

Workplace discrimination, harassment and bullying

Employers

- [Workplace discrimination, harassment and bullying \(PDF\)](#)
- [Workplace discrimination, harassment and bullying \(Word\)](#)



All employers have a responsibility to make sure that their employees, and people who apply for a job with them, are treated fairly.

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.

As an employer you need to prevent **discrimination, harassment** or **bullying** from occurring in the workplace.

What is unlawful discrimination?

Discrimination occurs when a person, or a group of people, is treated less favourably than another person or group because of their background or certain personal characteristics.

Federal discrimination laws protect people from discrimination of the basis of their:

- race, including colour, national or ethnic origin or immigrant status
- sex, pregnancy or marital status and breastfeeding
- age
- disability, or
- sexual orientation, gender identity and intersex status.

For more information see the relevant [fact sheets](#).

The *Australian Human Rights Commission Act 1986* (Cth) protects people from discrimination in employment because of their religion, political opinion, national extraction, nationality, social origin, medical record, criminal record or trade union activity. For more information see the [Other areas of workplace discrimination](#) fact sheet.

A number of these characteristics are also covered by the *Fair Work Act 2009* (Cth). Some state and territory laws protect people from discrimination on the basis of additional personal characteristics. For more information, see [A quick guide to Australian discrimination laws](#).

Discrimination can happen at different points in the employment relationship, including:

- when recruiting and selecting staff
- in the terms, conditions and benefits offered as part of employment
- who is considered or selected for training and the sort of training offered
- who is considered or selected for transfer or promotion
- who is considered and selected for retrenchment or dismissal.

What is harassment?

Under discrimination law, it is unlawful to treat a person less favourably on the basis of particular protected attributes such as a person's sex, race, disability or age. Treating a person less favourably can include harassing or bullying a person. The law also has specific provisions relating to sexual harassment, racial hatred and disability harassment.

Harassment can include behaviour such as:

- telling insulting jokes about particular racial groups
- sending explicit or sexually suggestive emails or text messages
- displaying racially offensive or pornographic posters or screen savers
- making derogatory comments or taunts about a person's disability, or
- asking intrusive questions about someone's personal life, including his or her sex life.

It is important to understand that a one-off incident can constitute harassment.

The *Sex Discrimination Act 1984* prohibits harassment in the workplace by employers, co-workers and other "workplace participants", such as partners, commission agents and contract workers. Sexual harassment is broadly defined as unwelcome sexual conduct that a reasonable person would anticipate would offend, humiliate or intimidate the person harassed.

The *Disability Discrimination Act 1992* prohibits harassment in the workplace based on or linked to a person's disability or the disability of an associate.

The *Racial Discrimination Act 1975* prohibits offensive behaviour based on racial hatred. Racial hatred is defined as something done in public that offends, insults or humiliates a person or group of people because of their race, colour or national or ethnic origin.

All incidents of harassment – no matter how large or small or who is involved – require employers or managers to respond quickly and appropriately. If issues are left unaddressed, a hostile working environment can develop which can expose employers to further complaints.

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.



Bullying behaviour can range from obvious verbal or physical assault to subtle psychological abuse. It can include: physical or verbal abuse

- yelling, screaming or offensive language
- excluding or isolating employees
- psychological harassment
- intimidation
- assigning meaningless tasks unrelated to the job
- giving employees impossible jobs
- deliberately changed work rosters to inconvenience particular employees
- undermining work performance by deliberately withholding information vital for effective work performance.

What is unlikely to constitute bullying, harassment or discrimination



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 comment 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.

Providing negative feedback to staff during a formal performance appraisal, or counselling staff regarding their work performance, can be challenging. Managers should handle these conversations with sensitivity but they should not avoid their responsibility to provide full and frank feedback to staff.

Meeting your obligations

Everyone has the right to work in an environment free from bullying, harassment, discrimination and violence.

Employers need to be aware of their responsibilities to ensure that the working environment or workplace culture is not sexually or racially hostile. Employers should develop and implement targeted practices to address inappropriate workplace behaviour and deal effectively with any complaints.

Employers should also be proactive in addressing hostile behaviour that may be embedded in the workplace culture. Examples of a potentially hostile working environment are where racially or sexually crude conversations, innuendo or offensive jokes are part of the accepted culture. An employee can complain about such conduct as harassment even if the conduct in question was not specifically targeted at him or her.

Under occupational health and safety legislation, employers and employees are required to comply with any measures that promote health and safety in the workplace. Because of this duty, employers need to eliminate or reduce the risks to employees' health and safety caused by workplace bullying.

As of 1 January 2014, the Fair Work Ombudsman can receive complaints from workers who believed they have been bullied at work. Further information is available at www.fairwork.gov.au/complaints.

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