



Preventing and managing harassment in the workplace



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Disclaimer

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What is Harassment?

Harassment is unwanted attention, touching, comments, innuendo and taunting that is sexual or racial in nature or is aimed at otherwise humiliating, degrading or making another person feel uncomfortable.

In the Australian Capital Territory any form of harassment at work is illegal. The Discrimination Act 1991 and several Commonwealth Acts cover rights and obligations in regard to certain types of harassment. The Work Safety Act 2008 makes harassment in the workplace against the law because it constitutes a possible hazard to the psychological health of employees.

Sexual Harassment

Sexual harassment is unwelcome behaviour of a sexual nature which makes a person feel uncomfortable, offended and/or intimidated and where that person's reaction can be deemed to be reasonable in the circumstances. Both men and women can be targeted by sexual harassment at work.

Sexual harassment in the workplace is unlawful and can take various forms. It can involve unwanted touching such as hugging, kissing or placing the hand on parts of the body. It can involve suggestive comments or jokes and unwanted invitations to go out on dates or requests for sex. Insults and taunts of a sexual nature or sexually explicit emails or SMS messages are also forms of sexual harassment.

When is sexual harassment unlawful?

The Commonwealth *Sex Discrimination Act 1984* makes sexual harassment unlawful in almost every employment situation and relationship. For example, sexual harassment is prohibited at the workplace, during working hours, at work-related activities such as training courses, conferences, field trips, work functions and office Christmas parties. It is also unlawful between almost all workplace participants.

What are my obligations as an employer?

There are good reasons for preventing sexual harassment in the workplace. As an employer you may be held legally responsible for acts of sexual harassment committed by your employees. This is called "vicarious liability". It is your obligation to prevent sexual harassment in your workplace by having good policies and procedures in place and educating your staff about this issue.



Sexual harassment adversely affects productivity and can negatively affect the health of the person who is being targeted.



Preventing Sexual Harassment

While there is no uniform standard expected of employers in “*taking all reasonable steps*”, at a minimum employers would usually be expected to:

- have an appropriate sexual harassment policy which is effectively implemented, monitored and communicated to all workplace participants
- take appropriate remedial action if sexual harassment does occur.

Policies and procedures preventing harassment assist employers in maintaining positive workplace relationships and can improve employee motivation and performance.

In managing sexual harassment in the workplace, you may also have obligations under other laws, such as privacy, defamation, occupational health and safety and industrial laws.



Any unwanted touching can be perceived as sexual harassment.

The Law

Refer to the Australian Capital Territory *Human Rights Act 2004* and the *Discrimination Act 1991*. also see the Commonwealth *Sex Discrimination Act 1984*

How do I Write a Sexual Harassment Policy?

A key aspect of prevention is the development and promotion of a written policy which makes it clear that sexual harassment will not be tolerated under any circumstances.

1. High Level Management Support

High level management support, particularly at the executive level, is critical in the development and implementation of an effective harassment policy.

2. Write and Implement a Sexual Harassment Policy

A sexual harassment policy should include the following:

- Zero tolerance
- Staff consultation
- Education
- Reporting
- Accessibility
- Remedial action
- Periodic Review
- Culturally responsiveness.

3. Leadership

Encourage managers to role model appropriate conduct and reinforce with staff on a regular basis that inappropriate behaviour in the workplace is unacceptable.

4. Grievance Process

The policy needs to include a process for staff to follow if they wish to make a complaint of sexual harassment. It is important that senior management provide a safe environment for staff to follow such a process.

Racial or Religious Harassment

Racial harassment and vilification or harassment on the grounds of religion is not to be tolerated under any circumstance. In the Australian Capital Territory it is an offence against the *Discrimination Act 1991* and the *Racial Discrimination Act 1975 (Cmwlth)* to vilify, abuse or adversely treat another person due to their race and/or religion in order to discriminate on the basis of race or religion.



