

## **Workplace harassment**

In order to understand the workplace health and safety requirements for workplace harassment, and your obligations under the law you must consider and understand relevant legislation and codes of practice.

### What law applies

Legal obligations, legislation, advisory standards

### What is workplace harassment?

Definition of what is and what is not workplace harassment

### Signs of workplace harassment

Some ways of how to identify if workplace harassment is happening in your workplace

### How to prevent workplace harassment

Workplace harassment prevention policy, complaint handling system, human resource systems, training and education

### Resolving workplace harassment complaints

Internal and external resolution, how complaints can be resolved

## What law applies

In order to understand the workplace health and safety requirements for workplace harassment, and your obligations under the law you must consider and understand relevant legislation and codes of practice.

### **General health and safety obligations**

To understand your obligations and safety requirements you must be familiar with the:

*Workplace Health and Safety Act 1995* which imposes obligations on people at workplaces to ensure workplace health and safety. The *Workplace Health and Safety Act 1995* also helps you to meet your workplace health and safety obligations through:

- The *Workplace Health and Safety Regulation 2008* which describes what must be done to prevent or control certain hazards which cause injury, illness or death
- codes of practice, which are designed to give practical advice about ways to manage exposure to common risks. In particular, the *Risk Management Code of Practice 2007* should be read in conjunction with information on PPE.

Every Queensland employer must have **workers' compensation** insurance. Most employers insure with WorkCover Queensland, while a small number of large organisations have their own insurance. This insurance coverage ensures that employees injured at work receive financial support.

### **What you must do**

It is a requirement of the *Workplace Health and Safety Act 1995* that risks must be assessed and control measures then implemented and reviewed to prevent or minimise exposure to the risks.

If the *Workplace Health and Safety Regulation 2008* describes how to prevent or minimise a risk at your workplace you **must** do what the regulation says. If there is a code of practice that describes how to prevent or minimise a risk at your workplace you **must** do what the code says or adopt and follow another way that gives the same level of protection against the risk.

If there is no regulation or code of practice about a risk at your workplace you **must** choose an appropriate way to manage exposure to the risk. People must, where there is no regulation or code of practice about a risk, take reasonable precautions and exercise proper diligence against the risk.

See the *Risk Management Code of Practice 2007* for further information.

## ***Specific regulations for workplace harassment***

The *Prevention of Workplace Harassment Advisory Standard 2004* (now known as a Code of Practice), provides information on the main health and safety problems linked to workplace harassment and gives practical advice on how to manage them.

Please note, from 18 November 2004 the *Workplace Health and Safety Act 1995*, was amended so that:

- all advisory standards that were in force on that day were continued as codes of practice and now expire 10 years after their commencement and
- all existing industry codes of practice that were in force on that day now expire 10 years after their commencement

## **What is workplace harassment?**

### ***What is workplace harassment?***

Workplace harassment is where a person is subjected to behaviour, other than sexual harassment, that:

- is repeated, unwelcome and unsolicited
- the person considers to be offensive, intimidating, humiliating or threatening
- a reasonable person would consider to be offensive, humiliating, intimidating or threatening

Workplace harassment can be committed by:

- an employer,
- worker,
- co-worker,
- group of co-workers
- client or customer, or
- a member of the public.

Workplace harassment covers a wide range of behaviours ranging from subtle intimidation to more obvious aggressive tactics, including:

- abusing a person loudly, usually when others are present
- repeated threats of dismissal or other severe punishment for no reason
- constant ridicule and being put down
- leaving offensive messages on email or the telephone
- sabotaging a person's work, for example, by deliberately withholding or supplying incorrect information, hiding documents or equipment, not passing on messages and getting a person into trouble in other ways
- maliciously excluding and isolating a person from workplace activities
- persistent and unjustified criticisms, often about petty, irrelevant or insignificant matters
- humiliating a person through gestures, sarcasm, criticism and insults, often in front of customers, management or other workers
- spreading gossip or false, malicious rumours about a person with an intent to cause the person harm

Management action may be considered as workplace harassment where it is used:

- primarily to offend, intimidate, humiliate or threaten workers
- to create an environment where workplace harassment is more likely to occur

### ***What is not workplace harassment?***

- A single incident of harassing type behaviour.

