

II Definition of Harassment

1. Introduction—Key Concepts

Article 2, Paragraph 1 of the Regulations defines the three basic types of harassment—sexual harassment (Article 2-1, Paragraph 1, Item 1), academic harassment (Item 2) and power harassment (Item 3)—along with other harassment (Item 4), which covers all other forms of harassment. While each of these four harassment categories involves different assumptions and prerequisites, they share a common structure made up of the following aspects.

The first step is to consider the problematic behavior with respect to (a) where it occurred (the education or research setting) and (b) (c) the context in terms of the activities involved. The next step is to consider (d) the specific speech or behavior exhibited by the perpetrator. Finally, we look at (e) the causal relationship between the speech or behavior and (f) the resulting impact or damage sustained.

Note that the first three categories of harassment defined above (corresponding to Article 2-1, Paragraph 1, Items 1 – 3) also provide for (g) mitigating or exceptional circumstances where harassment is not considered to be applicable. In the event of circumstances as defined in (g), harassment is deemed not to have occurred even where requirements (a) through (f) are satisfied.

The table below summarizes the above prerequisite conditions for harassment (a) through (f) along with exceptions (g).

Table 1. Harassment—Prerequisite Conditions and Exceptions

	Ⓐ Teaching or Research Setting	ⒷⒸ Context	ⒹⒺ Type of Speech or Behavior	Ⓕ Impact/Damage	Ⓖ Mitigating or Exceptional Circumstances
Sexual Harassment (Article 2-1, Paragraph 1, Item 1)	Ritsumeikan University and Ritsumeikan Affiliated Schools	All workplace activities	Sexual in nature	Disadvantaged in terms of treatment Negative impact on working environment	Constitutes an appropriate exercise of authority
Academic Harassment (Article 2-1, Paragraph 1, Item 2)	Ritsumeikan University	Education and/or research	Based on position of superiority in education or research setting	Disadvantaged in terms of education/research work Negative impact on learning or research environment	Considered necessary and proportionate to the relevant teaching or research activity
Power Harassment (Article 2-1, Paragraph 1, Item 3 (a) and (b))	(a) Ritsumeikan University and Ritsumeikan Affiliated Schools	Administrative duties	Based on position of superiority in workplace setting	Disadvantaged in terms of ability to perform work Negative impact on workplace environment	Considered necessary and proportionate to the relevant administrative duties
	(b) Ritsumeikan University	Student activities	Based on position of superiority in student setting	Disadvantaged in terms of student activities Negative impact on student environment	Considered necessary and proportionate to the relevant student activities
Other Harassment (Article 2-1, Paragraph 1, Item 4) Note: Forms of harassment other than the above	Ritsumeikan University and Ritsumeikan Affiliated Schools	All workplace activities	Unwelcome or inappropriate	Disadvantaged in terms of treatment Negative impact on immediate environment	

Of the prerequisite conditions for harassment outlined above, (c) requires that the behavior alleged to be harassment has (b) a connection to the operations of Ritsumeikan University and/or Ritsumeikan Affiliated Schools. Where the problematic behavior is a purely personal matter with no connection whatsoever to the operations of Ritsumeikan University or Ritsumeikan Affiliated Schools, it does not constitute harassment under the Guidelines. If, however, a connection can be established (even where the problematic behavior is not directly related to the operations of Ritsumeikan University and/or Ritsumeikan Affiliated Schools per se) then this would constitute harassment under the Guidelines. Thus, for example, not only could problematic behavior by a lecturer towards a student in class be constituted as harassment, but behavior that takes place at a social gathering after class could constitute harassment.

In column (f), negative impact on the workplace environment or other setting refers to distress or discomfort experienced as a result of specific speech or behavior (d), where such stress or discomfort represents a noticeable or obvious impediment to the victim's ability to continue with work, study or other activity (Regulations, Article 2-2). For example, if a faculty member uses speech or behavior that causes discomfort to a student, to the point where the student feels unable to continue attending lectures, this constitutes a negative impact. Another example is a manager who uses speech or behavior that makes an employee uncomfortable to the point of being unable to continue working.

