

## 53. Preventing Workplace Harassment



### Introduction

We are committed to ensuring a healthy and safe working environment that is free from workplace harassment in any form. Workplace harassment is unacceptable and will not be tolerated under any circumstances.

### Purpose

We will seek to educate and inform employees on appropriate workplace behaviour, to foster a work environment where all employees are treated with respect, courtesy and without harassment, and to ensure that the workplace respects and upholds each employee's workplace rights.

### Goals – What are we going to do?

This policy outlines our Services commitment to preventing workplace harassment and, promptly and effectively addressing and eliminating it if it should occur.

### Strategies – How will it be done?

#### What is Workplace Harassment?

Workplace harassment (which incorporates the concept of workplace bullying) may be defined as offensive, belittling or threatening behaviour directed at an individual or group of employees that creates a risk to health and safety. It is a risk to health and safety because it may affect the mental and physical health of workers. It is behaviour that is unwelcome, unsolicited, usually unreciprocated and usually (but not always) repeated. Workplace harassment can be both overt and covert. Examples of such inappropriate behaviour include, but are not limited to:

- Abusing a person, often when others are present;
- Leaving offensive messages on email, text or voicemail or any other medium;
- Maliciously excluding and isolating a person from workplace activities;
- Humiliating a person through gestures, sarcasm, criticisms and insults, often in front of others;
- Offensive or intimidating physical contact or actions; or
- Continual undermining of colleagues' abilities, character etc.

Harassment in the workplace breaches the Workplace Relations Act 2009, the Work Health and Safety Act 2011 and Anti-discrimination legislation. Failure to comply with legal obligations in relation to workplace harassment may result in legal action and possible termination of employment.

### What does not constitute workplace harassment?

Not all behaviour that makes a worker feel upset or undervalued is workplace harassment or bullying. Workplace harassment should not be confused with legitimate and **reasonable management discussions or actions**, provided everyone involved in these processes is treated with respect and courtesy. Such reasonable management actions may include:

- Performance management processes
- Disciplinary actions
- Allocation of work
- Business processes such as workplace change or restructuring.

### Implications of workplace bullying

There are legal obligations to consider all health and safety risks in the workplace including workplace harassment or bullying. Failure to take steps to manage the risk of workplace bullying can result in a breach of WHS laws.

Workplace harassment is best dealt with by taking steps to prevent it from happening and responding quickly if it does occur. The longer the harassment or bullying behaviour continues, the harder it becomes to repair working relationships and the greater the risk to health and safety.

### Preventing, Addressing and Eliminating Workplace Harassment

We are committed to preventing any form of workplace harassment. However, where issues do arise, we are equally committed to addressing allegations of workplace harassment or bullying in a prompt, thorough and confidential manner.

The **Guide to preventing and responding to workplace bullying (Safe work NSW)** and **Anti Bullying Guide (Fair Work Commission)** provide additional information for preventing, addressing and eliminating workplace harassment and bullying.

### Roles and Responsibilities

The responsibility for providing and maintaining a harassment free workplace lies with all employees. This responsibility incorporates all ongoing and casual employees.

#### Approved Provider/Nominated Supervisor will:

Be familiar with, and play a key role in, actively promoting and supporting both this policy and its supporting guidelines. They are required to advocate and promote the standard of behaviour expected of staff, and to model these standards in their own behaviour. Managers and supervisors also share legal and managerial responsibilities for identifying and dealing with behaviour that constitutes workplace harassment.

#### Educators will:

Have a responsibility to behave in accordance with the above guidelines and this policy. They must ensure that their behaviour meets appropriate and acceptable standards, and that they treat everyone fairly, with respect and without harassment or discrimination.

### Further Information

Further information on this policy may be sought from the Approved Provider or Nominated Supervisor. More generic information on workplace harassment is available on the Fair Work Commissions website and from Work Cover.

## Procedure for dealing with workplace harassment complaints

### Dealing with Complaints

Employees are encouraged wherever possible to resolve concerns and/or complaints about workplace harassment or bullying through discussion, particularly where there are doubts that any alleged behaviour was intentional.

Informal processes often resolve minor issues with a minimum of conflict and stress to all parties involved. Such an approach can result in an apology, agreement or decision to resolve issues.

Where a more serious complaint is lodged or when a minor issue remains unresolved, the following general process is appropriate.

### Informal Complaint Procedure

Under the informal complaint procedure there are a broad range of options for addressing the complaint. The procedure used to address the issue will depend on the individual circumstances of the case. The Nominated Supervisor or a member of management will determine which process to follow. The possible options include, but are not limited to, the Nominated Supervisor or member of management:

- discussing the issue with the person against whom the complaint is made and/or
- facilitating a meeting between the parties in an attempt to resolve the issue and move forward.

The informal complaint procedure is more suited to less serious allegations that if founded, may not warrant disciplinary action being taken.

### Formal Complaint Procedure

The formal complaint procedure involved the workplace participant making a written complaint and a formal investigation of that complaint. Formal complaints must always be forwarded to a member of the management team who will conduct a formal investigation.

