

Discrimination, Harassment and Bullying

Introduction

The company considers discrimination, harassment and bullying to be unacceptable actions and behaviour which will not be tolerated under any circumstances. Working relationships and standards of behaviour between employees are important workplace issues.

All employees, both current and prospective, are entitled to be treated on the basis of their true abilities and merits, and to work in an environment that is free from discrimination, harassment and bullying.

The purpose of this policy is to establish practices and procedures that protect all employees from discrimination, harassment and bullying in the workplace and to encourage employees to come forward and report incidences of same.

What is Harassment?

Harassment is any unwelcome and/or uninvited verbal or physical behaviour or conduct that has no legitimate workplace function and intimidates, humiliates, vilifies or offends another person or group of people.

Harassment does not just refer to sexual harassment but also to harassment on any basis including, but not limited to, age, race, disability, pregnancy, potential pregnancy, a person's sexual orientation/preference, personal characteristics, appearance or beliefs.

Harassment includes 'vilification', a public act which incites, encourages, or urges others to hate, have serious contempt for, or severely ridicule a person or a group of people because they are (or are thought to be) members of a particular group.

What is the Workplace?

Harassment is prohibited in the company's workplace.

The relevant legislation defines the workplace as 'any place where a person attends for the purpose of carrying out any functions in relation to his or her employment, occupation, business, trade or profession and need not be a person's principal place of business or employment'.

The notion of workplace could therefore extend to cover situations such as contractors or their employees visiting the company to install or service equipment or contact between providers and receivers of goods and services.

Employees are also expected to comply with the standards and guidelines set out in this handbook should they be required to visit suppliers or clients of the company.

What is Sexual Harassment?

A person sexually harasses another person ('the person harassed') if they:

- Make an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed, or
- Engages in other unwelcome conduct of a sexual nature in relation to the person harassed, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated.

'Conduct of a sexual nature' includes:

- Subjecting a person to any act of physical intimacy,
- Making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence, or
- Making any gesture, action or comment of a sexual nature in a person's presence.

Conduct Which May Constitute Sexual Harassment

Some examples of sexual harassment are:

- Unwelcome or unwanted sexual advances. This includes staring, patting, pinching, brushing up against, hugging, cornering, kissing, fondling, or any other similar physical contact considered unacceptable by another individual,
- Requests or demands for sexual favours or dates. This includes subtle or blatant expectations, pressures or requests of any type of sexual favour accompanied by an implied or stated promise of preferential treatment or negative consequences concerning one's employment,
- Verbal abuse or kidding that is sex-oriented and considered unacceptable by another individual. This includes comments about an individual's body, appearance, private life, off-colour jokes that are clearly unwanted or considered offensive by others; or any other tasteless, sexually-oriented comments, innuendoes, and offensive actions,
- Any sexually-oriented conduct that would unreasonably interfere with another's work performance. This includes extending unwanted sexual attention to someone, which reduces personal productivity,
- Participation in fostering a work environment that is generally intimidating, hostile, or offensive because of unwelcome or unwanted sexually-oriented conversations, suggestions, requests, demands, physical contacts or attention,
- Downloading, uploading or distribution of emails, images or other electronic material on a work computer or to a work computer that is sexually-orientated, and
- Displays of sexually graphic material including posters, pin-ups, cartoons, graffiti or messages left on noticeboards, kitchens, reception or common areas.

What is Racial Harassment?

'Racial harassment' may involve hostile or offensive physical, verbal or non-verbal behaviour of a racist nature.

For example, racial harassment includes, but is not limited to:

- Abusive language, racist jokes, racist name calling,
- Display or circulation of racially offensive written or visual material,
- Physical threats/assault or insulting behaviours/gestures,
- Open hostility or humiliation,
- Unfair allocation of work and responsibilities,
- Exclusion from normal workplace conversation or social events,
- Offensive e-mails or other correspondence of a racist nature, and
- Racial vilification.

What is a Disability?

A disability includes:

- Total or partial loss of a person's bodily or mental functions,
- Total or partial loss of a part of the body,
- The presence in the body of organisms capable of causing disease or illness,
- The malfunction, malformation or disfigurement of part of a person's body,
- A disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction,
- A disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment that results in disturbed behaviour, and

Includes a disability that:

- Presently exists,
- Previously existed but no longer exists,
- May exist in the future, or
- Is imputed to a person.

What is Disability Harassment?

Disability harassment consists of undignified treatment, ridicule or exclusion of people with disabilities, whether previous, current, potential or imputed. It can include undignified treatment, ridicule or exclusion of a person who is personally associated (whether as a relative or otherwise) with a person who has a disability.