The criteria for determining what constitutes a negative impact is based on how most people would feel in that situation (except for power harassment, where such determination is made in accordance with the provisions of Ministry of Health, Labour and Welfare Notice No. 5, 2020 (enforced June 1, 2020) *Guidelines for HR Response by an Employer in the event of Problematic Language or Behavior by a Person in a Position of Superiority in the Workplace*, Section 2 (6)). According to this, if an average person (student, employee or equivalent person within the organization), where subjected to the problematic speech or behavior in equivalent circumstances, would be noticeably impeded in their ability to continue work or study, this is deemed to be a negative impact.

2. Sexual Harassment

(1) Definition of Sexual Harassment (Regulations, Article 2-1, Paragraph 1, Item 1)

The Regulations define sexual harassment as “speech or behavior of a sexual nature...that leads to disadvantageous treatment of another person, or negatively impacts the immediate environment of another person, except where considered to be an appropriate exercise of authority.” Thus, any speech or behavior of a sexual nature that leads to disadvantageous treatment of another or that has a negative impact on the immediate environment will normally be considered to constitute sexual harassment.

Here, speech or behavior of a sexual nature refers to all forms of speech and behavior that can be seen as pertaining to sex or gender. Thus, for example, speech or behavior aligned with fixed notions of the allocation of gender roles could be seen as sexual harassment.

It should be noted that “speech or behavior of a sexual nature that leads to disadvantageous treatment of another” is taken to include both direct cases, where the speech or behavior directly causes disadvantageous treatment, and indirect cases, where the speech or behavior provokes a reaction that in turn results in disadvantageous treatment. An example of a direct case is a male manager directing his female employee to make the tea on the grounds that it's “a job for a woman.” An indirect case would be a manager putting undue pressure on an employee to date them and then, when rebuffed, retaliating by taking the employee off an important project.

Note also that where speech or behavior of a sexual nature that leads to disadvantageous treatment of another or that has a negative impact on the immediate environment is deemed to be an appropriate exercise of authority, this does not constitute sexual harassment. For example, suppose that a faculty member is describing sexual violence against women as part of a class, and a student feels so uncomfortable that they do not want to remain in the class. Provided that the class material has been chosen and presented in an appropriate manner, this scenario would not be construed as sexual harassment. While a determination such

as this may be complex and difficult, the key issue is whether it represents an appropriate exercise of authority.

(2) Types of Sexual Harassment

The non-exhaustive list below presents a number of common forms of sexual harassment.

① Unwanted Sexual Proposition or Bodily Contact

This includes persistent or coercive propositions pertaining to sexual activity, bodily contact deemed unnecessary or without good reason, and stalking.

② Quid Pro Quo Sexual Harassment

This is defined as a situation where a person is subject to speech or behavior of a sexual nature, reacts negatively (with refusal or resistance), and is then subject to retaliation that results in disadvantageous treatment. An example is a manager who unduly pressures a subordinate to date them and then, when rebuffed, retaliates by taking the employee off an important project.

③ Hostile Environment Sexual Harassment

This refers to speech or behavior of a sexual nature that fosters a hostile environment in which another person is noticeably impeded in their performance of education, research, study or work activities.

④ Speech and Behavior Intending to Discriminate on the Basis of Gender

More information about forms of speech and behavior that intentionally discriminate on the basis of gender is provided on p.24, *Examples of Speech and Behavior That May Constitute Sexual Harassment*.