Employer Responsibilities

Employers are responsible for preventing and managing all forms of harassment in the workplace including racial and religious harassment and discrimination. An employer may be held vicariously liable if such harassment takes place. All reasonable steps should be taken to ensure that such harassment does not occur and if it does, immediate and effective remedial action should be taken.

*Diversity promotes
creativity and
harmony*



Promoting and Encouraging Diversity

The most effective way to prevent racial and religious harassment in the workplace is to promote and encourage diversity. Diversity can provide your workplace with a rich fabric of knowledge, skills experience and creativity that would otherwise be absent.

Educating staff about the diversity of cultures existing in the workplace and the ways in which this diversity can enhance the productivity and innovation of the workplace will send a positive message to staff and encourage acceptance and tolerance.

If possible, allow people the freedom to dress in their cultural attire and follow their religious practices at work. Some workplaces provide a special room for Muslim people to be able to practice their religious customs through the day, or a Chapel for Christian people to be able to go away quietly to pray. Such provisions encourage harmony in the workplace and demonstrate respect for the diversity of the workgroup.

Write and Implement Racial and Religious Harassment Policy

A zero tolerance approach to racial and religious harassment and discrimination is the only way to convey the message that this type of behaviour is not appropriate in the workplace. Follow the guidelines for developing sexual harassment policy and remember to include a provision to address remedial action that will be taken if a complaint of harassment is made.





Workplace Bullying and Discrimination

Bullying is a form of harassment. Bullying behaviour is based on the misuse of power in human relationships. From a health and safety perspective, workplace bullying is defined as “repeated, unreasonable behaviour directed towards a person or a group of people in a workplace, which creates a risk to health and safety”.

Unreasonable Behaviour

Unreasonable behaviour is behaviour that is offensive, humiliating, intimidating, degrading or threatening. It includes but is not limited to:

- Verbal abuse
- Initiation pranks
- Excluding or isolating employees
- Giving a person the majority of unpleasant or meaningless tasks
- Humiliation through sarcasm, or belittling someone’s opinions
- Constant criticism or insults
- Spreading misinformation or malicious rumours
- Setting impossible deadlines
- Deliberately changing work rosters to inconvenience certain employees
- Deliberately with-holding information or resources, that are vital for effective work performance
- Manipulating the impression of others to split the work group into taking sides
- Displaying written or pictorial material which may degrade or offend certain employees.

Why is Bullying a Problem?

Bullying should be recognised as a potential hazard in all workplaces because it can occur in any workplace and under certain conditions most people are capable of bullying.

Bullying can be harmful to the organisation as well as to individuals. It can result in:

- Increased absenteeism
- High staff turnover
- Breakdown of staff morale
- Poor public image
- Reduced productivity and efficiency
- Increased costs through litigation and workers compensation.

Individuals targeted by bullying may experience:

- High levels of distress
- Anxiety, panic attacks and depression
- Ill-health, insomnia
- Loss of self esteem and confidence
- Social isolation
- Reduced work performance and/or incapacity to work
- Deteriorating relationships with family and friends.





*Age is
no
barrier
unless
you
make it
so*

You are only limited by your capacity to dream

Disability, Ageism and Size Discrimination

Discrimination and harassment of any kind in the work place is against the law and should not be tolerated.

Discrimination can be intentional and unintentional, so it is important to have open lines of communication so that workers can express their concerns if they feel they have been discriminated against.

Harassment can be directed at any perceived differences. Disability, size, sexuality and age are just some of the areas that may make someone a target for harassment and discrimination at work. When harassment begins it can quickly escalate into a situation of collective bullying or mobbing, so managers need to act quickly to deal with it.

The Age Discrimination Act 2004 (Cmwlth) makes it an offence to discriminate against someone because of their age and *the Disability Discrimination Act 1992 (Cmwlth)* makes it an offence to discriminate against someone because of a disability. As yet there is no specific legislation covering size discrimination however any form of harassment and/or discrimination in the workplace can be unlawful under the Worksafe Act if it jeopardises the health and welfare of other employees.





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