



The College for
Adult Learning

**DISCRIMINATION, BULLYING AND
HARRASSMENT**

Agenda

- Understanding discrimination, harassment and workplace bullying,
- Understanding sexual harassment,
- Identifying these behaviours,
- Reporting acts of discrimination, harassment and workplace bullying,
- Consequences of discrimination, harassment and workplace bullying.

What is Unlawful Discrimination?

Each State and Territory is governed by their own pieces of legislation which prohibits unlawful discrimination in the form of direct and indirect discrimination.

For more information, visit:

<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/quick-guide-australian-discrimination-laws>

What is Unlawful Discrimination

Discrimination is also unlawful under federal legislation, including:

- Age Discrimination Act 2004 (Cth),
- Sex Discrimination Act 1984 (Cth),
- Racial Discrimination Act 1975 (Cth),
- Disability Discrimination Act 1992 (Cth).
- Human Rights and Equal Opportunity Commission Act 1986 (Cth),
- Fair Work Act 2009 (Cth).

What is Direct Discrimination?

- Direct discrimination is treating or proposing to treat a person with a protected attribute unfavourably because of that attribute,
- The test is whether or not certain treatment was less favourable to the person claiming discrimination, placing emphasis on the consequences of the treatment on the person claiming direct discrimination because of a protected attribute.

What is Indirect Discrimination?

Indirect discrimination can occur when there is a requirement or condition or practice that is the same for everyone but disadvantages a person or is likely to disadvantage a person because they have one or more of the following protected attributes and which is not reasonable.

Protected Attributes in Australia

Not limited to but include:

- Age,
- Colour,
- Descent or national or ethnic origin,
- Disability/impairment,
- Industrial activity/inactivity,
- Lawful sexual activity/sexual orientation or preference,
- Marital status, including de facto,
- Physical features.

Protected Attributes in Australia

Not limited to but include:

- Political belief or activity,
- Pregnancy/breastfeeding,
- Race,
- Religious belief or affiliation,
- Gender,
- Status as a parent or carer,
- Personal association with someone of the above attributes,
- Irrelevant criminal conviction (under the Australian Human Rights Commission Act 1986 (Cth)).

Workplace Discrimination

Workplace discrimination can occur in:

- Recruiting and selecting staff,
- Terms, conditions and benefits offered as part of employment,
- Who receives training and what sort of training is offered,
- Who is considered and selected for transfer, promotion, retrenchment or dismissal,
- Any other unfavourable treatment including harassment.

It is important to note that from a legal perspective it is irrelevant whether or not the discrimination was intended.

What is Harassment?

Harassment is unlawful under the Australian Human Rights Commission Act 1986 (Cth) as well as many other Federal and State based pieces of legislation:

- A person unlawfully harasses another person if he or she makes that other person (another employee or member of the public) feel offended, humiliated or intimidated because of one of the protected attributes listed previously,
- It may involve inappropriate actions, behaviour, comments or physical contact that is objectionable or causes offence.

What is Harassment?

It is important to note that from a legal perspective it is irrelevant whether or not the discrimination was intended.

What is Harassment?

Unlawful harassment may have occurred if the behaviour makes the victim feel:

- Offended and humiliated,
- Intimidated or frightened,
- Uncomfortable at work.

What is Harassment?

Unlawful harassment can include behaviour such as:

- Telling insulting jokes about particular racial groups,
- Sending explicit or sexually suggestive emails,
- Displaying offensive or pornographic posters or screen savers,
- Making derogatory comments or taunts about someone's race or religion,
- Asking intrusive questions about someone's personal life, including their sex life.

What is not Discrimination or Harassment?

- Demoting,
- Disciplining,
- Redeployment or restructure,
- Dismissal,
- Correcting an employee's conduct,
- Pointing out areas for improvement.

What is not Discrimination or Harassment?

- Conducting performance reviews or performance based counselling/misconduct procedures,
- Refusal of a position where the employee would be unable to perform the inherent requirements of the role, for example too young to be a delivery driver as ineligible for a driver's licence.

What is Sexual Harassment?

Sexual harassment is unlawful under State based legislation and under federal legislation (Sex Discrimination Act 1984 (Cth)).

Sexual harassment occurs when a person makes an unwelcome or uninvited sexual advance, or an unwelcome request for sexual favours to another person, or engages in any other unwelcome conduct of a sexual nature in relation to another person (visitors, customers, clients included).

What is Sexual Harassment?

In circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

It has nothing to do with mutual attraction or consenting friendships, whether sexual or otherwise.

What is Sexual Harassment?

Sexual harassment is unlawful in the workplace, which includes any place a person goes for the purpose of carrying out any function in relation to his/her employment. The workplace can also extend to social functions and social media.

For example, in Victoria, co-workers can be named sole respondents in cases of alleged sexual harassment.

What is Sexual Harassment?

It is also unlawful for a person to be victimised for:

- Making,
- Proposing to make

a complaint of sexual harassment to the Fair Work Commission or Human Rights and Equal Opportunity Commission.

What is Sexual Harassment?

Examples of sexually harassing behaviour include:

- Unwelcome touching (my rule is handshakes only!),
- Staring or leering,
- Sexually explicit pictures or posters,
- Unwanted invitations to go out on dates,
- Requests for sex,
- Intrusive questions about a person's private life or body.

What is Sexual Harassment?

Examples of sexually harassing behaviour include:

- Humour such as smutty or suggestive jokes/comments,
- Unnecessary familiarity, such as deliberately brushing up against a person,
- Insults or taunts based on sex,
- Sexually explicit physical contact,
- Sexually explicit emails or SMS text messages.

What is Sexual Harassment?

