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Respect @ Work – Sexual Harassment is Against the Law

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Background

- The Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022 (Cth) amended the Sex Discrimination Act 1984 (Cth) with changes coming into affect from 6 March 2023:
 - Changes required is to provide better protection for workers from sexual harassment and other forms of sexual discrimination, sex-based harassment, and unfair treatment in the workplace
 - The purpose of this act is to shift away from a complaint-based system to one where it is a proactive approach to prevent workers, employees, agents, and the organisation itself from engaging in discriminatory/harassing conduct. This extends to third parties such as customers and clients

Key changes from 6th March 2023

- It is unlawful to subject another person to a workplace environment that is hostile on the ground of sex
- It is a PCBU's (persons carrying out a business or undertaking) responsibility to take reasonable and proportionate measures to eliminate, as far as possible certain discriminatory conduct, including sex discriminatory conduct, sexual harassment, sex-based harassment and certain acts of victimisation in the workplace
- A lower threshold for sex-based harassment that requires the conduct to be demeaning rather than seriously demeaning

What is Sexual Harassment?

- Inappropriate physical contact such as unwelcome touching
- staring or leering
- a suggestive comment or joke
- a sexually explicit picture or poster
- an unwanted invitation to go out on dates
- a request for sex
- intrusive questioning about a person's private life or body
- unnecessary familiarity such as deliberately brushing up against a person
- an insult or taunt of a sexual nature
- a sexually explicit email or text message

CAN BE A SINGLE INCIDENT – DOES NOT HAVE TO BE REPEATED

What is Sex Based Harassment?

Sex-based harassment is where someone:

- subjects another person to unwelcome conduct of a demeaning nature; and
- does so because of the person's sex or a characteristic that is generally imputed to persons of that sex.

What is Sex Based Harassment?

Sex based harassment occurs in circumstances where a reasonable person would anticipate that the person harassed would have been offended, humiliated or intimidated by the unwelcome conduct. The relevant circumstances include:

- the attributes of the person harassed;
- the relationship between the person harassed and the person who engaged in the conduct;
- any disability of the person harassed;
- any power imbalance between the parties involved;
- the seriousness of the conduct;
- whether the conduct was repeated;
- any other relevant circumstance; and
- that the conduct occurs in a workplace or within a working relationship.

What is Sex Based Harassment?

- Some examples of sex-based harassment include:
 - Asking intrusive personal questions based on a person's sex.
 - Making inappropriate comments and jokes to a person based on their sex.
 - Displaying images or materials that are sexist, misogynistic or misandrist.
 - Making sexist, misogynistic or misandrist remarks about a specific person.
 - Requesting a person to engage in degrading conduct based on their sex.

Sexual Harassment Legislation Protection applies to the following:

- employees
- contractors
- work experience students/interns
- an outworker
- small business owner who works in the business
- apprentice or trainee and volunteers
- future workers
- people conducting a business or undertaking

Investigate Sexual Harassment and Discrimination Claims

- Employers have a duty of care to protect workers from sexual harassment.
- Under the Fair Work Act 2009 Act (Cth) a person or company may be liable for sexual harassment committed by an employee or agent in connection with work, including if they were involved in the employer's contravention.
- This will apply unless the person or company can prove that they took all reasonable steps to prevent the sexual harassment
- If an employer is found to be in breach of these laws it could result in penalties, and/or remedies under common law

What is a Hostile Workplace Environment?

- The Fair Work Legislation Amendment Act 2022 (Cth) definition of a hostile workplace environment is where a reasonable person test is done and is there an anticipated possibility of the conduct resulting in a workplace that is offensive, intimidating or humiliating to a person on the grounds of sex
- If a person considers that they are subjected to a hostile workplace environment, then they can lodge a complaint with the Fair Work Commission

Responsibility of PCBU

- The PCBU must eliminate or minimise health and safety risk of workplace sexual harassment as far as is reasonably practicable. This does not replace their obligations under Workplace Health and Safety to provide a safe working environment. The PCBU should like any WHS risk, manage the risk of sexual harassment like any other risk and that is to identify the hazards, assessing the associated risks, implement control measure to eliminate or minimise risks and regularly review control measures to ensure that they are effective
- It is imperative that the Employer has policies that comply with the amendments to the legislation. They should consider physical work environments and work systems to eliminate or minimise risks

Stopping Sexual Harassment in the workplace

Sexual harassment is a social problem which is not just about changing behaviour of individuals but a change in culture and environment in which it occurs. Some of the root causes is in relation to possession of control and misuse thereof, authority such as age, seniority or value to the business or influence over others such as gender inequality.

You can manage the workplace to prevent sexual harassment by:

- Providing a safe physical and online working environment
- Providing information, instructions, and training to staff to prevent and address sexual harassment in the workplace.
- A proactive approach to address unwanted or offensive behaviour early
- Encouraging the reporting of sexual harassment and having an effective complaints procedure in place

Penalties for Breach of the Act

- Under the Fair Work Act 2009 Act (Cth) a person or company may be liable for sexual harassment committed by an employee or agent in connection with work, including if they were involved in the employee's contravention. This will apply unless the person or company can prove that they took all reasonable steps to prevent the sexual harassment
- If sexual harassment occurs and the employer did not act, then in some cases it can be a breach of an employer's common law duty where they did not take reasonable care for the health and safety of their employees
- It can also be in breach of occupational health and safety legislation. An employer can be liable for foreseeable injuries which could have been prevented by taking the necessary precautions