



EQUAL AT WORK

Manager Guide

Sexual Harassment

What is a sexual harassment?

Sexual harassment is any unwelcome conduct of a sexual nature, where it is reasonable to expect that the other person would be offended, afraid or humiliated.

This means the behaviour will be determined as sexual harassment depending on how a reasonable person would interpret the behaviour in that situation.

Sexual harassment has been unlawful under the Sex Discrimination Act 1984 (Cth) for over 25 years, however it remains a large problem in Australia.

Sexual harassment statistics

- 33% of people in the workforce in the previous 5 years said they had experienced sexual harassment in the workplace
- Reports show that 1 in 5 women and 1 in 20 men have experienced sexual harassment in the workplace at some point
- Most people who experience sexual harassment never report it for fear of the impact on their reputation and career prospects
- One in two people have been exposed to sexual harassment, either as a victim themselves, or as a bystander

Who is most at risk of sexual harassment?

All workers are at risk of workplace sexual harassment. However, the following groups are more vulnerable workers and are therefore at greater risk:

- Women (statistics show that women experience higher rates of workplace sexual harassment than men)
- Younger workers
- Lesbian, gay, bisexual, transgender, queer, or intersex (LGBTQI) workers
- Aboriginal or Torres Strait Islander workers
- Workers with a disability
- Workers from culturally and linguistically diverse (CALD) backgrounds
- Migrant workers or workers holding temporary visas
- People in working arrangements are described as 'precarious' or 'insecure'

What could be considered sexual harassment

Sexual harassment can take many forms. It can occur as a single incident or a pattern of behaviour, and may come from colleagues, managers, customers or clients. Examples include:

- Staring, leering or making gestures of a sexual nature
- Unwelcome touching, kissing, brushing against someone, or invading personal space
- Comments, jokes or remarks of a sexual or suggestive nature
- Whistling at or making comments about someone's body, appearance or clothing
- Intrusive questions about a person's intimate relationships, sexual history or sexual activities
- Unwanted requests for dates or sexual contact
- Requests for sexual favours, particularly where linked to work outcomes
- Sending or sharing sexually explicit messages, images, objects or videos
- Accessing or displaying pornographic or sexually explicit material at work

The intention is irrelevant - the test is what impact it had on the person experiencing it

Impacts of sexual harassment

Sexual harassment can cause harm not only to the person experiencing it, but also to those who witness it. The impact can range from short-term distress to long-lasting physical, psychological and career consequences. These effects can extend beyond the individual to families, workplaces and the wider community.

Sexual harassment may lead to:

- Stress, anxiety or depression
- Loss of confidence and self-esteem
- Social withdrawal or isolation
- Ongoing health conditions
- Reduced job performance or career impact
- Absence from work or exit from workforce
- Post-traumatic stress (PTSD)
- Self-harm and suicidal thoughts

Potential legal and disciplinary consequences

Sexual harassment is a form of workplace misconduct. **Employers have a legal obligation to take reports seriously and to investigate them appropriately.** Action may be taken not only against the person responsible, but also against managers who knowingly allow the behaviour to continue.

Possible consequences for the person responsible may include:

- Workplace disciplinary action: outcomes may range from a formal warning to demotion, suspension without pay, or termination of employment.
- Legal consequences: where the behaviour involves criminal conduct, such as sexual assault, the matter may be reported to police and lead to criminal charges.

What is sex-based harassment?

Sex-based harassment is another form of unlawful workplace behaviour. It involves unwelcome conduct based on a person's sex that is seriously demeaning and that a reasonable person would find offensive, humiliating or intimidating.

Unlike sexual harassment, the behaviour does not need to be sexual in nature.

Examples of sex-based harassment may include:

- Treating someone as less capable because of their sex
- Assuming certain roles or tasks are suitable for someone based on their sex
- Excluding someone from opportunities, discussions or decisions because of their sex

Positive duty

Employers have a legal positive duty to take reasonable and proactive steps to prevent sexual harassment and sex-based harassment in the workplace. This means not just waiting for complaints to be made and reacting when they do, but proactively working to mitigate these behaviours from occurring in the first place. **Positive duty is about prevention, early action and accountability.**

For managers and leaders, this includes:

- Setting clear expectations about respectful behaviour
- Putting practical measures in place to prevent harm
- Creating a workplace where concerns can be raised safely
- Responding promptly and seriously to issues when they arise