(3) Sexual Harassment in the Context of Sexual Orientation and Gender Identity Diversity

Sexual harassment is not confined to members of the opposite sex; same-sex sexual harassment also exists. This means that forms of stress or discomfort caused by sexual harassment (Regulations, Article 2-1, Paragraph 2) can vary widely depending on a person's sexual orientation¹ or gender identity.² (Article 2-3 of the Regulations addresses the issue of respect for diversity of sexual orientation and gender identity.) Thus, sexual harassment in the modern world can take myriad different forms with respect to both the relationship between the parties involved and the type of damage that results. (See also Ministry of Health, Labour and Welfare Notice No. 615, 2012 (enforced June 1, 2020) *Guidelines Concerning Measures to be Taken by Employers in Terms of Employment Management with Regard to Problems Caused by Sexual Harassment in the Workplace*, Section 2 (1)).

In light of the above, it becomes obvious that sexual harassment can also be taken to include instances of insulting language directed towards sexual minorities such as LGBTQ individuals (lesbian, gay, bisexual, transgender and questioning/queer) as well as overtly negative speech or actions regarding the character, performance or behavior of a person on the basis of their membership in a sexual minority group. Examples of sexual harassment towards sexual minorities can be found on p.22, *Speech and Behavior Against Sexual Minorities (LGBTQ)*.

¹ Sexual Orientation: the gender or genders to which a person is sexually or emotionally attracted

² Gender Identity: a person's concept or sense of their own gender as male, female, or something else

■ Forced Consent Due to Power Imbalance or Equivalent Circumstances

Speech or behavior of a sexual nature that goes against the wishes of another person constitutes sexual harassment. The hierarchical relationship between faculty members and students in particular represents a major power imbalance, with faculty members in a position of seniority and therefore superiority. Due to the power imbalance, a student who is subjected to

problematic speech or language by a faculty member is likely to simply accept or go along with it. In this scenario, even where the student has technically not refused, they cannot be said to have given willing consent.

■ Sexual Harassment of Young Children and School-Age Students

Sexual harassment of school-age and younger students is inexcusable. It can have a major impact on their dignity and personal character; it can also affect their desire to engage in learning, with potentially severe consequences for subsequent growth and development. Given that our schools exist and operate with the understanding and support of parents, guardians and local communities, an incidence of sexual harassment at a school would significantly damage the reputation of the school and Ritsumeikan Academy as a whole, potentially threatening the future viability of the school.

Sexual harassment of a school-age or younger student may be punishable under the Penal Code, the Child Welfare Act or local government ordinances (in Kyoto, the Ordinance on Healthy Youth Development), depending on the nature of the harassment. An alleged perpetrator will be held criminally responsible and, if found guilty of harassment, will be subject to proceedings under Work Regulations for Teaching Staff and Other Staff including disciplinary punishment (Article 60 onwards) and dismissal (Article 22).

(4) Gender Harassment

Gender harassment refers to sexual harassment in the form of speech and behavior motivated by fixed stereotypes about the gender roles of men and women. Examples in a workplace environment would be always getting a woman to make the tea or always getting a man to perform heavy lifting work, or being critical of speech or behavior that is seen to deviate from stereotyped notions of masculinity and femininity. If we are to show respect for diversity of ideas and value systems then we cannot allow this form of harassment.

(5) Sexual Harassment of Students Looking for Work

Students engaged in work experience, internship or equivalent programs in the private sector should not be subjected to sexual harassment by other workers. The government has stipulated that company guidelines on sexual harassment in the workplace should also extend to students present in the workplace. The government also requires any complaint or inquiry from a student regarding sexual harassment to be dealt with appropriately in keeping with the company's existing sexual harassment policies and procedures (Ministry of Health, Labour and Welfare Notice No. 615, 2012 *Guidelines Concerning Measures to be Taken by Employers in terms of Employment Management with Regard to Problems Caused by Sexual Harassment in the Workplace*, Sections 4 and 7).

Any student who finds themselves subject to sexual harassment during a work experience or internship assignment is advised to report it to the relevant department of the company. The university's support service may also step in where necessary to support students in consulting with the company.

