

# Information for employers on workplace harassment complaints



Workplace Health and Safety Queensland

## What is workplace harassment?

1. A person is subjected to 'workplace harassment' if the person is subjected to repeated behaviour, other than behaviour amounting to sexual harassment, by a person, including the person's employer, a co-worker or group of co-workers of the person that:
  - (a) is unwelcome and unsolicited
  - (b) the person considers to be offensive, intimidating, humiliating or threatening
  - (c) a reasonable person would consider to be offensive, humiliating, intimidating or threatening.
2. 'Workplace harassment' does not include reasonable management action taken in a reasonable way by the person's employer in connection with the person's employment.
3. In this section - 'sexual harassment' see the *Anti-Discrimination Act 1991*, section 119.

## Discrimination and sexual harassment

Workplace harassment does not include acts of unlawful discrimination<sup>1</sup>, vilification<sup>2</sup> or sexual harassment<sup>3</sup>. These complaints should be addressed to the Anti Discrimination Commission Queensland (ADCQ).

## What are my health and safety obligations?

The *Workplace Health and Safety Act 1995* imposes health and safety obligations on people at workplaces to ensure workplace health and safety. This extends to managing risks associated with workplace harassment.

<sup>1</sup> Discrimination on the basis of the following attributes- (a) sex (b) relationship status (c) pregnancy (d) parental status (e) breastfeeding (f) age (g) race (h) impairment (i) religious belief or religious activity (j) political belief or activity (k) trade union activity (l) lawful sexual activity (m) gender identity (n) sexuality (o) family responsibilities (p) association with, or relation to, a person identified on the basis of any of the above attributes.

<sup>2</sup> Vilification refers to a public act which incites hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race, religion, sexuality or gender identity of the person or members of the group.

<sup>3</sup> Sexual harassment is any form of unwelcome attention of a sexual nature that is humiliating, intimidating or offensive.

The *Prevention of Workplace Harassment Code of Practice 2004* provides information on the main health and safety problems linked to workplace harassment and gives practical advice on how to manage them.

## What do I do when I am made aware of a complaint of workplace harassment?

The organisation's response when first notified of a complaint of workplace harassment is very important and can influence how and when the issue is resolved.

Complaints can be dealt with in a number of ways including informally through mediation, or through a formal investigation process. It is important that complainants are made aware of the process and possible outcomes associated with each option prior to them making a decision about whether to pursue an informal or formal complaint process.

### 1. Informal complaint handling procedure/ mediation

Resolving complaints informally through mediation is generally more effective, requires fewer resources and often prevents further escalation of the issue.

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.

## 2. Formal investigations for workplace harassment

The object of an investigation is, where possible, to facilitate the resolution of conflict which prompted the complaint and to effectively control the risk of workplace injury or illness from workplace harassment.

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:
  - (a) the person alleged to have committed workplace harassment is presumed to be innocent until allegations are proved to be true
  - (b) all allegations of workplace harassment are investigated promptly
  - (c) 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
  - (d) 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 of an investigation plan

- 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.

## More information

To obtain a copy of the *Prevention of Workplace Harassment Code of Practice 2004* for managing this hazard or for other workplace health and safety legislation and information:

Workplace Health and Safety Queensland  
 website: [www.worksafe.qld.gov.au](http://www.worksafe.qld.gov.au)  
 Infoline: 1300 369 915

Further information about mediation services:  
 The Dispute Resolution Centre  
 website: <http://www.justice.qld.gov.au/mediation/>  
 Telephone: (07) 3239 6269 or 1800 017 288 outside Brisbane (toll free)

Further information about anti discrimination:  
 Anti Discrimination Commission Queensland (ADCQ)  
 website: <http://www.adcq.qld.gov.au/> Telephone: 1300 370 670

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