An investigation generally involves collecting information about the complaint and then making a finding based on the available information as to whether or not the alleged behaviour occurred. Once a finding is made, management will decide what actions should be taken to resolve the complaint and any disciplinary actions.

### Submitting a Formal Complaint

Formal complaints should be submitted through a staff member's Nominated Supervisor. Where the Nominated Supervisor is the subject of the complaint, the complaint should be submitted to management.

While complainants are encouraged to express themselves freely, they should, as much as possible, provide the following elements of a workplace harassment complaint:

- name of respondent(s)
- alleged behaviour(s), including approximate time's, date's and location of
- incident(s)
- witnesses (if any);
- their (the complainant's) perceptions; and
- wherever possible, identify their preferred outcome.

Formal complaints should be submitted in writing.

### Receiving a Complaint

The Nominated Supervisor or member of management who receives a formal complaint shall, within the scope of their authority, take immediate action to address any ongoing unacceptable or offensive behaviour, ensuring that any health and/or safety issues are addressed immediately and that both the complainant and the respondent are informed of their rights and responsibilities.

The Nominated Supervisor or member of management receiving such complaints must ensure that any action taken as a result of the complaint complies with the principle of procedural fairness, such as informing the respondent(s) of the substance of any allegations and allowing them the opportunity to respond. This can often be achieved without the need to identify the complainant.

All complaints of harassment and bullying must be taken seriously and treated confidentially. Treating complaints seriously does not necessarily mean that the behaviour in question is of a bullying or harassing nature. It may appear that some complaints are ill founded or are an overreaction. Nevertheless care must be taken in all circumstances not to trivialise concerns or to deal with them in a superficial manner. The complaint should only be discussed with those involved in the resolution of the issue.

The complainant must not be subjected to further harassment, bullying or victimised as a result of lodging a complaint.

### Resolving Complaints General

It is recognised that early intervention and/or use of dispute resolution techniques usually provide for speedier and more effective resolution of workplace harassment and bullying issues. While it is preferable that workplace harassment should be resolved within the workplace, there may also be cases of harassment or bullying where it is appropriate to seek assistance from someone other than the Nominated supervisor or management

There are a number of ways in which a complaint of workplace harassment or bullying can come to the attention of the Nominated Supervisor or management. The Nominated Supervisor or member of management may simply observe that there appears to be a problem in a particular area. Alternatively, an employee, or other person, may draw the matter to the Nominated Supervisor or member or management's attention.

When dealing with workplace harassment or bullying situations, the Nominated Supervisor or management should ensure that employees can access independent support. The use of a dispute resolution process does not preclude seeking advice from a range of sources within or outside the service.

### Informal Complaint Procedure

Under the informal complaint procedure there are a broad range of options for addressing the complaint. The procedure used to address the issue will depend on the individual circumstances of the case. The Nominated Supervisor or a member of management will determine which process to follow. The possible options include, but are not limited to, the Nominated Supervisor or member of management:

- discussing the issue with the person against whom the complaint is made and/or
- facilitating a meeting between the parties in an attempt to resolve the issue and move forward.

The informal complaint procedure is more suited to less serious allegations that if founded, may not warrant disciplinary action being taken.

### Formal Complaint Procedure

The formal complaint procedure involves the workplace participant making a written complaint and a formal investigation of that complaint. Formal complaints must always be forwarded to a member of the management team who will conduct a formal investigation.

An investigation generally involves collecting information about the complaint and then making a finding based on the available information as to whether or not the alleged behaviour occurred. Once a finding is made, management will decide what actions should be taken to resolve the complaint and any disciplinary actions.

When an allegation has been made management will ensure that they:

- take all complaints seriously
- act promptly
- not victimise any person who makes a complaint, any person accused of bullying or any witnesses
- support all parties
- be impartial
- communicate the investigation or complaint process to all parties involved
- Maintain confidentiality
- Act appropriately
- Keep records – documentation is essential. A record of all meetings and interviews stating who was present and agreed outcome should be maintained.

### Possible outcome

The possible outcomes will depend on the nature of the complaint. Where an investigation results in finding that the alleged behaviour has occurred, that person will be disciplined. The type and severity of the disciplinary action will depend on the nature of the complaint and other relevant factors. The range of disciplinary action taken includes but is not limited to:

- Providing training
- Monitoring to ensure there are no further problems
- An apology or an undertaking that certain behaviour stop
- Mentoring and support from management
- Changing work arrangements
- Issuing a warning
- dismissal

### Related Legislation

Workplace Relations Act 2009  
The Work Health and Safety Act 2011  
Anti-discrimination legislation

### Links to other policies and documents

- Staffing
- Code of conduct for staff members
- Privacy and confidentiality
- Staff grievance

### Links to Education and Care Services National Regulations: 168

Links to National Quality Standards/Elements: 4.2, 7.1 and 7.2

### Sources

- [https://www.fwc.gov.au/documents/documents/factsheets/guide\\_antibullying.pdf](https://www.fwc.gov.au/documents/documents/factsheets/guide_antibullying.pdf)
- <https://www.safeworkaustralia.gov.au/bullying#codeguides>