- Reasonable management action taken in a reasonable way.
- Acts of unlawful discrimination, vilification or sexual harassment.

More information about the definitions of what is, and what is not workplace harassment is available within Section 1 of the *Prevention of Workplace Harassment Advisory Standard 2004* (now known as a Code of Practice).

## Signs of workplace harassment

Apart from the direct sign of complaints being raised, signs of workplace harassment may appear indirectly. These signs may not always be linked with workplace harassment and need to be considered within the overall workplace environment.

Indirect signs of workplace harassment may include:

- changes in human resource management trends, for example:
  - increases in levels of absenteeism and staff turnover
  - increases in the use of employee counselling services
- workers leaving the organisation reporting dissatisfaction with working relationships
- negative results from organisational climate/worker opinion surveys
- the breakdown of relationships between workers, customers or management
- workers becoming withdrawn and isolated
- poor worker morale and erosion of loyalty and commitment.

Measures including a workplace harassment policy, complaint handling system, open communication and training and education can be effective in preventing workplace harassment from occurring.

More on preventing workplace harassment

More on resolving workplace harassment complaints

## How to prevent workplace harassment

No single control measure will effectively prevent or control workplace harassment. It is important that these control measures are used together as part of a broader strategy for the prevention of workplace harassment.

### Workplace harassment prevention policy

Defining workplace harassment, the impacts, consequences, and how it will be managed in the workplace

### Complaint handling system

Outlining procedures for reporting, investigating, resolving and appealing workplace harassment complaints

### Human resource systems

Performance management and open communication systems can be used to prevent workplace harassment

### Training and education

How training and education about workplace harassment can increase awareness and reduce workplace harassing behaviours

It is important that employers apply the risk management process to prevent or control exposure to the risk of workplace harassment. Further information is provided in Section 4 of the Prevention of Workplace Harassment Advisory Standard 2004 (now known as a Code of Practice).

## Workplace harassment prevention policy

Employers should ensure a workplace harassment prevention policy is developed and implemented in the workplace. The policy should outline the workplace's commitment to address harassment and expectations regarding appropriate workplace behaviour.

The policy may be a stand-alone policy or form part of an existing health and safety policy, or code of conduct for all workers.

The workplace harassment prevention policy should be:

- easy to understand
- provided in languages other than English, if needed
- displayed where all workers can read it
- be consistent with the workplace's other health and safety policies and objectives
- relevant to the workplace, its needs, people and conditions
- developed in consultation with workers
- supported by employer, manager or chief executive
- followed, and consistently and fairly applied

Typically, a workplace harassment policy should be readily available within the workplace, for example from the human resources or administration areas.

More information on workplace harassment prevention policies is available within Section 8.1 of the *Prevention of Workplace Harassment Advisory Standard 2004* (now known as a Code of Practice) including details of elements a workplace harassment policy should include.

An example of a workplace harassment policy is provided in Appendix 1 of the *Prevention of Workplace Harassment Advisory Standard 2004* (now known as a Code of Practice)

## Complaint handling system

A complaint handling system should include procedures for reporting, investigating, resolving and appealing workplace harassment complaints.

The system should be fair, impartial, and be developed in consultation with workers, managers, supervisors and the workplace health and safety committee (where there is one).

The system should provide procedures for managing both informal and formal complaints.

For informal complaints this might be encouraging complaints to be raised with the appropriate contact person in the workplace, identified in the workplace harassment prevention policy.

Interpersonal conflicts are often effectively resolved through open discussion between the parties. This should be encouraged as the first step in every complaint, unless otherwise requested by the person making the complaint.

A formal complaints handling system should include:

- a formal reporting procedure
- an investigation procedure
- a complaint resolution procedure
- an appeals process

The complaint handling system should be based on the principles of natural justice, for example:

- the person alleged to have committed workplace harassment is presumed to be innocent until allegations are proved to be true
- all allegations of workplace harassment should be investigated promptly
- the person who has allegedly committed the workplace harassment is informed of all allegations and given an opportunity to explain their version of events
- should the complaint be proven to be true, then remedial action must be taken

More information on complaint handling systems is provided in Section 8.2 of the *Prevention of Workplace Harassment Advisory Standard 2004 (now known as a Code of Practice)*.

