

Factsheet Thirteen

Sexual Harassment

Under new employment laws, from 6 March 2023, sexual harassment of all workers is now prohibited under the Fair Work Act. Sexual harassment is now considered serious misconduct and engaging in sexual harassment can be a valid reason for termination of employment.

Your employer now has a positive duty under the law (including the NT Anti-Discrimination Act as at 6 January 2024) to put preventative measures in place to ensure your working environment is safe and free from sexual harassment. This means your employer has a positive duty to protect you from harm including customers or external contract workers who may visit your workplace.

Under recent changes to the Work Health and Safety laws in the Northern Territory, sexual harassment in the workplace can now be deemed a workplace hazard which is known to cause psychological and physical harm. The role of NT WorkSafe is to ensure that that person(s) conducting a business or undertaking, such as your employer, take reasonable care of the health and safety of workers. Your employer must treat the risk of sexual harassment just as they would any other workplace hazard. This means they must reduce or remove the risk of sexual harassment as much as they reasonably can.

To fully protect workers, employers must have a comprehensive understanding of what can increase the risk of sexual harassment in a workplace. To achieve this understanding, employers must have measures in place to prevent sexual harassment, including policies and procedures to address and eliminate it if it occurs.

What is Sexual Harassment in the Workplace?

Sexual harassment is unwelcome behavior in the workplace that happens because of your sex, sexual orientation, or gender identity. Sexual harassment can happen to anyone, but women are much more likely to be targeted. Sexual harassment can cause psychological and physical harm, and it should not be ignored.

For example:

- Sexually suggestive behavior, comments, or jokes;
- Staring and/or leering;
- Sexual propositions or asking for sexual favors;
- Unwanted invitations for dates;
- Unwelcome sexual or physical contact such as touching, hugging, kissing, groping;
- Insults, taunts based on a person's sex;
- Sexually offensive gestures;
- Sexually explicit materials, images, phone calls texts or emails; or
- Intrusive questions about one's private life, such as sex life and physical appearance.

"The workplace" can include work, work-related trips, and at work-related social events. Under federal legislation, sexual harassment is also unlawful in shops, restaurants, or anywhere that goods and services are provided including your workplace.

What does positive duty mean?

Imposing a positive duty on your employer, or person who is conducting a business or undertaking (PCBU) that you work for, means they have a responsibility to prevent sexual harassment from occurring in the workplace. These new laws means that an employer or person conducting a PCBU must be proactive and take preventative action to stop sexual harassment from occurring in the workplace.

This obligation on a person conducting PCBU to prevent sexual harassment extends beyond harassment perpetrated by colleagues and/or management internally. This extends to perpetration externally from customers and sales representatives for example.

What is a PCBU?

A person conducting a business or undertaking is referred to as a PCBU. A person conducting a PCBU has a primary duty of care to ensure workers and other people in your workplace are not exposed to psychological hazards and risks such as sexual harassment. As a PCBU they also have a duty to consult with workers and health and safety representatives particularly if they are or likely to be affected by a work health and safety matter.

What should my employer be doing to prevent sexual harassment?

There are many steps your employer can take to prevent sexual harassment. This will depend on the size of the business as to what is considered a 'reasonable step'. Some of those steps are development of policies, and procedures to prevent and respond to sexual

harassment including acceptable standards of behaviour of all workers and the process for discipline and dismissal of sexual harassment perpetrators. Other steps could include the provision of training to all staff members about their rights and responsibilities as it relates to their specific roles within the organisation and the display of a sexual harassment policy in a common area of the workplace, so it is easily accessible for all employees including management. The www.respect@work website provides comprehensive resources to assist businesses understand, prevent, and respond to workplace sexual harassment. Alternatively, you can contact our office if you need help, or workplace training on preventing and responding to sexual harassment. See our website for the list of training options we provide: Work Aware Training Packages, NT (ntwwc.com.au).

What can I do if I believe I am being Sexually Harassed?

If you have experienced sexual harassment in connection with your workplace, on 6 March 2023 or after you can lodge a dispute with the Fair Work Commission, or a complaint with the NT Anti-Discrimination Commission or the Australian Human Rights Commission.

Who can lodge a dispute with the Fair Work Commission?

If you believe you are being sexual harassed and you are

- A worker in a business or undertaking
- Seeking to become a worker in a particular business or undertaking or
- A person conducting a business or undertaking, and the harassment occurs or relates to work business

Who do you lodge the dispute against?

You can lodge the dispute against the person(s) who sexually harassed you and/or the employer where this occurred. You can also lodge a claim against a PCBU. It might be that your employer and or the PCBU should have prevented the harassment, or they did not respond to the complaint in an appropriate way.

You must apply within 24 months after the alleged sexual harassment in connection from when the sexual harassment occurred, or last occurred in your workplace.

Process and Forms

To lodge a dispute, you need to complete the f75 form, which you can find here: <https://www.fwc.gov.au/apply-or-lodge/form/apply-resolve-sexual-harassment-dispute-form-f75> . After you lodge a complaint, you will receive a phone call from the Fair Work Commission confirming that they have received your application. At this point, with your consent, your application will be sent to the people and/or employers named in your application. They will be listed as the 'Respondent' in your application and you as the 'Applicant'.

The offenders and employer will have the opportunity to provide a written response to your application. This is also a FWC form, and this response will be sent to the FWC and then it will be sent to you.

Please note that if you believe the sexual harassment at work happened or started before 6 March 2023 and was not ongoing you cannot use this form but a f72A instead.

