers not only at the hands of colleagues, but also client company employees and their customers. Having specific policies on sexual

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The preventative duty also needs to apply to employment platforms or ‘apps’, including those engaging workers as ‘self-employed’.”

harassment in the workplace in the context of outsourcing is crucial due to the heightened risk of incidences in this type of work.

Furthermore, the preventative duty also needs to apply to employment platforms or ‘apps’, including those engaging workers as ‘self-employed’. Workers providing services through platforms may experience specific circumstances that put them at higher risk of sexual harassment in the workplace, such as isolated working environments (e.g., cleaning in or delivering food to a private household) and being reliant on clients’ reviews in order to build a good score and secure further work through the platform’s algorithm. Because people working through platforms/apps are usually classed as independent contractors, they fall outside the remit of labour protections, including protections against sexual harassment in the workplace. Having a preventative duty and good practice guidelines for online employment platforms would help protect workers in these highly vulnerable situations.

Finally, given the significant power that lead companies have over the environment, working conditions, and anti-harassment culture at the workplace, the preventative duty should also apply to client companies. That is, employers should have a duty to prevent sexual harassment not only of their direct employees, but also of outsourced workers and agency workers delivering services on their premises.

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Where individuals face high barriers to enforcing their own rights at work, proactive state enforcement is crucial.”

## **2. Improve state enforcement of sexual harassment protections**

Where individuals face high barriers to enforcing their own rights at work, proactive state enforcement is crucial. Proactive enforcement would not only serve as a strong deterrent, making the issue a higher priority for employers, but also increase individuals’ confidence in reporting sexual harassment.

Unfortunately, there is currently no labour market enforcement agency in the UK that has the remit, resources, and powers needed to tackle sexual harassment at work. This needs to be urgently addressed, starting with an assessment of what resources and powers would make such enforcement most effective, and which agency is best placed to take on the responsibility. Doing so will help the government prepare for its intended ratification of the ILO Violence and Harassment Convention, 2019 (No.190).

One of the agencies with the clearest remit to tackle sexual harassment at work is the EHRC, which is responsible for enforcing the Equality Act 2010. However, its enforcement powers are limited and used mainly to clarify the law, highlight priority issues, or challenge policies and practices causing significant disadvantage across industries or sectors. It does not have the power to act to prevent or prosecute workplace harassment cases, nor can it issue fines (Hazards, 2019). A new preventative duty for employers could allow the EHRC to take a more active role at the workplace level by investigating and taking enforcement action against suspected breaches of the duty. However, the EHRC is currently not set up to carry out the necessary enforcement action (Government Equalities Office, 2019). It does not have a workplace inspectorate or a preventative inspection system, nor the budget or human resources necessary (Women and Equalities Committee, 2019; EHRC, 2021). For EHRC to effectively meet its remit of enforcing the Equality Act 2010, including addressing sexual harassment in the workplace, it must be given the necessary powers and resources to do so.

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Another potential agency that could take on the responsibility for tackling sexual harassment at work is the future Single Enforcement Body (SEB) for employment rights, which the government has committed to establishing.”

Another agency with a clear remit to tackle sexual harassment is the HSE, which is already responsible for preventing and addressing violence at work. Unfortunately, though its own definition of violence at work should seemingly cover gender-based violence like sexual harassment, the HSE has so far refused to accept this interpretation (Women and Equalities Committee, 2018). Given its specific remit and powers of inspection, the HSE is well-placed to take reasonable steps to protect workers from sexual harassment. The HSE’s remit should be clarified to include sexual harassment and the law should be changed if necessary to support this. Finally, it is paramount that the HSE’s budget – which has been slashed by almost 60% since 2009/10 (Ewing *et al.*, 2021) – be increased sufficiently to allow it, and its Local Authority counterparts, to add tackling sexual harassment to their existing duties.