3. Academic Harassment

(1) Definition of Academic Harassment (Regulations, Article 2-1, Paragraph 1, Item 2)

Under the Regulations, academic harassment is defined as "speech or behavior by a person who enjoys a position of superiority in the context of teaching or research work at Ritsumeikan University (excluding speech or behavior of a sexual nature) that leads to disadvantageous treatment of another person in their performance of teaching or research work, or negatively impacts the learning or research environment of another person, except where deemed both necessary and reasonable for teaching or research purposes."

It follows under this definition that speech or behavior deemed necessary and reasonable for teaching or research purposes does not constitute academic harassment. For example, if a lecturer assigns a particular assignment to a particular group of students during a class then technically speaking, it could be argued that those students have been subjected to disadvantageous treatment in the context of the learning environment. But where the act of assigning that assignment to that group of students can be considered both necessary and reasonable for teaching purposes, it would not constitute academic harassment.

(2) Types of Academic Harassment

Common forms of academic harassment are described below.

1) Educational Harassment

- ① Making scornful comments; shouting at someone in a loud voice; being excessively critical over an extended period; making negative comments about individual character.
- ② Refusing to provide the required educational instruction without good reason
- ③ Imposing excessive assignments
- ④ Threatening or implying a threat to deliver an unreasonable assessment in relation to an academic degree, unit or credit; dispensing unfair treatment in relation to an academic degree, unit or credit; or refusing to recognize an academic degree, unit or credit without good reason
- ⑤ Obstructing or impeding a student's freedom of preferred career or study trajectory

2) Research Harassment

- ① Obstructing or hindering research work, such as by refusing to allocate research topics, preventing access to equipment or facilities, or unreasonably restricting access to opportunities to present research findings
- ② Exploiting the work of a researcher, such as by unfairly appropriating their research findings, proposals or ideas

3) Other

- ① Demanding to be invited into a particular academic society or other grouping
- ② Asking a student to perform personal tasks or administrative work
- ③ Displaying coercive speech or behavior over an extended period with a significant negative impact on the learning or research environment
- ④ Violating privacy provisions, for example by eliciting personal information without good reason or releasing personal information into the public domain without consent

4. Power Harassment

(1) Definition of Power Harassment (Regulations, Article 2-1, Paragraph 1, Item 3)

The Regulations note that power harassment can occur in the workplace or in a student setting, and provides separate definitions as follows.

- ① Power Harassment in the Workplace (Regulations, Article 2-1, Paragraph 1, Item 3 (a))
“Speech or behavior (excluding speech or behavior of a sexual nature) from a person who enjoys a position of superiority within the course of operations of Ritsumeikan University or a Ritsumeikan Affiliated School that leads to disadvantageous treatment of another person in their workplace, or negatively impacts the immediate workplace environment of another person, except where deemed both necessary and reasonable in the workplace context.”

- ② Power Harassment in a Student Setting (Regulations, Article 2-1, Paragraph 1, Item 3 (b))
“Speech or behavior (excluding speech or behavior of a sexual nature) from a person who enjoys a position of superiority within a student setting at Ritsumeikan University that leads to disadvantageous treatment of another person in their student setting, or negatively impacts the immediate environment of another person, except where deemed both necessary and reasonable in the context of student activities.”

The use of the term “superior position” in these definitions is not meant to imply that superiority based on rank, job description or seniority is problematic in and of itself. It is worth noting that superiority can also be derived from a higher level of knowledge or technical prowess. Thus, speech or behavior by a highly knowledgeable or technically capable employee towards their less credentialed manager could also constitute speech or behavior that takes advantage of a superior position in certain situations.

Note that both definitions above are subject to the caveat that power harassment does not apply where the speech or behavior is considered necessary and appropriate in workplace or student settings. Thus, for example, a manager ordering a particular worker to perform a particular task could, technically speaking, be construed as the worker being subjected to disadvantageous treatment in the context of the workplace environment, which corresponds to “power harassment in the workplace” as defined above. But if the act of assigning that task to that worker is considered both reasonable and necessary to the operations of the organization, it does not constitute power harassment.

