

**Wide-ranging legislative changes mean employers now have a “positive duty” to prevent sexual harassment in the workplace.**

#### What is sexual harassment?

Sexual harassment is unwelcome sexual conduct which makes a person feel offended, humiliated, or intimidated, where that reaction is reasonable in the circumstances. In Queensland, sexual harassment is unlawful in any public place as well as in workplaces. It can occur between individual employees, managers, or supervisors; or employees can experience harassment from clients, students, or patients. A single incident can amount to sexual harassment and any unwelcome behaviour does not have to be repeated or continuous.

#### What isn't sexual harassment?

Sexual harassment is not sexual interaction, flirtation, attraction, or friendship which is invited, mutual, consensual, or reciprocated. However, employees should remember there are general standards of conduct expected in a work environment and a sexualised workplace culture can still be found to be sexual harassment or sex discrimination.

#### What is sex-based harassment?

Sex-based harassment is defined as unwelcome conduct of a seriously demeaning nature by reason of the person's sex, in circumstances in which a reasonable person would have anticipated the possibility that the person harassed would be offended, humiliated, or intimidated.

#### What are some examples of workplace sexual harassment?

Sexual harassment can take various forms. It can include physical contact such as unwelcome touching, hugging or kissing; or staring or leering at a person.

Or it can include:

- following or loitering near a person;
- asking intrusive questions about someone's private life;
- making comments about a person's physical appearance;
- making unwelcome requests for sex;
- sending sexually explicit emails, calls, text messages or other online behaviour; or
- actual or attempted sexual assault, rape, indecent exposure, or stalking (which are also criminal matters).

#### How widespread is workplace sexual harassment?

You're more likely to be sexually harassed if you:

- are a young worker (under 30);
- are Aboriginal or Torres Strait Islander;
- identify as LGBTIQ;
- have a disability
- are from a culturally or linguistically diverse background;
- are a migrant, or hold a temporary visa; or
- are employed in casual or insecure work.

#### Who is likely to be sexually harassed in the workplace?

Anyone can be sexually harassed but **women are more likely than men** to experience sexual harassment. As evidenced in the 2020 Australian Human Rights Commission (AHRC) *Respect@Work* Report those most likely to experience sexual harassment in the workplace are those without power such as young people, women, LGBTIQ+ people, Aboriginal and Torres Strait Islander people and people with a disability.

Many of these types of workers have one thing in common: they're often employed in insecure work such as casual, temporary or labour hire jobs, and are often afraid to speak up about unacceptable workplace behaviours because they fear they may lose their jobs. That's why it's important we have strong laws focused on preventing sexual harassment rather than waiting until it happens.

### **What workplaces put you at a higher risk of experience sexual harassment?**

Sexual harassment can occur in any workplace; however, some factor may increase the risk of exposure to sexual harassment. These include, but aren't limited to:

- a poor understanding of sexual harassment;
- male dominated industries and a "blokey" workplace culture;
- workers engaging with third parties (such as customers, patients, and clients);
- working in an isolated or remote setting;
- lack of diversity in the workplace;
- poor leadership and workplace culture; and
- a misuse of alcohol in the workplace.

### **What should I do if I witness workplace sexual harassment?**

Preventing sexual harassment at work is your employer's primary responsibility. But stopping it in the workplace when it does happen can also be everyone's responsibility – and we should all help to support anyone experiencing sexual harassment.

Call it out when you see it. However, never act on behalf of someone who has experienced sexual harassment without their permission, and always consult with them on how you can best help – even if that's just to listen. Call your union to discuss options.

### **Updates to legislation**

In response to the 55 recommendations from the *Respect@Work* report there have been wide-ranging legislation changes to strengthen the provisions to respond to sexual harassment complaints in the workplace. Importantly, the legislation now creates a positive duty for the employer, with a focus on **prevention**.

