

SEXUAL HARASSMENT AT WORK

DISCLAIMER

This infosheet contains information of a general nature only and is not a substitute for professional legal advice. You should obtain legal advice from a lawyer about your particular situation before acting on any of the following information. This infosheet is designed for Victorian and national system employees in Tasmania and Queensland only. If you are not a Victorian employee or a Queensland or Tasmanian national system employee, you should obtain specialist legal advice about your case as soon as possible.

Introduction

Sexual harassment is a serious problem and it is against the law. You can take action if you have been sexually harassed at work. This infosheet looks at what you can do to stop the harassment and make a complaint.

This infosheet is a guide only and you should obtain legal advice from a lawyer before acting on any of the following information.

Who can use this infosheet?

This infosheet is designed for **Victorian** and national system employees in **Tasmania** and **Queensland** only.

If you are a **Victorian** employee, you can use this infosheet unless you were employed in a sector that provides essential services of core government functions, including state infrastructure services such as electricity and gas, and your employer is not covered by a nationally registered collective agreement.

If you are a **Tasmanian** employee, you can use this infosheet unless you were a State public sector employee not covered by a nationally registered collective agreement.

If you are a **Queensland** employee, you can use this infosheet unless you were a State public sector or local government employee not covered by a nationally registered collective agreement.

Glossary

Conciliation: An informal meeting where both parties to a dispute discuss the issues and try to resolve them. A conciliator is also present.

Vicarious Liability: where an employer is held responsible for its employee's actions

What is sexual harassment?

Generally, Sexual harassment is unwelcome sexual behaviour. Sexual harassment is against the law if it would make a reasonable person feel offended, humiliated or intimidated. Sexual harassment can be physical, verbal or written.

Some examples of sexual harassment include:

- brushing up against someone, touching, fondling or hugging;
- unwanted requests for sex;
- sexual messages in emails, text messages or on social networking sites;
- sexually suggestive comments or jokes; and
- repeated requests to go out.

Sexual harassment in the workplace is unlawful. To make a complaint the sexual harassment must be connected to the person's workplace. Connected to the workplace means that a person can still be sexually harassed after hours, for example at a work Christmas party.

Here are some examples of sexual harassment in the workplace.

EXAMPLE 1

Jane has been working as a receptionist at a construction company. Tom also works there and they had a fantastic working relationship up until Jane overheard Tom making a joke about her breasts. Later, Tom emailed the same joke to every male employee.

EXAMPLE 2

Sarah has recently started volunteering at her local library. She works a few hours after school and on the weekends. On numerous occasions when Sarah has been on her lunch break, one of the librarians has come up behind her and rubbed himself against her.

EXAMPLE 3

Amy works at a gym. One day after finishing her shift her friend Erin invited her to after work drinks with 5 other employees. By 11pm everyone had gone home except Amy and Daniel. When Amy attempted to leave Daniel kissed her and touched her under her skirt.

What can I do if I am being sexually harassed at work?

If you think that you are being sexually harassed at work you don't have to put up with it. The steps you take will depend on your work environment and how comfortable you feel speaking up.

It is a good idea keep a record of situations when you feel sexually harassed. Consider keeping a diary, include specific details such as dates, times, witnesses, how you were sexually harassed and how this made you feel.

It is important to get the help that you need so see a doctor if you feel depressed, anxious or if you have been physically injured.

If you feel in danger

- Apply to the Magistrates Court for an Intervention Order (seek legal advice). An Intervention Order is an order made by the court to protect you from the harasser. The harasser will have to follow the conditions set out in the order.
- Call the police. Some harassing behaviour is criminal such as sexual assault, indecent exposure and stalking and may be investigated by the police.

Tell someone and take action

- If you feel safe you should tell the person sexually harassing them how their behaviour makes you feel. Make it clear to the harasser that their behaviour is inappropriate and unwanted and that you feel harassed and offended.
- Make a complaint to your manager or HR department.
- Make a complaint to your State Anti-discrimination Commission or to the Australian Human Rights Commission.

In Victoria

You can make a complaint against the person harassing you and also against their employer at the Victorian Civil and Administrative Tribunal (VCAT). The employer may be held vicariously liable for the actions of the harasser.

In Victoria, a person has **12 months** from the date they were sexually harassed to file a complaint at VCAT. A person can also make a complaint to Victorian Equal Opportunity and Human Rights Commission where they may have a conciliation before making an application to VCAT.

In Tasmania

You have **12 months** from the date of the sexual harassment to file a complaint with the Equal Opportunity Tasmania. You can make a complaint against the person harassing you and/or their employer. Equal Opportunity Tasmania will conduct a conciliation to try to resolve the matter by agreement. If your complaint is not resolved, it can be referred to the Anti-discrimination Tribunal for a hearing.

In Queensland

You have **12 months** from the date of the sexual harassment to file a complaint with the Anti-discrimination Commission Queensland. You can make a complaint against the person harassing you and/or their employer. The Anti-discrimination Commission will conduct a conciliation to try to resolve the matter by agreement. If your complaint is not resolved, it can be referred to the Queensland Civil and Administrative Tribunal or Queensland Industrial Relations Commission for a hearing.

Make a complaint to the Australian Human Rights Commission

Alternatively, you can make a complaint to the Australian Human Rights Commission within **6 months** of the sexual harassment occurring. The Australian Human Rights Commission (AHRC) will also conduct a conciliation. If a person decides to make a complaint to the AHRC, they may still be able to change to their State's jurisdiction so long as they are still within the time limit. However, it is not possible to change from a State jurisdiction to the AHRC.

It is important to consider seeking legal advice from a lawyer before making a legal complaint. A lawyer will be able to provide you with more information and advice on your options and possible outcomes if you wish to make a complaint.

If a matter does not settle at a conciliation at the AHRC, the next step is usually a hearing at a federal court.

The orders that may be made by a court or tribunal include financial compensation, that the sexual harasser apologises and/or that the employer implements sexual harassment policies and training.

Further information

For further information regarding sexual harassment in the workplace, individuals may wish to contact the relevant organisations below:

ORGANISATION	PHONE	WEBSITE
Australian Human Rights Commission	Complaints Infoline: 1300 656 419 General enquiries: 1300 369 711	www.humanrights.gov.au
Fair Work Commission Helpline	1300 799 675	www.fwc.gov.au/
Fair Work Infoline (Office of the Fair Work Ombudsman)	13 13 94	www.fairwork.gov.au/
Job Watch Inc	Metro: (03)9662 1933 Rural: 1800 331 617	www.jobwatch.org.au
Victorian Civil and Administrative Tribunal	(03) 9628 9900	www.vcat.vic.gov.au
Victorian Equal Opportunity and Human Rights Commission	1300 292 153	www.humanrightscommission.vic.gov.au
Anti-discrimination Commission Queensland	1300 130 670	www.adcq.qld.gov.au/
Equal Opportunity Tasmania	1300 305 062	www.equalopportunity.tas.gov.au/
WorkSafe Victoria	Metro: (03) 9641 1444 Rural: 1800 136 089	www.vwa.vic.gov.au/home
WorkSafe Tasmania	1300 366 322	www.worksafe.tas.gov.au
WorkSafe Queensland	1300 362 128	www.worksafe.qld.gov.au

If you are unsure about any information in this infosheet, it is important to obtain legal advice as soon as possible

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Fair Work
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Victoria Legal Aid

JobWatch acknowledges the Aboriginal and Torres Strait Islander peoples of this nation. We acknowledge the traditional custodians of the lands on which we are located and where we conduct our business. We pay our respects to ancestors, and Elders, past, present and emerging.