## **Human resource systems**

Effective human resource systems, including effective and reasonable performance management processes, can help prevent or control workplace harassment.

### ***Performance management processes***

Performance management processes can:

- provide timely and accurate feedback about job performance in a reasonable way
- identify a person's strengths, and training and development needs for current and future positions
- set mutually agreed goals and competencies

They can also be used to identify and address behaviours or managerial styles that may contribute to workplace harassment.

By having these systems in place workplace harassment can be prevented as performance is monitored and managed, enabling issues to be identified and resolved.

More information on human resource systems is provided in Section 8.3 of the *Prevention of Workplace Harassment Advisory Standard 2004 (now known as a Code of Practice)*.

### ***Open communication systems***

Forms of workplace harassment such as spreading false, malicious rumours, and withholding important information can prosper in workplaces with poor communication systems.

To help prevent these forms of workplace harassment:

- Encourage good channels of communication, for example, through regular staff meetings.
- Consult and discuss with workers issues that may affect them, particularly during periods of organisational change or restructure.
- Encourage 'open door' management styles.
- Implement transparent decision making processes.

More information on open communication systems is provided in Section 8.3.2 of the *Prevention of Workplace Harassment Advisory Standard 2004 (now known as a Code of Practice)*.

## Training and education

Training and educating workers on issues of workplace harassment can help prevent or control exposure to workplace harassment as:

- workers including supervisors, managers, workplace health and safety officers (WHSOs), workplace health and safety representatives (WHSRs) and workplace health and safety committees become more aware of their roles and responsibilities
- offenders will become more conscious of their behaviour, how it may be perceived and the possible consequences of their actions. This may deter workplace harassing behaviours
- workers will have a more accurate knowledge of what does and does not constitute workplace harassment
- workers will become aware of the consequences of making malicious, frivolous or vexatious workplace harassment complaints
- it can promote cultural change and a healthy and safe workplace
- people who work at the workplace are informed and encouraged to take action against harassing behaviours

Creating awareness of workplace harassment issues, policies and procedures helps reinforce the commitment of the workplace to addressing it.

Awareness can be promoted through training that addresses:

- general workplace harassment issues
- the workplace harassment prevention policy
- procedures for making complaints

The *Prevention of Workplace Harassment Advisory Standard 2004* (now known as a Code of Practice) provides practical advice on how to raise awareness and provide effective training through:

[Appendix 1 - An example workplace harassment prevention policy](#)

[Appendix 2 - Suggested topics for training according to target group](#)

[Appendix 3 - Methods to inform workers about policies and procedures](#)

For supervisors, people management training can be effective in developing attitudes and behaviours that prevent or control exposure to workplace harassment.

Where managerial styles and behaviours in a workplace are identified as contributing to workplace harassment employers can address them through performance management processes, training and education.

People with supervisory responsibilities should also be provided with training that focuses on developing a greater understanding of human behaviour, communication and people management. Assessment should also be conducted to ensure that supervisory staff are able to apply their newly acquired knowledge, skills and abilities in the workplace.

Employers should keep records of any training conducted. Training should be updated following any significant changes to workplace harassment prevention policy, complaint handling system or changes to relevant laws.

More information on training and education is provided in Section 8.4 of the *Prevention of Workplace Harassment Advisory Standard 2004* (now known as a Code of Practice).

## **Resolving workplace harassment complaints**

### Resolving complaints in the workplace

Resolving complaints informally, resolving complaints formally

### Resolving complaints through external agencies

What to expect from Workplace Health and Safety Queensland, other agencies

## Resolving complaints in the workplace

When a complaint of workplace harassment is raised how it is responded to can influence how and when the issue is resolved.

The person responsible for human resources or industrial relations matters at your workplace should be able to advise you about complaint resolution policies and procedures.

Generally, complaints can be resolved either informally, or formally.

Before deciding on how to resolve the complaint the person raising the complaint should:

- clearly define their concerns and desired outcome
- assess the advantages and disadvantages of the informal versus formal process
- consider the complexity of the situation (a formal option may need careful consideration if the situation is very complex)
- be aware of support mechanisms available, for example counselling
- acknowledge the consequences of making malicious, frivolous or vexatious complaints (complaints that are deliberately harmful, spiteful, trivial or unworthy of serious attention or resources)

It is recommended that the opinion of an independent third party (for example, human resource manager, supervisor or workplace health and safety representative) be obtained to help validate experiences and make a well informed decision regarding the most appropriate resolution option.

