

SEXUAL HARASSMENT



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SEXUAL HARASSMENT IS CONDUCT OF A SEXUAL NATURE THAT IS UNWELCOME

Sexual harassment can be physical, verbal or written. It involves behaviour that could reasonably be expected to make a person feel offended, humiliated or intimidated. Sexual harassment is against the law.

Sexual harassment can involve:

- unwelcome touching, hugging or kissing; staring or leering;
- suggestive comments or jokes;
- sexually explicit pictures, screen savers or posters;
- unwanted invitations to go out on dates or requests for sex;
- intrusive questions about an employee's private life or body;
- unnecessary familiarity;
- insults or taunts based on your sex, sexual orientation or gender identity
- sexually explicit emails or SMS messages;
- accessing sexually explicit internet sites;
- behaviour which would also be an offence under the criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.

Sexual harassment can involve statements or pictures transmitted by fax, telephone, e-mail, office intranet, videoconference or any other means of communication.

Sexual harassment is not sexual interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated.

EXAMPLE

Peter, a computer technician, maintains office computer systems at Natalie's workplace. When Peter works on Natalie's machine he leaves sexually explicit messages on her screen. Peter's actions could constitute sexual harassment.

THE TEST FOR SEXUAL HARASSMENT

The legal test for sexual harassment in the Victorian Equal Opportunity Act has three essential elements:

- the behaviour must be unwelcome;
- it must be of a sexual nature;
- it must be such that a reasonable person would anticipate in the circumstances that the person who was harassed would be offended, humiliated and/or intimidated.

The unwelcome behaviour need not be repeated or continuous. A single incident can amount to sexual harassment.

A complaint of sexual harassment will not necessarily be dismissed because the person subjected to the behaviour did not directly inform the

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harasser that it was unwelcome. A complaint can also be acted on when an employee complains about sexual harassment he or she has witnessed, even though they are not the recipient of the behaviour or actions.

EXAMPLE

At drinks celebrating her team's great performance, Sonia is sexually harassed by her team leader. Sonia can lodge a complaint against her team leader and her employer with the Equal Opportunity Commission.

EMPLOYER AND EMPLOYEE RESPONSIBILITIES

The Employer has a duty to provide a workplace that is safe and without risks to health under the Victorian Occupational Health and Safety Act 2004. Therefore, a workplace should be free of harassment.

An individual can be liable for their own harassing or discriminatory actions. The Employer can also be liable if it is found to have not taken reasonable steps to prevent the harassment from occurring, or if they don't deal with a complaint adequately. This is known as vicarious liability.

EXAMPLE

Tom has made a complaint of sexual harassment against another male employee to his manager. The manager laughed off his complaint. The individual manager, the male employee and the employer would be liable.

WHAT CAN BE DONE?

Step 1: Try to resolve the matter directly

If possible talk to the person who is sexually harassing you and ask them to stop.

Step 2: Get advice and keep records

If you are unable to talk to the person responsible, or if they continue to harass you, contact

your Union Delegate or Health and Safety Rep for free and confidential advice.

At this stage it is important to keep records and any evidence in case you need to make a complaint.

Step 3: Make a complaint

Your Union Reps and Health and Safety Reps can help you prepare a written statement of complaint. They can also accompany you to any meetings that take place with management.

Usually, complaints are resolved at this level. A negotiated resolution could include an apology, compensation and sexual harassment training for managers, team leaders and employees.

Step 4: If the employer doesn't resolve the situation

At any stage you can lodge a formal complaint with the Equal Opportunity and Human Rights Commission or WorkSafe. Your Union Delegate and Health and Safety Rep can assist you through this process.

MORE INFORMATION

Australian Services Union
(03) 9320 6700
www.asuvic.org

Victorian Equal Opportunity and Human Rights Commission
1800 134 142
www.humanrightscommission.vic.gov.au

WorkSafe Victoria
1800 136 089
www.workcover.vic.gov.au