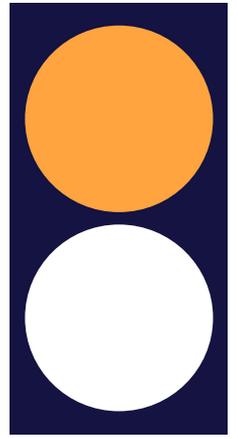


EMPLOYMENT LAW

ARTICLE: SEXUAL HARASSMENT IN THE WORKPLACE - THE LAW

JULY 2023



Introduction

Following a number of recent legislative changes, it is now more important than ever for employers to take steps to ensure the prevention of sexual harassment in their workplaces.



Workplace sexual harassment

1. Legislation

The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth), came into effect on 6 March 2023. These changes include:

- A prohibition on work-related sexual harassment under in the Fair Work Act 2009 (Cth)

- An employer may now be held vicariously liable under the Fair Work Act 2009 (Cth) for sexual harassment conducted by an employee or agent, unless it can establish that it took all reasonable steps to prevent the employee or agent from engaging in the sexual harassment.
- Individuals alleging they have been sexually harassed at work can make an application to the Fair Work Commission to make a stop sexual harassment order and/or otherwise deal with the dispute.
- The timeframe for making a sexual harassment-related application to the Fair Work Commission is 24 months from the date of the contravention.

This followed new laws arising from the Respect@Work Bill which came into effect from 12 December 2022, which created a positive duty for employers (or any person conducting a business or undertaking (PCBU)) take reasonable and proportionate measures to eliminate (as far as possible) the following behaviours from the workplace:

- Sexual harassment
- Harassment on the grounds of sex
- Sex discrimination
- Conduct that subjects a person to a hostile work environment; and
- Victimisation in relation to the above

This means that from December 2022, all employers must already be actively taking steps to prevent such behaviour from occurring in the workplace, shifting the focus from a complaints-based model to a more proactive, preventative approach.

2.How can employers comply with the positive duty?

Conducting a workplace audit would be a sensible starting point in complying with the positive duty.

The results of your audit will then assist you in developing an action plan to address any gaps highlighted through the audit process and to demonstrate that you are taking reasonable steps to reduce the risk of sexual harassment (and associated behaviours) from occurring in the workplace.

Some recommended steps to take to meet your positive duty obligations include:

- Ensuring you have an up-to-date and well communicated policy in place.
- Ensuring all employees have regular training in relation to respectful and appropriate workplace behaviours.
- Conducting a survey to assess the current climate and to ensure you don't have an underlying culture of accepting inappropriate behaviours in the workplace.

At Ezra Legal, our team of commercial lawyers know that clear and accurate legal advice on HR and employment issues is critical to your commercial success. We provide commercially relevant legal and strategic advice on complex employment decisions, striking the right balance between legal considerations and commercial reality.

Contact Information

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