

Discrimination

Overview: What is Sexual Harassment?

Sexual harassment in the workplace is any form of sexual attention that is unwelcome. It may include an unwelcome sexual advance (which may be physical, verbal or written), request for sexual favours, or any other form of unsolicited or unwelcome sexual conduct associated with the work environment.

It is important to understand that certain conduct that might be tolerated socially could constitute sexual harassment if repeated in the workplace, when it is unwelcome. At the same time, sexual harassment should not be confused with normal workplace conduct that has the consent of all those involved.

The following examples may constitute sexual harassment when they are offensive to an employee, regardless of any "innocent intent" on the part of the offender:

- The public display of pornography (especially where it is directed at particular individuals), ranging from material that might be considered mildly erotic, through to material that is sexually explicit. NOTE visiting web sites containing this material will be a breach of this policy.
- Continued use of jokes containing sexual innuendos, which humiliate or embarrass another person;
- Intrusive enquiries into an employee's private life, or in reference to their sexuality or physical appearance (these may be verbal or written);
- Persistent requests for dates / drinks etc, which have been repeatedly rebuffed; and
- Persistent staring or leering at a person or at parts of their body;

Whilst single or isolated occurrences of the above behaviour may appear relatively minor, when continued over an extended period they can become very wearing and stressful.

It is important to note that:

(1) Behaviour or comments that may not offend one person may be unwelcome or offensive to another.

(2) Fair disciplinary counseling or workplace control practices based on objective assessment of work performance do not constitute harassment.

Examples of more severe Sexual Harassment include:

- Sexually offensive telephone calls;
- Requests for, or expectations of, sexual activity under threat, or in exchange for favours or promises of preferential treatment;
- Public displays of nudity commonly referred to as flashing;
- Deliberate and unnecessary physical contact, such as patting, pinching, fondling, or deliberate brushing against another body, attempts at kissing; and
- Sexual violence at the most serious extreme, sexual assault and forced attempts at sexual intercourse.

The Effects of Sexual Harassment

The effects of sexual harassment on an individual can include:

- Annoyance, embarrassment, intimidation, humiliation, distress, anxiety, fear, ill health, or a threat to personal safety (even suicide);
- Sexual harassment can also interfere with an individual's performance on the job, and may induce lack of motivation, absenteeism, needless transfers, or resignations; and
- Submissions to or rejection of sexual harassment, may result in improper decisions affecting the individual's (and others') employment or career prospects.

All of these will also impact negatively on the organisation.

The Law

Sexual harassment in the workplace amounts to unlawful conduct if:

(a) An employee subjected to behaviour capable of constituting sexual harassment feels offended or humiliated, intimidated or frightened or generally uncomfortable at work. In this regard a single act is capable in itself of being unlawful. There is no requirement of a pattern of behaviour.

(b) An employee has reasonable grounds for believing that rejecting sexual advances, refusing requests for sexual favours, or objecting to any other forms of sexual conduct, could (or has in fact) disadvantaged the employee, in connection with his or her employment.

Overview: What is Discrimination?

Discrimination can be categorised into five types, which are:

- **Direct discrimination:** Any (act or) practice which makes distinctions between individuals or groups so as to disadvantage some or advantage others. This is overt discrimination and may result from any action that specifically excludes a person or group of people from a benefit or opportunity, or significantly reduces their chances of obtaining it, because a personal characteristic, irrelevant to the situation, is applied as a barrier. Most of the anti-discrimination laws aim at preventing this form of discrimination.
- **Indirect discrimination:** (where a practice or) a condition of employment is imposed which appears not to be discriminatory but has a disadvantageous effect on a certain group. Eg full time benefits not available to part time employees. Also known as covert discrimination, it occurs where actions or policies appear non-discriminatory however in operation have an adverse outcome for a group or individual by reducing a benefit or opportunity. Indirect discrimination is also known as systemic discrimination as it is built into the system. To counter this form of discrimination, Affirmative Action needs to be taken which counters covert discrimination by bringing employment opportunities specifically to the notice of the minority group.
- **Harassment:** Includes any unwelcome or offensive behaviour or conduct which has no legitimate workplace function and which intimidates, humiliates or offends another person or persons. Two main types: (a). Quid Pro Quo:

harassment with direct or implied threat, benefit or promise. In other words, blackmail. (b). Hostile work environment: Behaviour which creates a hostile or sexually permeated environment. Eg: porn, sexual banter, crude conversation, and offensive jokes.

