

Sexual Harassment Fact Sheet

What is sexual harassment, and what are examples of it happening in the workplace? Learn all about it, and your obligations as an employer.



What is it?

Sexual harassment occurs when a person:

- makes an unwelcome sexual advance
- makes an unwelcome request for sexual favors and/or
- engages any other unwelcome conduct of a sexual nature

to another person in the workplace. The behaviour is considered sexual harassment where a reasonable person would have anticipated the possibility that the person on the other end of the harassment would be offended, humiliated, or intimidated by the behaviour.

Sexual harassment is unlawful, and only has to happen once for it to be considered harassment.

The prohibition on and the protection from sexual harassment in the workplace extends to "all workers." This includes employees, contractors, subcontractors, outworkers, apprentices, trainees, students and volunteers as well as prospective workers and third parties such as clients and customers.

Examples of Sexual Harassment

Examples of sexual harassment includes, but is not limited to the following:

- inappropriate physical contact or unnecessary familiarity (i.e., deliberately brushing up against a person)
- inappropriate staring or leering
- suggestive comments, jokes, or innuendoes
- unwanted invitations to go out on a date
- request for sex
- intrusive questioning about a person's private life or body
- an insult or a taunt of sexual nature
- harassment on the grounds of sex

Conduct that maybe considered sexual harassment in one situation may not be in others. Mutual, consensual, or reciprocated flirtation or love and affection between two consenting individuals is not sexual harassment.

Sexual harassment includes conduct which could reasonably result in a workplace being offensive, intimidating, or humiliating to a person because of their sex. Employees having a sexist conversation can result in an instance of sexual harassment. The intention of the person engaging in the behaviour is not relevant.

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What are my obligations as an employer?

Health and Safety Obligations:

Employers have a duty to provide workers with a safe workplace under work health and safety legislation. Employers must take steps to prevent or minimise the risk of instances of sexual harassment in the workplace. This not only applies to conduct that occurs during work hours, but also at times when workers are at work social events (conferences or offsite training for example) 'during the course of employment.'

Anti-Discrimination Legislation:

Under anti-discrimination legislation, employers have a duty to take reasonable proactive steps to eliminate discriminatory behaviour in the workplace including by third parties.

For example, an employee can make a sexual harassment complaint where they are harassed by a customer or client. The employer in that scenario may be liable where they did not take reasonable steps to stop the client's behaviour.

Preventing sexual harassment rather than responding to it is an employer's responsibility.

As well, it is important to put proactive steps in place to reduce the likelihood of sexual harassment happening in the workplace. Employers should consider conducting a risk assessment and consider control measures including:

- Clear policies
- Proactive regular training
- Ensuring procedures are followed
- Creating a "safe to speak" culture

Responding to an allegation

When a sexual harassment claim is made, the primary action is to conduct a confidential, thorough investigation. This applies whether the complaint was raised informally.

If evidence of the claim is found, sexual harassment is considered serious misconduct under the Fair Work Act, meaning it can result in a valid reason for termination without notice.

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Vicarious Liability:

Employers can be held jointly liable if they do not take reasonable steps to minimise or eliminate sexual harassment in the workplace. This includes, but is not limited to, individual employees, managers, directors, and agents of a workplace.

Protections for Workers:

Any worker who experiences sexual harassment may:

- raise a workplace grievance with their employer, protected by a whistle-blower legislation
- apply to the [Fair Work Commission](#) (FWC) for a stop sexual harassment order
- make a complaint to the [Australian Human Rights Commission](#) (AHRC)
- submit a safety complaint to [Safe Work Australia](#) or the relevant state work health and safety body and/or
- submit a complaint to the police for serious instances of sexual harassment e.g. stalking, sexual assault

Workers are protected from adverse action or being victimised because they made a complaint of sexual harassment.

Stop Sexual Harassment Orders:

The Fair Work Act provides that any worker who is employed by a constitutionally covered business is eligible to make an application (F72) to the FWC for an order to stop workplace sexual harassment.

A worker is defined to include employees (including apprentices, trainees and outworkers) as well as contractors and unpaid workers (interns, work experience and volunteer workers).

A constitutionally covered business includes any incorporated companies and constitutional corporations but does not include sole traders or partnerships. Civil penalties apply to a person who contravenes a stop sexual harassment order.

Need HR advice on sexual harassment matters?
We can help.

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