If a workplace harassment prevention policy exists it should provide details of an appropriate person to raise workplace harassment complaints with who can help.

[More on workplace harassment prevention policies](#)

### ***Resolving complaints informally***

The objective of an informal approach is to resolve the matter with a minimum of conflict or distress for individuals.

The benefits of resolving workplace harassment informally are:

- the process is generally quick and less adversarial and cumbersome
- it does not require extensive 'proof' of workplace harassment to be demonstrated
- the person exhibiting harassing behaviours may wish to resolve the issue to avoid a formal process
- the process may result in improved communication between the parties
- it is easier to maintain confidentiality and ongoing working relationships

If the informal approach is unsuccessful and the harassing behaviours continue at the workplace, a formal approach should be considered.

### **Speaking directly with the person**

Any worker who believes they are being harassed may choose to speak directly with the person/s demonstrating the harassing behaviours. Directly dealing with the person/s responsible sometimes results in the behaviour ceasing.

For this approach to be successful the information must be delivered to the respondent in a confidential, non-confrontational way with a view to resolving the issue in an informal low-key manner.

A good technique to use is to focus on the behaviours being exhibited by the other party. The aim is to communicate exactly what behaviours are harassing and distressing. This lessens the likelihood that the other party will take the comments as a personal attack.

### **Mediation**

Resolving complaints informally through mediation is generally more effective, requires fewer resources and often prevents further escalation of the issue while in no way trivialising the issue or the effect it has on an individual.

Interpersonal conflicts are often effectively resolved through open discussion between parties. This should be encouraged as the first step in every complaint, unless otherwise requested by the complainant.

Mediators should:

- be competent, impartial, maintain confidentiality and be acceptable to all parties
- guide discussions between the parties
- encourage parties to identify the issues in dispute and explore options for agreement
- guide the parties to negotiate and implement options for agreement
- take account of real or perceived differences in power between the parties.

If a party has a significant concern about an internal resolution process it may be necessary to arrange an external mediator.

Where a complaint cannot be resolved by informal means, a formal process should be followed.

### ***Resolving complaints formally***

Where a complaint handling system or grievance procedures are in place they would be used to address the complaint. The person responsible for human

resources or industrial relations matters at your workplace should be able to advise you about complaint resolution policies and procedures.

### **Investigating complaints**

The objective of an investigation is to resolve the conflict which prompted the complaint and to effectively control the risk of workplace injury or illness from workplace harassment.

An investigation will aim to establish the facts and circumstances of the situation and usually lead to a formal report being prepared. The person responsible for human resources or industrial relations matters at your workplace should be able to offer further advice concerning the applicable formal procedure.

An effective investigation procedure should be:

- *Planned* to ensure the investigation process is appropriate.
- *Transparent* – the investigation process and timeframes be outlined for all parties.
- *Objective/impartial* – the investigator should be unbiased and non-judgemental. In some workplaces this may mean they need to be someone from outside the workplace.
- *In line with the principles of natural justice*, which are:
  - . the person alleged to have committed workplace harassment is presumed to be innocent until allegations are proved to be true
  - . all allegations of workplace harassment are investigated promptly
  - . the person who has allegedly committed the workplace harassment is informed of all the allegations and given an opportunity to explain his or her version of events
  - . should the complaint be proven to be true, then remedial action must be taken.
- *Documented* – information from interviews and accurate records of evidence used to establish facts should be kept. No assumptions or opinions should be included. Detailed investigation notes are essential to demonstrate fair practices associated with the investigation.
- *Reviewed*, so an assessment can be made as to whether or not the behaviour constitutes workplace harassment.
- *Able to provide factual evidence*, so appropriate remedial actions may be taken by the employer in relation to the complaint or other issues identified during the investigation.

