

Discrimination, Bullying and Harassment Webinar – 14 September 2016

Questions from session

Q: How frequently should you be testing employee understanding of policy?
policy?

A: I would test each time you update the policy and train it as well as annually regardless of updates to the policy.

Q: Great discussion, every person in every workplace should be watching / hearing this.

A: Thank you! It would save a lot of grief if all workplaces implemented these awareness programs and the supporting policies.

Q: Define deliberate.

A: Dictionary meaning = Something that is done consciously and intentionally.

Q: Indirect discrimination: is it legal to have a company policy stating that you cannot be in a relationship with another colleague?

A: It's not so much that is illegal to have a policy stating you cannot be in a relationship with another colleague, it's that you would struggle to enforce it. In Australia you do not have the right to interfere in someone's personal relationship choices. The company does however need to protect itself as much as possible from any potential litigious situations and can ensure that you don't report into your partner. You may have to report to someone else. There are conflict of interest risks, so a policy may need to be worded along the lines of the company having the right to move one or both of you and this is where it could get tricky. What if there is nowhere to move you?

The main issues are around – preferential treatment, harassment if the relationship goes wrong, sensitive company information disclosure between the 2 colleagues where one of them may not be entitled to know this information, discrimination cases from other staff around perceived preferential treatment etc. Solid policies and a code of conduct around appropriate work place behaviour will be how you will deal with any potential issues. I would personally have something stating that it is company policy that family members and partners may not report into other family members or their partner and list why.

Q: Can an employee use an employee advocate if they have been accused of bullying?

A: Yes, the employer must offer the accused employee a support person.

Q: If a matter goes to the Fair Work Commission, are diary notes admissible? And do they carry any weight?

A: Yes, so make sure your notes are all fact based, and not opinion based. Write your notes in a professional manner – no nicknames or inappropriate themes.

Q: Do we only need to do this training once with employees or should we do refresher training?

A: Yes, refresher training is highly advisable and on a yearly basis. Test for competence also.

Examples used during session

Direct Discrimination –

Let's say you are female and you're being interviewed for a management job. The interviewer asks if you are married and planning to have children in the near future. The interviewer then goes on to tell you they would have concerns as the job wouldn't allow you to be absent for an extended period of time. This is a classic example of direct discrimination because he is implying that because you are female you may be taking family leave: gender discrimination.

Direct Discrimination -

You are being interviewed for a management role. You have the right skill set for the role and you look like being successful in obtaining it. The hiring manager then discovers that your partner is also employed by the company, however in a different location and position.

The hiring manager points out to you that even though you have the required skills and are capable of performing the role, it is against company policy to hire employees if a family member is already employed within the business.

This is an example of indirect discrimination as this policy disadvantages the person being interviewed for the role based on their marital status.

Discrimination, Workplace Bullying or Harassment –

So let's just say there is an employee who reads, writes and speaks fluent English but who has a strong European accent. A colleague often mocks his accent and their manager laughs along too. This employee has been told his English is too poor (as people struggle to understand him) so he won't be given a promotion. Is this Discrimination, Workplace Bullying or Harassment?

It's actually all three. Harassment – telling racial jokes; Bullying – making him the brunt of teasing due to his accent; and it's continual, Discrimination – not being considered for the promotion because of his accent.

Sex Discrimination –

If you own a retail store in a 'bad neighbourhood' and are recruiting for a manager. You are not wanting to hire a woman as she may get mugged and some of the colourful language used by customers may offend her. Is this sex discrimination – because you are basing hiring decisions on gender?

Yes it is.

Standard workplace decision – not discrimination, harassment -

Just say you have a team member who is falling behind in his work and you ask to see what work he has been doing over the past week. The employee feels you don't like him. Is this harassment?

No – performance management is a legitimate and reasonable action by management and not considered harassment.

Provided these actions are legitimate and reasonable and comply with Anti-Discrimination laws these actions would not in themselves constitute harassment or discrimination.

Sexual Harassment –

Example 1: For example, a manager often tells a staff member that she 'looks good' and 'has a great shape'. These comments make her feel embarrassed. According to the legislation, it would be more important how the comments make her feel rather than what the manager intends by the comments.

It's important to note, it has nothing to do with mutual attraction or consenting friendships, whether sexual or otherwise.

Example 2: Just say we're at a farewell function for a co-worker and one employee pinches another one the bottom. The pinchee is not happy and less than impressed about being pinched! What responsibility would an organisation have in this scenario?

The organisation may be liable, as the farewell event is considered an extension of the workplace.

Example 3: An employee receives a funny sexual cartoon via email and wants to forward it to a co-worker. He accidentally sends it to all employees! Has this employee unintentionally put themselves and the company at legal risk?

Yes, he has and this person then needs to act immediately in an attempt to resolve the issue. He should apologise to all employees and ask them to delete the cartoon immediately.

Example 4: A man and a woman from the same workplace dated for 6 months and he breaks it off. She is devastated and determined to win him back! She drops past his desk asking him to talk and leaves him letters reminding him of the good times they shared. She is interrupting his work regularly. He has told her often he just wants to be friends. Is this considered to be sexual harassment?

Yes, this would be deemed as sexual harassment.

Workplace Bullying –

Example 1: For example, if you and a group of colleagues give a co-worker the 'silent treatment' by ignoring her and leaving her out of group lunches because she got the promotion you wanted, this is deemed as bullying and harassment. It is harassment because of the group's inappropriate actions and humiliation and it is bullying because of the humiliation and psychological harassment.

Example 2: If you undertake a performance appraisal with a staff member and you provide them with feedback regarding a KPI they didn't meet, this would be classed as legitimate feedback from your manager – not bullying, harassment or discrimination.

Victimisation -

If you make a complaint to your manager about some homophobic comments you overheard in the factory and since making that complaint, your colleagues seem to whisper and stop conversation when you walk into the room, this 'silent treatment' you are receiving from your colleagues can be described as victimisation as this unacceptable behaviour being displayed as a result of making a complaint of discrimination.