(2) Types of Power Harassment

Common forms of power harassment are described below.

- ① Physical aggression (engaging in violence with potential to cause injury)
- ② Psychological aggression (engaging in intimidation or verbal abuse)
- ③ Separation from interpersonal relationships (isolating a person; excluding them from a group; refusing to acknowledge their presence)
- ④ Unreasonable demands (assigning tasks that are clearly unnecessary and/or impossible to achieve)
- ⑤ Belittling demands (assigning menial tasks that have no discernible objective and/or are clearly well below a person’s capabilities or experience, or refusing to assign tasks for no discernible reason)
- ⑥ Infringing on personal matters (intruding to an excessive degree into the personal affairs of another person)

(3) Power Harassment in a Student Setting

Power harassment is not limited to employment settings; it can arise between students of Ritsumeikan University and Ritsumeikan Affiliated Schools in the course of normal day-to-day activities. This point is clearly articulated in Article 2-1, Paragraph 1, Item 3 (b) of the Regulations. Examples of power harassment at extracurricular activities include: junior students being expected to display unquestioning obedience to orders from senior students or risk exclusion from training; a senior student putting sustained and undue pressure on a junior student to go out drinking together; and specific members of a club being subject to disadvantageous treatment.

Note that problematic speech or behavior by a member of faculty or staff towards a student would be classified as academic harassment rather than power harassment. Since it takes place in a student setting, the problematic speech or behavior is deemed to have come from a person “in a position of superiority with respect to teaching.”

5. Other Harassment

(1) General

Because there are some types of harassment that do not fit the categories of sexual, academic or power harassment, the Regulations provides for a fourth category of other harassment. Article 2-1, Paragraph 1, Item 4 defines other harassment as inappropriate speech or behavior occurring in the context of the activities or operations of Ritsumeikan University and/or Ritsumeikan Affiliated Schools that leads to disadvantageous treatment of another person, or negatively impacts the immediate environment of another person.

Unlike the first three harassment categories, the definition of other harassment does not include a caveat that allows for exceptions to the rule. Instead, the definition uses the term “inappropriate” to qualify the speech or behavior. This means that the threshold for whether harassment has occurred rests on the interpretation of what constitutes inappropriate speech or behavior.

The “other harassment” category is intended to capture egregious violations of human rights that do not fit into any of the other three categories. At the same time, it is also designed to accommodate new and as yet unknown forms of harassment that may arise in the future. Items (2) through (4) below describe four common forms of harassment that are classified as other harassment at the present point in time.

(2) Harassment in Connection with Pregnancy, Childbirth or Childcare Leave

1) General

Inappropriate speech or behavior in regards to pregnancy, childbirth and/or childcare leave that leads to disadvantageous treatment of another person or negatively impacts the workplace environment of another person constitutes harassment. (Note that under the *Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment* Article 11-3 and the *Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members* Article 25, the employer must take all necessary steps to ensure that such speech and/or behavior does not negatively impact on the immediate workplace environment of the employee.) In the same way, inappropriate speech or behavior in regards to pregnancy or childbirth that subjects a student to disadvantageous treatment or that has a negative impact on their learning environment also constitutes harassment. The term “harassment in connection with pregnancy, childbirth or childcare leave” refers to any and all of the above.

The determination of whether harassment in connection with pregnancy, childbirth or childcare leave has occurred rests on the interpretation of whether the speech or behavior in question is considered inappropriate in context. If, on an objective reading, the speech or behavior can be viewed as necessary and reasonable for reasons of safety or equitable allocation of work duties (in a workplace setting) or learning tasks (in a student setting), then it is not inappropriate and does not constitute harassment.

2) Forms of Harassment in Connection with Pregnancy, Childbirth or Childcare Leave

Harassment in connection with pregnancy, childbirth or childcare leave can be divided into two categories as described below.

① Harassment of Those Making Use of Systems, Etc.