Some types of sexual harassment can also be offences under criminal law, such as:

- Physical molestation or assault,
- Indecent exposure,
- Sexual assault,
- Stalking,
- Obscene communications, by way of telephone calls, letters, emails etc.

What is Workplace Bullying?

Bullying is a significant occupational health and safety issue, as it can cause harm to a person's health and wellbeing, both physical and psychological.

Under the Work Health and Safety Act 2011 (Cth); Victorian Occupational Health and Safety Act 2004; Work Health and Safety Bill 2014 (WA), employers have a primary legal duty to provide a healthy and safe workplace.

Employees also have a duty to abide by safety standards and to cooperate with their employer's actions to ensure a healthy and safe workplace is maintained.

What is Workplace Bullying?

Bullying may also be unlawful under federal and state anti-discrimination legislation where the bullying is linked to, or based on, one of the attributes covered by the various pieces of legislation, for example, age, sex, race, disability, etc.

Complaints of bullying can now be heard by the Fair Work Ombudsman as of 1 January 2014.

Serious cases of bullying may also be illegal under the various State's Crimes Acts and in Victoria (*Crimes Act (Vic) 1958*) can result in imprisonment of up to 10 years.

What is Workplace Bullying?

The Fair Work Amendment Act 2013 defines workplace bullying as repeated unreasonable behaviour by an individual towards a worker which creates a risk to health and safety.

It includes behaviour that:

- Intimidates,
- Offends,
- Victimises.

What is Workplace Bullying?

It includes behaviour that:

- Undermines,
- Threatens,
- Degrades,
- Humiliates a worker.

What is Workplace Bullying?

This behaviour may include:

- Physical or verbal abuse,
- Yelling, screaming or offensive language,
- Excluding or isolating employees,
- Psychological harassment,
- Intimidation.

What is Workplace Bullying?

This behaviour may include:

- Assigning meaningless tasks unrelated to the job,
- Giving employees impossible jobs,
- Deliberately changing work rosters to inconvenience particular employees,
- Undermining work performance by deliberately withholding information vital for effective work performance.

Other types of behaviour may also constitute bullying.

What is Workplace Bullying?

Workplace bullying can occur between a worker and a manager or supervisor, or between co-workers.

Bullying does not cover situations where an employee has a grievance about legitimate and reasonable:

- Performance management process,
- Disciplinary action,
- Allocation of work in compliance with systems.

What is Workplace Bullying?

Many people refer to bullying as harassment or discrimination.

However, bullying may not be unlawful under federal or state anti-discrimination laws unless it is linked to, or based on, one of the characteristics covered by these laws, such as the person's age, sex, race or disability.

Legitimate comments and advice, including relevant negative feedback, from managers and supervisors on the work performance or work-related behaviour of an individual or group should not be confused with bullying, harassment or discrimination.

Defamation

Defamation is unlawful under the State Defamation Acts as well as common law:

- A person should not be deterred from making a complaint of harassment by concerns about defamation laws,
- Generally if a complainant only discusses the complaint with appropriate people in the workplace (managers/human resources/employee contact officers) and is acting in good faith (that is, not making the complaint out of spite or malice or without basis), then the person will not be liable for defamation.

What is Victimisation?

Victimisation means punishing or threatening to punish someone and is unlawful under the Human Rights and Equal Opportunity Commission Act 1986 (Cth) as well as State based legislation.

It is against the law to punish or threaten to punish someone because they have:

- Asserted their rights under equal opportunity law,
- Refused to complete a task that is unlawful or not reasonably within their skill set,
- Made a complaint.

What is Victimisation?

It is against the law to punish or threaten to punish someone because they have:

- Helped someone else make a complaint,
- Refused to do something because it would be discrimination, sexual harassment or victimisation.

A person has the right to make a complaint without being victimised as a result of making the claim.

What you must do

All businesses are legally obligated to deal with bullying and harassment. This responsibility is set out in federal and state anti-discrimination laws, as well as the Fair Work Act 2009 (Cth). Taken together, they make certain types of workplace behaviour against the law.

Any form of bullying, harassment or discrimination must be taken seriously. It must not be ignored!

The grievance must be documented and the employee needs to sign it off as an accurate account of events.

What you must do

All businesses are legally obligated to deal with bullying and harassment, based on federal and state anti-discrimination laws, as well as the Fair Work Act 2009 (Cth).:

- All bullying or harassment claims must be investigated promptly,
- Report any such claims to your manager immediately and seek advice on how to proceed. Speak to your HR department if you do not feel comfortable discussing the matter with your manager.

Conclusion

It is illegal to bully, harass and discriminate in the workplace under state anti-discrimination laws as well as:

- Age Discrimination Act 2004 (Cth),
- Sex Discrimination Act 1984 (Cth),
- Racial Discrimination Act 1975 (Cth),
- Disability Discrimination Act 1992 (Cth),
- Human Rights and Equal Opportunity Commission Act 1986 (Cth),
- Fair Work Act 2009 (Cth).

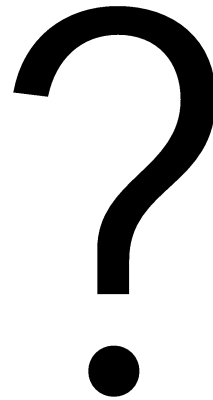
Conclusion

- You can be held solely liable (sole respondent) for your actions and comments in the workplace,
- The company legally must take all reasonable steps to educate and inform you of your responsibilities and duty regarding your behaviour in the workplace to prevent such occurrences. This includes:
 - Awareness programs,
 - Memos,
 - Policy updates and inductions,
- Terms and conditions upon commencement of employment, etc.

Conclusion

Be aware that discrimination, harassment and bullying can extend to what you post on social media websites as well as workplace functions!

Questions



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