Finally, another potential agency that could take on the responsibility for tackling sexual harassment at work is the future Single Enforcement Body (SEB) for employment rights, which the government has committed to establishing. The SEB will bring together three existing labour market enforcement bodies into “a single, recognisable organisation” and “deliver a significantly expanded remit” (BEIS, 2021). This expanded remit could include addressing sexual harassment in the workplace by taking a proactive approach to enforcing the new preventative duty for employers, by responding to workers’ complaints, and by working closely and purposefully with other agencies.

At a minimum, labour market enforcement agencies, including the future SEB, must ensure they are fulfilling the Public Sector Equality Duty by having “due regard to the need to eliminate unlawful discrimination, harassment and victimisation” (EHRC, 2019a). To do so, they must address sexual harassment within the broader context of labour abuse, taking into consideration:

- a. How protected characteristics, as defined in the Equality Act 2010, interact with and increase vulnerability to experiences of workplace abuse.
- b. How particular employment models (e.g. zero-hours contracts, agency work, outsourcing, ‘dependent’ or ‘false’ self-employment) and conditions (e.g. night work, isolation) contribute to risk of sexual harassment in the workplace.
- c. How other labour abuses, especially minimum wage violations and other issues with pay, contribute to risk of sexual harassment in the workplace (further explained below).
- d. The ways in which abuses, including sexual harassment, can cause workers to feel disempowered in relation to their employers and thereby make it harder to complain or challenge abuse.

This understanding should be matched with more targeted, proactive and gender-aware labour market enforcement that is accessible to all and effective at reaching out to the most at-risk workers. FLEX (2017) has produced a practical guide that aims to support labour inspectorates to build a more gender-aware response to detecting and tackling labour abuses against women in the workplace, including sexual harassment. In this guide FLEX recommends that enforcement agencies should:

- a. Appoint a lead officer to oversee the organisational response to feminised labour sectors and to tackle gender-related abuse and exploitation.
- b. Conduct research and evidence-gathering to build a full picture of risk of abuse and exploitation in feminised and high-risk sectors.
- c. Engage with NGOs and frontline support organisations that are already working with and trusted by workers in these sectors.
- d. Establish a joint working group on labour market enforcement in high-risk sectors with members from each of the labour market enforcement bodies and other organisations.
- e. Develop and implement a gender policy and training programme that provides guidance on identifying gender-related abuse and gender sensitivity in the monitoring and enforcement of labour rights.
- f. Make proactive inspection a core element of enforcement strategy in combatting sexual harassment at work.

### **3. Address low-pay and insecurity at work to enable individuals to report sexual harassment and enforce their rights**

Sexual harassment in the workplace must be addressed not as an isolated issue but in the broader context of what drives labour abuse and exploitation at work. Like other workplace abuse, discrimination and harassment are often linked to unequal power dynamics within the workplace. It is therefore crucial to address the factors creating these power imbalances, such as low pay and insecure employment practices, which often trap workers in a situation of high dependency on their employer. As we have previously recommended (FLEX, 2021e), to address the vulnerability created by low pay and insecurity at work, the government must:

- a. Determine National Minimum Wage/National Living Wage rates based on what workers and their families need to meet the cost of living, as modelled by the Living Wage Foundation.
- b. Strengthen the enforcement of existing labour standards, focusing on sectors with low-pay and high rates of insecure work. This will require evidence-based resourcing of labour inspectorates, so they have the staff and capacity to proactively enforce workplace standards, as well as a review of their powers and remit.
- c. Address the insecurity created by zero-hour contracts. The Trades Union Congress recommends workers should have the right to a contract that reflects their regular working hours, at least four weeks' notice of shifts and compensation for cancelled shifts.
- d. Address the vulnerabilities resulting from false self-employment in platform work and take steps to narrow the legislative gap leaving individual workers having to bring cases to employment tribunals to have their rights as workers recognised.
- e. Make sure employers cannot dismiss workers without a just cause or without following proper procedure.
  - i. Extend protection against unfair dismissal to cover all workers.

