

Sexual Harassment

Sexual harassment in the workplace is a serious problem and it is against the law. It is prohibited in the *Fair Work Act 2009*, and under federal and state anti-discrimination laws.

Employers also have a 'positive duty' to prevent sexual harassment in the workplace, which means that they can be held liable for any sexual harassment that occurs unless they can prove that they took all reasonable steps to prevent the sexual harassment.

You can take action if you have been sexually harassed at work.

What is sexual harassment at work?

A person is sexually harassed at work if, while at work, one or more individuals:

- makes an unwanted sexual advance or unwelcome request for sexual favours, or engages in other unwelcome conduct of a sexual nature towards the person; AND
- this conduct occurs in circumstances where a reasonable person, having regard to all the circumstances, would have anticipated the possibility of the person harassed being offended, humiliated or intimidated.

Conduct does not have to be repeated to constitute sexual harassment. Conduct that occurs outside of work hours but that is still connected to the workplace, for example, conduct that occurs at a work function, may still constitute sexual harassment 'at work'.

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 media (even if this occurs outside of work hours);
- sexually suggestive comments or jokes; and
- repeated requests to go on a date.

Case examples

Anam has been working as a carpenter at a construction company. Anam works alongside Tom, who she generally has a fantastic working relationship with. Recently, Anam overheard Tom making a joke about her breasts. Later, Tom emailed the same joke to every male employee.

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.

Disclaimer

This Fact Sheet 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 Fact Sheet is designed for employees and prospective employees in Victoria, Tasmania and Queensland only. If you are not from these states, you should obtain advice about your specific case as soon as possible.

What is sexual harassment at work? (cont.)

Note that under the *Sex Discrimination Act 1984*, it is also unlawful to:

- **Harass a person on the ground of sex** - defined similarly to sexual harassment, except that the unlawful conduct is of a demeaning nature (rather than sexual), and is done by reason of the person's sex.
- **Subject a person to a hostile work environment on the ground of sex** - defined as conduct resulting in a workplace environment that a reasonable person would anticipate would be offensive, intimidating or humiliating by reason of the person's sex.

Claims based on these provisions are made in the the same way as sexual harassment claims to the Australian Human Rights Commission, see below.

What can you do?

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

It is a good idea to 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 sexually assaulted or physically injured.

If you feel in danger


1. **You do not have to attend an unsafe workplace.** If you feel like you are unsafe at work due to sexual harassment, make sure you tell your employer the reason you are not attending work and make it clear that you have not abandoned your employment. You should also request that appropriate management action be taken by the employer.
2. **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.
3. **Make a report to 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

1. If you feel safe, you should tell the person sexually harassing you 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.
2. Make a complaint to your manager or HR department.

Case example

Amy works at a gym. One day after finishing her shift, she went to after work drinks with some co-workers. By 11pm everyone had gone home except Amy and Daniel. When Amy attempted to leave, Daniel kissed her and touched her under her skirt.



Note!
For further assistance,
contact JobWatch, your
union, or a lawyer.

Legal options

01. Apply to the Fair Work Commission

If you are sexually harassed at work you can apply to the Fair Work Commission (FWC) for an order to stop sexual harassment or to deal with a dispute about sexual harassment. This is available whether you are an employee, independent contractor or volunteer.

For sexual harassment that occurred before 6 March 2023, you can apply for an order to stop sexual harassment using a Form 72A. A small filing fee is required to be paid with your claim. If payment of the fee will cause you financial hardship, you can apply to have the fee waived. The fee waiver application form is available on the FWC's website and must be completed at the same time as you lodge your application.

If the FWC is satisfied on the evidence that you are eligible to apply, that you have been sexually harassed and that the sexual harassment is likely to continue, it can make any orders it considers appropriate to prevent the sexual harassment from continuing.

If the FWC's order is breached, you have **6 years** from the date of the breach to apply to the Federal Court or the Federal Circuit and Family Court of Australia for a remedy. The courts can make any orders they deem fit including an order for financial compensation.

