

Sexual harassment in the workplace

Sexual harassment is unfortunately still a common occurrence in the workplace. The *Sex Discrimination Act 1984* (Cth) (Act) describes sexual harassment as any unwelcome conduct of a sexual nature, it also makes sexual harassment in the workplace unlawful.

There are many examples of behaviours that amount to sexual harassment. If you are an employer, you have a duty to prevent, to the best of your ability, sexual harassment occurring in your workplace. There are various things you can do to ensure you meet your responsibilities as an employer and minimise the risk of paying out compensation for sexual harassment claims.

What is 'sexual harassment' in the workplace?

The Australian Human Rights Commission (AHRC) has found that 72% of Australians have experienced sexual harassment in their workplace.

As mentioned above, sexual harassment involves any unwelcome or unwanted sexual conduct to an employee while they are working.

Examples of sexual harassment can include;

- inappropriate touching or text messages;
- sexually suggestive taunts or remarks;
- unwanted sexual requests;
- inappropriate questions about a person's body.

Sexual harassment in the workplace isn't strictly limited to a place of work, it also includes sexual harassment that occurs at work-related activities or can come from colleagues, managers or customers and clients. Acts of indecent exposure, stalking, sexual assault, obscene or threatening communications may amount to a crime and should be reported to Police.

What can I do to prevent sexual assault occurring in my workplace?

Under Workplace, Health and Safety laws (WHS) an employer must do all they reasonably can to prevent and manage the risk of sexual harassment occurring in the workplace.

The AHRC provides various guides to help employers understand and meet their legal obligations under the Sex Discrimination Act. You can find this helpful information [here](#).

You should also have an accessible and simple complaint process available for employees to report sexual harassment informally, formally, anonymously and confidentially, including a list of information on support services available. You also cannot discriminate against or disadvantage an employee in any way for reporting sexual harassment. Having an effective complaint process can also help to identify ways to improve your workplace procedures and policies. It can also help avoid complaints to external organisations and from employees taking legal action against you.

If you want to ensure you are compliant with the procedures discussed above, we recommend you speak with one of our experienced lawyers.

Can my employee claim compensation for sexual harassment?

Yes! Employers can be ordered to pay compensation to employees who have been sexually harassed in the workplace for anxiety, depression, and other psychological effects caused by sexual harassment. Employers can also be made to pay compensation for economic loss if an employee chooses to leave their employment because of the harassment.

An employee is entitled to lodge a claim for compensation with the AHRC, within 12 months of when the harassment occurred.

The AHRC will then investigate and conciliate the employee's complaint and determine whether the sexual harassment was unlawful. The AHRC can also arrange for the parties to attend mediation to see if a settlement can be reached.

If no agreement is reached through the AHRC, the employee has 60 days to apply for monetary compensation in the Federal Court.

The Federal Court can award damages for unlawful discrimination which includes sexual harassment. For example, in a couple of recent cases, an employee who was sexually harassed received \$100,000 in compensation for the value of loss of enjoyment of life and the mental illness and distress resulting from sexual harassment and \$30,000 in compensation for loss of income. In another case, an employee was awarded \$120,000 in compensation for loss of income and psychological distress. A further \$50,000 in compensation was awarded for aggravated damages because the employer failed to stop or prevent sexual harassment from occurring.

The above examples demonstrate the importance of having effective procedures in place that can prevent and manage sexual harassment in your workplace. If you want to minimise your risk of paying out compensation for a sexual harassment claim, we strongly recommend you speak to our experienced employment lawyers.

Conclusion

As discussed above, employers have a duty to ensure they take reasonable steps to minimise the risk of sexual harassment occurring in the workplace and to have effective procedures in place to manage any sexual harassment complaints made by their employees.

Putting together effective procedures to minimise sexual harassment and handling sexual harassment claims can be a daunting and overwhelming task. This is why we recommend employers seek advice from an experienced lawyer.

If you or someone you know wants more information or needs help or advice, please contact us on (07) 5538 2766 or email jeff@dwyerlaw.com.au.