- Victimisation: "punishment etc" for certain (usually allowable) behaviours eg for whistle blowing and includes 'pay-backs', retribution or intimidation associated with a discrimination complaint or potential complaint. Protection against victimisation extends to actual or potential complainants, witnesses, supporters and those investigating or resolving complaints. Another form of victimisation is deliberate exclusion eg being cut out of office functions.
- Vilification: Includes public acts which could incite, encourage, or urge others to hate, have serious-contempt for, or severely ridicule, a person or group of people because they are (or are thought to be) members of a particular group, and which have no justification in 'free speech'. Other descriptors: disparagement, criticism, backbiting, denigration, slander, libel or defamation.

Bullying can be one or a combination of harassment, victimisation or direct discrimination. A Bully is "a person who uses strength or power to coerce others by fear" and that to bully is to "oppress, persecute, physically or morally by (threat of) superior force." - Concise Oxford Dictionary. Bullying is not acceptable in the workplace and will be dealt with under this Policy.

Anti-Discrimination laws exist for the protection of all workplace participants including employees, contract workers, commission agents, clients and customers. These laws make it unlawful to treat people differently, to their disadvantage, on certain grounds. Fair (or lawful) discrimination is where individual differences in ability, potential capacities or qualifications regardless of race, age, sex etc are used to differentiate individuals. It is unlawful to discriminate, harass, victimise or vilify an individual based on a ground of discrimination.

Unlawful grounds of discrimination include

- Age
- Sex
- Political or religious conviction
- Pregnancy / potential pregnancy
- Race, ethnic background and nationality, and that of a relative or associate
- Parental status / family responsibilities
- Marital / defacto status / identity of the spouse
- Sexuality / sexual preference
- Disability (past, present, possible future or imputed and that of an associate or 'carer' or involving a therapeutic aid, for example a guide dog for a blind person, wheelchair, or a hearing aid etc.)
- Trade union activity / inactivity
- Irrelevant criminal record
- Social origin
- HIV / AIDS

It should be noted that:

INTENTION IS IRRELEVANT UNDER THE LAW ONLY IMPACT MATTERS

Liability

Generally speaking the company could be vicariously liable for the unlawful discriminatory behaviour of its employees or in a claim of sexual harassment. However, once the company has met its preventative obligations, the individual employees may be legally and financially liable for their own unlawful behaviour, either directly or as an accessory.

The possibility also exists for managers and supervisors to be held vicariously liable for failure to take appropriate action when faced with a case of harassment / discrimination.

Sexual Harassment and Discrimination Policy

In managing the Company's people, these three principles apply:

(1) We will do everything possible to create and sustain an organisational environment which supports mutual trust and assists our people to discover, develop and increase their fullest personal capacities; and

(2) We will practice high ethical standards with each other, with customers, with clients, with governments and with the community.

(3) The Company does not encourage you to have relationships with your work colleagues. If you have a genuine relationship with a person at work, that person must not either be a person to whom you report or a person who's work you direct. Such situations shall be reported to either the Branch Manager or Human Resources immediately.

The Company considers both sexual harassment and discrimination to be unacceptable forms of behaviour that will not be tolerated, under any circumstances. Such behaviour is also unlawful. Each employee has a right to work in an environment that is free from harassment / discrimination.

Management is therefore committed to action which ensures the absence of both sexual harassment and discrimination in the workplace. Appropriate disciplinary action will be taken against any individual engaging in such unsuitable conduct.

What You Can Do:

- Do not ignore sexual harassment, thinking it will go away (ignoring the behaviour could be taken as or mistaken for tacit consent). Make it clear that such behaviour is offensive and unacceptable.

Making a Formal Complaint

A formal complaint may be made in the following ways:

(1) You may inform a member of our Committee Against Sexual Harassment / Discrimination. Committee Members (listed above) have the responsibility of listening to your complaint and of treating it confidentially. He or she (or an appropriate delegate) will promptly make a full and impartial investigation of the matter, and will take appropriate action to ensure that any sexual harassment or discrimination found to exist, does not continue. This may include disciplinary action being taken against an offender; or

(2) You are also advised that complaints of sexual harassment or discrimination can be lodged with the State's Anti-Discrimination Board. Alternatively, complaints of sexual harassment can be lodged with the Commonwealth Human Rights and Equal Opportunity Commission.

This Company Procedure (as varied by the Company from time to time) forms part of your employment agreement with the Company.