*For sexual harassment that occurred on or after 6 March 2023, you can use a Form 75 to apply for the Fair Work Commission to deal with a sexual harassment dispute, within **24 months** of the conduct occurring. This can include a stop sexual harassment order as above. The FWC will assess your application and any responses from the other parties, and typically will call a conference to try to resolve the dispute through conciliation, mediation, making a recommendation or expressing an opinion. If this doesn't resolve the dispute, the FWC can arbitrate if the parties agree.*

If this is unsuccessful, you may also be able to make a claim in court - time limits apply, please seek further assistance by contacting JobWatch, your union, or a lawyer.

02. Submit a General Protections Dispute to the Fair Work Commission

People who have been sexually harassed may avoid taking action due to a concern that they could face negative repercussions from their employer.

It is against the law for your employer to take 'adverse action' against you because you have made a complaint about sexual harassment in the workplace or because you have made an order to stop sexual harassment at the FWC.

03. Make a complaint to your state's anti-discrimination commission In Victoria

You have **12 months** from the date of the sexual harassment to file a complaint against the person harassing you and also against your employer at the Victorian Civil and Administrative Tribunal (VCAT). The employer may be held vicariously liable for the actions of the harasser. Before making an application to VCAT, you can also make a complaint to the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) where a voluntary conciliation can be arranged to resolve the matter by agreement.

Fair Work Commission

Phone: 1300 799 675

Website:
fwc.gov.au

Note!

To be eligible to make an application for this order, you must still be working at the workplace where you are being/have been sexually harassed.

Read JobWatch's 'General Protections Dispute - Termination claim' or 'General Protections Dispute - Non-Termination claim' Fact Sheets for more information.

VCAT

Phone: 1300 018 228

Website:
vcat.vic.gov.au

VEOHRC

Phone: 1300 292 153

Website:
humanrights.vic.gov.au

03. Make a complaint to your state's anti-discrimination commission (cont.) In Queensland

You have **12 months** from the date of the sexual harassment to file a complaint with the Queensland Human Rights Commission (QHRC). You can make a complaint against the person harassing you and/or their employer. The QHRC 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.

In Tasmania

You have **12 months** from the date of the sexual harassment to file a complaint with the Equal Opportunity Tasmania (EOT). You can make a complaint against the person harassing you and/or their employer. EOT 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.

04. Make a complaint to the Australian Human Rights Commission

You can make a complaint to the Australian Human Rights Commission (AHRC) within **24 months** of the sexual harassment occurring. The 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.

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, an apology and/or that the employer implements sexual harassment policies and training.

05. Report your employer to the Fair Work Ombudsman

The Fair Work Ombudsman (FWO) can help with some issues around sexual harassment at work usually once an employee has already sought help, such as from the FWC. This includes:

- investigating a workplace for non-compliance with laws prohibiting workplace sexual harassment
- taking action when someone doesn't comply with a FWC stop sexual harassment order

You can make a report through creating an account on the FWO website.

QHRC

Phone: 1300 130 670

Website:
qhrc.qld.gov.au

EOT

Phone: 1300 305 602

Website:
equalopportunity.tas.gov.au

AHRC

Phone: 1300 656 419

Website:
humanrights.gov.au

Where to get help

JobWatch's free and confidential Telephone Information Service

P: (03) 9662 1933 (Melb Metro), 1800 331 617 (Regional Vic, Qld, Tas)

W: jobwatch.org.au

Fair Work Infoline (Office of the Fair Work Ombudsman)	13 13 94
Fair Work Commission	1300 799 675
1800RESPECT	1800 737 732
Lifeline	13 11 14
Beyond Blue	1300 22 4636
Australian Human Rights Commission	1300 656 419
Victorian Equal Opportunity and Human Rights Commission	1300 292 153
Victorian Civil and Administrative Tribunal	1300 018 228
Queensland Human Rights Commission	1300 130 670
Queensland Industrial Relations Commission	1300 592 987
Equal Opportunity Tasmania	1300 305 062
Tasmanian Civil and Administrative Tribunal	1800 657 500
Community Legal Centres Australia	02 9264 9595
ACTU Worker Information line (for referral to a union)	1300 362 223
Law Institute of Victoria's Legal Referral Service	03 9607 9311
Queensland Law Society (for referral to a lawyer)	1300 367 757
Law Society of Tasmania (for referral to a lawyer)	03 6234 4133

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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.