This refers to speech or behavior regarding a person’s decision to make use of one or more of the systems, schemes and measures listed below (collectively “systems”) that has a negative impact on the workplace or learning environment.

- Health and well-being measures during pregnancy and after giving birth
- Employment restrictions on hazardous work
- Maternity leave prior to childbirth
- Switching to light work
- Restricting overtime work, late-night work and work on holidays
- Childcare breaks

- Leave of absence from school

This category of harassment is further divided into the following three sub-categories.

① Anything Suggestive of Dismissal or Other Disadvantageous Treatment

Where a suggestion or implication of disadvantageous treatment such as dismissal or refusal to provide guidance is made to a faculty or staff member or student in connection with their decision to take childcare leave or equivalent

② Anything Hindering Requests to Use or the Actual Use of Systems, Etc.

Where a manager, colleague, faculty advisor or friend advises a faculty or staff member or student not to use the systems available to them in response to their inquiry

③ Anything That Harasses Others for Having Used Systems, Etc.

Where a manager, colleague, faculty advisor or friend harasses a faculty or staff member or student who has made use of the systems by, for example, using unpleasant speech or behavior, withholding or obstructing access to work, or limiting their duties to menial or routine tasks

② Situational Harassment

This refers to speech or behavior in relation to any of the following situations (collectively “pregnancy-related situations”) that has a negative impact on the workplace or learning environment.

- Having gotten pregnant
- Having given birth
- Being unable or having been unable to engage in work due to restrictions on hazardous work
- Being unable to work due to postpartum work restrictions, or taking maternity leave
- Being unable or having been unable to provide services related to work for reasons stemming from pregnancy or childbirth (e.g., morning sickness, hyperemesis gravidarum, danger of miscarriage, failure to recover from childbirth, etc.) or that productivity has decreased

This category of harassment is further divided into the following two sub-categories.

① Anything Suggestive of Dismissal or Other Disadvantageous Treatment

Where a manager, faculty advisor or equivalent makes a suggestion or implication to a faculty or staff member or student of disadvantageous treatment such as dismissal or refusal to provide guidance

② Harassment of Women for Having Gotten Pregnant, Etc.

Where a manager, colleague, faculty advisor or friend harasses a faculty or staff member or student in a pregnancy-related situation by, for example, using unpleasant speech or behavior, withholding or obstructing access to work, or limiting their duties to menial or routine tasks

3) Other

Further examples are given on page 27, *Examples of Speech and Behavior That May Constitute Harassment in Connection With Pregnancy, Childbirth or Childcare Leave*.

(3) Alcohol Harassment

Alcohol harassment is essentially any form of harassment in relation to alcohol. Notwithstanding that encouraging or forcing a student under 20 years of age to drink alcohol is a criminal offense, it is important to remember that excessive consumption of alcohol can lead to acute alcohol poisoning. Forcing someone

to drink alcohol is thus a very serious act with potentially life-threatening consequences. Extreme prudence is required in the following situations.

- Forcing others to drink alcohol with no regard for their physical constitution, condition, etc.
- Making others chug alcohol
- Intentionally causing another person to become excessively inebriated
- Preventing a person from going home after a drinking session and/or forcing them to attend subsequent drinking sessions

It is important to show consideration to those who may not drink alcohol, for example by providing access to non-alcoholic beverages.

(4) Racial Harassment

Racial harassment refers to improper discriminatory speech and/or behavior in connection with differences in race, nationality or ethnicity. The Ritsumeikan University Charter calls for the “creation of universal values based on academic freedom and search for solutions to the pressing issues facing humankind.” To this end, it is vitally important that all faculty, staff and students of Ritsumeikan University and Ritsumeikan Affiliated Schools demonstrate respect for the fundamental human rights of each other regardless of differences in race, nationality and ethnicity.

More information is provided on page 27, *Examples of Speech and Behavior That May Constitute Racial Harassment*.