### **Example investigation process**

- Review background documentation – policies, procedures, evidence already taken in response to the complaint.
- Inform all parties of the process and timelines.
- Compile questions for interviews.
- Interview complainant, determine if the behaviour meets the definition of workplace harassment. Why? How?
- Interview other parties to the complaint.
- Obtain any corroborating evidence.

- Interview respondent (alleged harasser).
- Assess evidence.
- Prepare investigation report.
- Inform parties of outcomes of investigation.
- Implement actions.

### **What makes a good investigator?**

- Has received training in investigating harassment complaints.
- Has comprehensive understanding of what constitutes workplace harassment.
- Is impartial, non judgemental and has no conflict of interest or personal association with any person involved in the complaint.
- Abides by principles of natural justice and procedural fairness.
- Parties have confidence in the appropriateness of the investigator.
- Is able to listen, interview and communicate effectively.
- Explains the investigation process to all involved parties.
- Keeps involved parties informed and is available to answer questions.
- Develops and follows an investigation plan and establishes realistic timeframes.
- Has either comprehensive knowledge of the organisation's policy, procedures and training provided to workers, or access to this information.
- Maintains accurate documentation throughout the investigation process.
- Is able to assess the information received and make a determination regarding the allegations on the basis of the evidence collected.

An employer should always consider the merit of engaging an external specialist mediator or investigator when conducting an investigation into workplace harassment.

Guidance can generally be found in industrial instruments such as awards or Certified Agreements. Formal complaint resolution will generally involve an internal investigation of the incidents.

## Resolving complaints through external agencies

Most external agencies will not accept a complaint unless complainants have attempted to resolve the workplace harassment internally through an informal or formal process (where available).

Workplace harassment can be addressed within the workplace before referring to external agencies through:

- speaking directly with the person
- mediation between parties
- formal processes

Complainants may contact the following agencies where internal processes have been ineffective (or not available). The most appropriate agency will depend on the type of complaint and the complainant's desired outcome.

For assistance in determining the most appropriate agency, call Workplace Health and Safety Infoline on 1300 369 915. Infoline staff will ask a series of questions to help identify which agency or agencies are appropriate to assist, and provide information about them. Depending on the nature of the complaint it is possible that more than one agency will be involved.

### ***Department of Employment and Industrial Relations – Workplace Health and Safety Queensland***

Workplace Health and Safety Queensland (WHSQ) can only respond to complaints in certain situations that fall within the scope of the Workplace Health and Safety Act:

- The complaint must (on the face of it) fall within the definition of workplace harassment.
- The complaint must be in writing. The complainant will be sent an information package, including a checklist which must be attached to the complaint.
- The complaint should have been raised at the workplace and an attempt made to resolve the complaint internally. Information regarding the outcome of this step should be included in the written complaint.

Where a complaint falls within the scope and a health and safety risk of injury or illness from workplace harassment is determined likely to exist an inspector may be assigned to investigate.

The purpose of the investigation is to determine if the obligations under the Workplace Health and Safety Act are being met in regards to managing the risk of illness and injury from workplace harassment, and to apply enforcement options where they are not met.

Legal advice, mediation between parties, counselling or victim support is not provided. Compensation, unfair dismissal or other issues are not dealt with through this process.

The inspector will contact the workplace, advising them of the complaint and investigation and request evidence that the risk of injury or illness from workplace harassment is being managed.

The inspector may ask for the evidence to be sent to them and/or visit the workplace to collect evidence.

The types of information an inspector could request include:

- incident records
- workplace harassment policy, grievance procedures
- information about the workplace complaint handling system
- workplace records to show that the allegation of workplace harassment has been investigated appropriately
- should the risk of workplace harassment be identified in the investigation, the steps that were taken to remedy the situation
- staff training records
- any other information required by the inspector.

During a workplace visit the inspector will review documentation and may survey or interview staff members as part of the investigation. The inspector will identify if there is a risk of injury from workplace harassment and review controls implemented at the workplace.

The *Prevention of Workplace Harassment Advisory Standard 2004* (now referred to as a Code of Practice) states that where workplace harassment has been identified and assessed to be creating a risk, employers must decide on, and put into place control measures to prevent or control this risk.