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Sexual harassment in the workplace must be addressed not as an isolated issue but in the broader context of what drives labour abuse and exploitation at work.”

- ii. Eliminate the two-year qualifying period for claiming unfair dismissal.
- f. Enable better trade union access to workplaces and introduce stronger rights to establish collective bargaining so that unions can negotiate secure working conditions, inform workers about their rights and entitlements, and support them to access those rights in practice.

#### 4. Identify and address barriers to redress linked to immigration status

Immigration restrictions can further exacerbate power imbalances at work, making it hard for people to push back against or report workplace abuses like sexual harassment especially if workers are tied to their employer for their legal right to live and work in the UK or if their immigration status is insecure or irregular. The Director of Labour Market Enforcement's annual strategy for 2021/22 (Taylor, 2021) recognises the risk of labour exploitation created by the immigration system and recommends that:

- a. A strategic oversight group be established involving relevant government departments and enforcement agencies focusing on the potential labour market enforcement implications arising from the UK's new immigration system.
- b. The Home Office and the Department for Business, Employment, and Industrial Strategy (BEIS) commit to regular and ongoing monitoring of the impact of the new immigration system on labour market compliance, building on existing structures such as its Vulnerability Advisory Group. In addition, there should be an independent evaluation of these impacts after 18 months of the new system.
- c. The Home Office and BEIS, working with the labour market enforcement bodies, should review the interaction between labour market and immigration enforcement to ensure sufficient protections for migrant workers and improve intelligence flows via safe reporting structures. This should feed into development of the Single Enforcement Body for employment rights.

We concur with these recommendations and hope they will be endorsed by the new Director of Labour Market Enforcement and adopted by the government. FLEX, as part of the Labour Exploitation Advisory Group, has previously published a report on safe or 'secure' reporting pathways that enable all workers, including those without work permits and/or with insecure immigration status (e.g., temporary visas, tied visas, etc.) to report labour abuse and exploitation without fear of immigration enforcement action against them (LEAG, 2020). We hope the recommendations from this report are adopted as part of the above.

Furthermore, we call on the government to ensure the availability of safe and legal routes for migration so that people are not pushed to migrate for work irregularly with limited employment rights and protections. We also call for the government to ensure existing short-term routes such as the Overseas Domestic Worker (ODW) visa and the Seasonal Workers visa for agriculture do not increase risk of exploitation for workers. FLEX has previously written about the risks associated with short-term work visas (FLEX, 2019) as well as calling for specific changes to be made to the Seasonal Workers visa (FLEX and Fife Migrants Forum, 2021). Kalayaan

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(2020) and others have similarly published on the risks associated with the ODW visa, including recommendations for reforms.

## **5. Address problems with the Employment Tribunal system**

Finally, there are important steps that must be taken to improve access to Employment Tribunals for workers in low-paid and insecure jobs. The government must:

- a. Extend legal aid to cover representation in Employment Tribunals.
- b. Improve access to legal aid by making the financial eligibility criteria less stringent and ensuring it is sustainable for legal aid practitioners to continue providing this service.
- c. Extend the timeline for bringing Equality Act 2010 cases to Employment Tribunals from three months minus one day to, at a minimum, six months. This should be done in recognition of the many barriers workers face, which often delay reporting, including the psychological impact of trauma caused by severe forms of abuse. This measure is already under consideration by the Government and should be informed by workers' experiences, particularly women and non-binary workers, given the gendered nature of this abuse.
- d. Ensure workers on short-term visas have access to a fast-track complaints mechanism through which workplace grievances may be aired and remedied during their time in the UK. Where this is not possible, workers should be supported to make claims after having left the UK.

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# **FOCUS ON LABOUR EXPLOITATION**

**FOCUS ON LABOUR EXPLOITATION (FLEX)**

The Foundry, 17 Oval Way  
London SE11 5RR

 @FocusOnLabour  
info@labourexploitation.org

[www.labourexploitation.org](http://www.labourexploitation.org)