*The Sex Discrimination Act 1984* (the SDA) has been updated so that now:

- it is unlawful to harass a person on the ground of their sex where the conduct is "unwelcome" and of a "demeaning nature" and a "reasonable person" would expect the impacted person to be "offended, humiliated or intimidated";
- a new offence of a "hostile work environment" on the ground of sex exists, making it unlawful to subject another person to a hostile workplace environment that a "reasonable person" would find is "offensive, intimidating or humiliating" to a person of a particular sex;
- sex-based harassment is now specifically made unlawful in all areas of public life covered under the SDA;
- victimisation under the SDA can form the basis of a civil action for unlawful discrimination; and
- a complaint can now be terminated if lodged more than 24 months after the alleged conduct. (This replaces the 6-month timeframe.)

*Fair Work Act* (2009) updates mean that:

- sexual harassment is now explicitly prohibited and workers alleging they have been sexually harassed will be able to make an application to the FWC to deal with a dispute, including an order;
- sexual harassment in the course of employment can be considered serious misconduct and can be a valid reason for dismissal;
- sexual harassment could also include being exposed to or witnessing this kind of behaviour in their work environment or culture. (For example, overhearing a conversation or seeing a sexually explicit poster in the workplace.);
- the inclusion of vicarious liability in relation to an agent or employee of an employer; and
- the FWC can now:
  - make a stop sexual harassment order to prevent future sexual harassment;
  - conciliate, mediate or make a recommendation or expressing an opinion; and

- deal with a sexual harassment dispute to remedy past harm.

Safe Work Australia changes mean that:

- a National Code of Practice – *Managing psychosocial hazards at work* – has been introduced. (This is a model code and is not enforceable in Queensland.); and
- the Queensland Regulation and *Managing the risk of psychosocial hazards at work* Code of Practice 2022 is now operative.

### What can I do if I've been sexually harassed in the workplace?

Commonwealth and Queensland anti-discrimination laws make sexual harassment unlawful. Employers can now be held liable for the actions of their employees or agents (if the person is found to have sexually harassed an employee) if they didn't take reasonable steps to prevent the harassment (referred to as "vicarious liability"). All employers also have a duty under work health and safety laws to provide and maintain a work environment without the risk of sexual harassment to workers or other persons at the workplace.

### Some options if you have been sexually harassed

- Speak to your union – your union can give you advice and support as well as help you make a complaint, either within your organisation or externally.
- Speak to your Health and Safety Rep (HSR) – and if you don't have an HSR, speak to your union to organise to elect an HSR.
- Report what happened to a supervisor, human resources area, or a person designated by your organisation. Your employer should have workplace policies or procedures in place on how to report and manage complaints about sexual harassment (including reporting confidentially or anonymously).
- Approach the other person(s) involved to talk about your concerns after the incident has occurred, but only if you feel safe and comfortable to do so. You could have a support person with you when you do this.
- Keep a record of what happened, when and where it happened, who was involved and anything else you think may be important.
- Contact your WHS Regulator for further advice about prevention of sexual harassment in your workplace or lodge a complaint with the Australian or Queensland Human Rights Commission. If you're covered by the *Fair Work Act* you can also apply for a stop sexual harassment order. Talk to your union about how they can assist.
- Talk to your union about putting in place measures at your workplace aimed at preventing sexual harassment from occurring such as:
  - a proper sexual harassment prevention policy and procedure;
  - education and training for managers, supervisors and employees;
  - a fair and independent investigation process, and
  - support measures for people affected by sexual harassment.

### Further support and resources

- **Sexual assault support services:** 1800RESPECT is the national domestic, family and sexual violence counselling, information and support service. If you or someone you know is experiencing, or at risk of experiencing, domestic, family or sexual violence, call 1800RESPECT on 1800 737 732 or visit [1800RESPECT.org.au](http://1800RESPECT.org.au).
- **Workers' Psychological Support Service:** 1800 370 732 or [info@wpss.org.au](mailto:info@wpss.org.au)
- **Some forms of sexual harassment are criminal conduct.** If you have experienced sexual assault and feel you would like to make a complaint or report it to the police, access Police contacts for sexual assault.
- **Mental health support service:**
  - Lifeline 24 hours crisis support and suicide prevention: 13 11 14
  - Beyond Blue: 1300 224 636
  - Mental Health Hotline: 1300 642 255