#### More on preventing workplace harassment

When people fail to meet their obligations under the Workplace Health and Safety Act, inspectors may use a range of compliance and enforcement options including but not limited to advice, verbal directions, improvement and infringement notices. Inspectors are skilled in determining the best enforcement options to use in a given situation in order to offer the most advantageous workplace health and safety outcome.

### ***Department of Employment and Industrial Relations - Wageline***

Wageline provides a comprehensive information service to employees on industrial relations matters such as industrial relations legislation, Awards, Certified Agreements, and Queensland Workplace Agreements.

In relation to workplace harassment complaints, Wageline officers can provide specific advice on grievance procedures in awards and agreements.

## ***Queensland Industrial Relations Commission***

The Queensland Industrial Relations Commission (QIRC) and the Industrial Registry are constituted under the *Industrial Relations Act 1999*.

The QIRC has jurisdiction to hear and decide issues concerning industrial matters. For most matters, the powers and functions of the QIRC are exercised by a Commissioner and include:

- resolving industrial disputes through conciliation and arbitration
- determining applications for reinstatement by employees who believe they have been unfairly dismissed

The Registry provides administrative support to the QIRC and also provides a facilitative service to the general industrial relations community. The Registry processes applications for unfair dismissal and notifications of disputes and provides information on QIRC procedures. Registry staff do not provide advice to parties regarding their legislative entitlements or the merits of their application.

An existing employee or an organisation on behalf of the employee can lodge a notification of an industrial dispute regarding workplace harassment. The QIRC may take steps it considers appropriate for the prevention or prompt settlement of the dispute, by conciliation in the first instance. If the QIRC considers conciliation has failed and the parties are unlikely to resolve the dispute then arbitration will be undertaken.

An employee or an organisation on behalf of an employee can lodge an application for reinstatement if it is alleged that an employee has been unfairly dismissed. In circumstances where an employee resigns due to workplace harassment, the termination of the employment may be deemed to be a “constructive dismissal” and unfair. A dismissal is unfair if it is harsh, unjust or unreasonable or for an invalid reason.

The QIRC must hold a conference to attempt to settle an application for reinstatement before it hears the application. If the QIRC considers reinstatement or re-employment would be impracticable the QIRC may order the employer to pay the employee compensation as decided by the QIRC, although reinstatement is the primary remedy.

## ***Queensland Anti-Discrimination Commission and Anti-Discrimination Tribunal***

The Queensland *Industrial Relations Act 1999* promotes fair treatment and equal opportunity by making discrimination and vilification (for example, on the

basis of race, religion, sexuality or gender identity) and all sexual harassment against the law.

The Anti-Discrimination Commission Queensland (ADCQ) accepts and conciliates complaints of discrimination, vilification and sexual harassment under the Act. Commission staff can provide information on how to make a complaint.

A complainant does not need to have first tried to resolve their complaint informally before contacting the ADCQ.

If a complaint cannot be resolved through conciliation between the parties, the complainant can refer it to the Anti-Discrimination Tribunal. The Tribunal hears complaints in a similar way to a court and seeks to operate in an informal and non-intimidating way. All the Members who hear complaints are experienced lawyers.

### ***Department of Education, Training and the Arts – Training Services***

Training Services in the Department of Education, Training and the Arts monitor registered traineeships and apprenticeships. Training Services also investigate training issues between employers and trainees/apprentices in Queensland.

In relation to complaints of workplace harassment from apprentices and trainees, training services staff may use a range of strategies to address the issue.

### ***Australian Council of Trade Unions***

Trade unions provide information, advice and advocacy to members on all industrial matters. Union members can contact their respective union for information.

### ***Queensland Working Women's Service***

The Queensland Working Women's Service (QWWS) provides a comprehensive free and confidential telephone advisory service to women on all work related matters. QWWS has information about workplace harassment and is able to offer advice on the possible courses of action. Information on advocacy and representation can also be obtained through the service. QWWS offers workplace training programs and information sessions on workplace harassment.

## ***Young Workers Advisory Service***

The Young Workers' Advisory Service (YWAS) provides a comprehensive, free and confidential advisory service to young people under 25 on all work related matters. The YWAS may be able to provide specialist intensive assistance or casework for matters being pursued through the Queensland Industrial Relations Commission and the Anti-Discrimination Commission. YWAS also offers talks to school or youth groups on workplace harassment.