Conciliation

At this stage, a confidential conciliation conference will be held. The way this conference will be conducted will be a matter for the FWC member, however the member will contact you and ask you about your preferences and take care to keep all parties safe. In the NT is likely that the conciliation conference will be conducted on the telephone, or it might be that no conciliation conference is listed, and the matter is listed for hearing. The FWC is taking steps to be victim focused and so your opinion and preference is considered.

At the conciliation stage, you can make settlement offers based on what could be ordered if you were to go to a hearing and win. You can ask for:

- Payment of compensation (pain and suffering);
- A payment for lost wages (historical or in the future);
- That the employer and perpetrator act in some way. This might be that you ask the employer or other respondents to undertake specific training on understanding and responding to sexual harassment or implement a sexual harassment policy.

Hearing (arbitration)

If your dispute does not settle at conciliation, and all parties agree for it to stay at the Fair Work Commission (FWC) then your dispute will be listed for a hearing. This is called an 'arbitration' and means that a member of the FWC will hear your dispute and evidence and make a decision. A hearing will call for witness statements, submissions about how the law works and applies to the facts in your witness statement, and cross examination of both parties' witnesses.

What is the difference between a Stop Sexual Harassment Order and Sexual Harassment Dispute?

'A stop sexual harassment order' is intended to prevent any future harassment whilst still employed by the same employer. An application to otherwise deal with the dispute is intended to remedy past harm caused by the sexual harassment. You can make an application to stop sexual harassment and a sexual harassment dispute at the same time using a f75.

A Stop Sexual Harassment Application

If you are still working for the same employer and the sexual harassment continues, then you can make an application in the FWC to "Stop Sexual Harassment Claim". The matter

will be listed for a conciliation conference where the parties will have the opportunity to negotiate an agreement facilitated by the conciliator. If this conciliation is unsuccessful and the parties are unable to reach an agreement, there are two avenues to further pursue the claim:

- With consent of both parties, proceed to arbitration in the FWC. Arbitration gives power to the FWC to award compensation and/or make an order for sexual harassment to stop; or
- If consent is not obtained from both parties, the applicant can request a certificate from the FWC to file proceedings in the Federal Court within 14 days.

How do I make a Stop Sexual Harassment Application in the FWC?

To file a 'Stop Sexual Harassment' application in the FWC, you need to file a Form f75 in the FWC. There is a fee of approximately \$84.00 to make this application, however, you can apply for a fee waiver if it would cause financial hardship.

You will need to set out the following information in your application:

- Details of your employer and the alleged perpetrator
- Two examples of the behaviours of sexual harassment
- Explain how this behaviour has created a risk to your health and safety (anxiety, stress etc)
- Whether you have followed any processes or reported this behaviour to management
- What you would like the outcome of your application (the remedies you are seeking).

Information on how to make this kind of application can be found on the Fair Work Website at the following links:

<https://www.fwc.gov.au/issues-we-help/sexual-harassment/what-is-workplace-sexual-harassment>

<https://www.fwc.gov.au/apply-or-lodge/form/apply-stop-workplace-bullying-form-f72>

What remedies can you get out of a Stop Sexual Harassment Application?

The following remedies are available if a matter proceeds to arbitration in the FWC:

- A 'Stop Sexual Harassment Order' made by the FWC
- Compensation for economic loss (loss of wages if you have had to take time off work etc)
- Compensation for non-economic loss (humiliation, pain, suffering etc).

Where else can I lodge a complaint?

Northern Territory Anti-Discrimination Commission (NTADC)

A complaint can be made online, or you can download and complete the complaint form. If you do not want to lodge a formal complaint, you can also report the discrimination. This is an informal report and can be made anonymously. There is a 12-month time limit from the date of the sexual harassment.

Australian Human Rights Commission (AHRC)

A complaint form can be filled out online and submitted on the AHRC website. You have 24-months from the date of the sexual harassment to make a complaint in the AHRC.

NT WorkSafe

NT WorkSafe only accepts workplace harassment complaints in certain situations that fall within the scope of the Act. You have a time-limit of 6 months to lodge a claim from the date of injury or when you first became aware of the injury.

NTWWC can assist you with the process and/or provide further information and assistance with these. Please see contact details for the NTADC, AHRC and NT WorkSafe on the next page.

Where can I get more help?

NT Working Women's Centre Ph: 1800 817 055 www.ntwwc.com.au	Your Union Unions NT Ph: 8941 0001 www.unionsnt.com.au	NT Anti-Discrimination Commission Ph: 1800 813 846 adc.nt.gov.au
Australian Human Rights Commission Ph: 1300 656 419 www.humanrights.gov.au	Fair Work Ombudsman Ph: 13 13 94 www.fairwork.gov.au	Fair Work Commission Ph: 1300 799 675 fwc.gov.au
NT Police Ph: (emergency) 000 If calling from a mobile: 112	Office of the Commissioner of Public Employment (OCPE) Ph: 8999 4129 www.ocpe.nt.gov.au	NT WorkSafe Ph: 1800 019 115 www.worksafe.nt.gov.au

Your HR Department

Aboriginal Interpreter
Service

Ph: 1800 334 944

www.ais.nt.gov.au

To access an interpreter
Interpreting and
Translating Service NT

Ph: 1800 676 254

www.itsnt.nt.gov.au/

The NT Working Women's Centre (NTWWC) provides free and confidential information, advice and assistance to women about work. The information, opinions and advice contained have been prepared with due care and are believed to be correct at the time of publication. NTWWC expressly disclaim any liability whatsoever to any person who suffers any loss arising from the contents of, errors in, or omissions from this publication. This Factsheet is not intended as a substitute for legal advice. Please seek advice for further information about your situation. August 2024.