For example, disability harassment includes, but is not limited to:

- Physical harassment,
- Verbal abuse, whether face to face or written, including notes, email or graffiti,
- Offensive language, name-calling or 'jokes',
- Intentional exclusion from work related activities, and
- Hostility towards removing barriers to individuals with a disability.

What is Discrimination?

Discrimination can occur in two forms, either directly or indirectly.

Direct discrimination occurs if a person treats, or proposes to treat, a person with a protected attribute unfavourably because of that attribute.

Examples of direct discrimination include, but are not limited to:

- Refusing to employ a qualified person in their fifties because he or she is considered to be too old,

- Failing to give a female workplace participant a promotion because she has children,
- Jokes, comments or emails between employees containing discriminatory material,
- Refusing to extend an employee's workplace conditions or benefits due to the employee's medical condition, or
- Terminating an employee's employment because of their sexuality i.e. they are homosexual.

Indirect discrimination occurs if a person unreasonably imposes, or proposes to impose, a requirement, condition or practice that has, or is likely to have, the effect of disadvantaging persons with a protected attribute.

Examples of indirect discrimination include, but are not limited to:

- Excluding employees from a particular ethnic background from work social activities,
- Dismissing an employee due to their inability to attend meetings or training courses on weekends or in the evenings because of home duties or ethno-religious beliefs,
- Imposing a workplace condition on all employees which causes an employee with childcare responsibilities to suffer a detriment,
- A company policy requiring all employees to read and write English fluently when this is not needed for all jobs within the company, or
- Requiring a certain length of service for an employee to be eligible for benefits such as promotion or transfer.

What is a Protected Attribute?

Protected attributes include age, breastfeeding, employment activity, gender identity, disability, industrial activity, lawful sexual activity, marital or relationship status, national extraction or social origin, parental status or status as a carer, physical features, political belief or activity, pregnancy, race, religious belief or activity, sex, gender identity, intersex status, sexual orientation and personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the aforementioned attributes.

What is Workplace Bullying?

Workplace bullying is defined as 'repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety'.

Within this definition:

- **'Unreasonable behaviour'** means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten another person,
- **'Behaviour'** includes actions of individuals or a group, and may involve using a system of work as a means of victimising, humiliating, undermining or threatening, and
- **'Risk to health and safety'** includes risk to the mental or physical health of an employee.

Bullying in the workplace can take place between an employee and a manager (or supervisor); co-workers; or a worker and another person in the workplace, e.g. a customer/client or a supplier.

Bullying may be overt or covert. The following types of behaviour, where repeated or occurring as part of a pattern of behaviour, could be considered bullying:

Overt Bullying

- Abusive behaviour towards another employee such as threatening gestures or actual violence,
- Aggressive or abusive or offensive language, including threats, yelling, screaming abuse, inappropriate comments about a person's appearance or lifestyle,
- Demeaning remarks, or
- Constant unreasonable and unconstructive criticism.

Covert Bullying

- Deliberate exclusion, isolation or alienation of the employee from normal work interaction, such as intentionally excluding the employee from meetings or lunches,
- Placing unreasonably high work demands on one employee but not others,
- Allocation of demeaning jobs or meaningless tasks,
- Unreasonably ignoring the employee,
- Undermining another employee, including encouraging others to 'gang up' on the employee, or
- Repeated refusal of requests for leave or training without adequate explanation and suggestion of alternatives.

This list is not exhaustive and other types of behaviour may also constitute bullying.

Workplace bullying is not:

- Legitimate comment and advice from a manager including constructive criticism or negative comment about an employee's work performance,
- Occasional difference of opinion,

- Approved disciplinary action against an employee,
- Appropriate action by a manager to manage the poor performance or inappropriate behaviour of an employee, or
- Behaviour that is not unwelcome.

Responsibilities of Employees

All employees have a legal responsibility to:

- Comply with the company's discrimination, harassment and bullying policy,
- Offer support to anyone who is being harassed and let them know where they can get help and advice,
- Maintain complete confidentiality if they provide information during the investigation of a complaint.

Relevant Legislation

All employees must comply with the following laws which provide the legal basis for this policy:

- Age Discrimination Act 2004 (Cth),
- Disability Discrimination Act 1992 (Cth),
- Racial Discrimination Act 1975 (Cth),
- Sex Discrimination Act 1984 (Cth),
- Fair Work Act 2009 (Cth),
- Victoria Equal Opportunity Act 1995 (VIC).