

## 6.4 Workplace Harassment

Workplace harassment is offensive, belittling or threatening behaviour directed at an individual worker or group of workers. Harassment is often focused on the sex, cultural or racial background or disability of the individual or group.

Harassment is behaviour that is unwelcome, unsolicited, usually unreciprocated and usually (but not always) repeated. It makes the workplace or association with work unpleasant, humiliating or intimidating for the individual or group targeted by this behaviour. It can make it difficult for effective work to be done.

Workplace harassment should not be confused with advice or counselling on the work performance or work-related behaviour of an individual or group which might include critical comments indicating performance deficiencies. Feedback or counselling on work performance or work-related behaviour differs from harassment, in that feedback or counselling is intended to assist employees to improve work performance or the standard of their behaviour. Feedback or counselling should always be carried out in a constructive way that is not humiliating or threatening.

The maintenance of courteous workplace behaviour is not intended to impose unnecessary rigidities on individual workplace styles or on workplace and work-related relationships and social activities. Rather, it is a recognition that people with different backgrounds, interests and friendship groups need to get along with each other in the workplace if an organisation is to be effective.

For harassment to occur there does not have to be an intention to offend or harass. Moreover, harassing behaviour may be of a minor nature. Individual incidents may seem too trivial to warrant attention, or the person subjected to harassment may seem unaffected. Where the behaviour continues over a period and it is not addressed, however, such behaviour can undermine the standard of conduct within a work area.

Examples of harassing behaviour include:

- offensive physical contact, derogatory language or intimidating actions;
- insulting or threatening gestures or language (overt or implied) or continual and unwarranted shouting in the workplace;
- unjustified and unnecessary comments about a person's work or capacity for work;
- openly displayed pictures, posters, graffiti or written materials which might be offensive to some;
- phone calls or messages on electronic mail or computer networks which are threatening, abusive or offensive to employees;
- persistent following or stalking within the workplace, or to and from work or elsewhere; and
- disparaging remarks about malingering to employees who have made a claim for compensation.

Workplace harassment on the basis of race, sex or disability may also breach both the anti-harassment and the anti-discrimination provisions of Commonwealth anti-discrimination legislation. This includes sexual harassment and discrimination under the *Sex Discrimination Act 1984*, disability harassment and discrimination under the *Disability Discrimination Act 1992* and racial discrimination under the *Racial Discrimination Act 1975*. While the Racial Discrimination Act does not use the term 'racial harassment', some types of workplace harassment could be unlawful discrimination under this Act.

In addition to an employee's personal liability for harassing behaviour under the anti-discrimination legislation, businesses are vicariously liable for the acts or omissions of their employees, unless they can demonstrate they have taken all reasonable steps to prevent the acts from occurring. A business may therefore be liable for damages awarded for harassment by one of its employees even though the employer is not directly involved in the harassing behaviour. The employer can seek to recover damages from the

harasser. Workplace harassment may also constitute discrimination under the *Human Rights and Equal Opportunity Commission Act 1986*.

The following websites are available to offer information on your rights and responsibilities as an employer on this somewhat delicate topic.

[www.apsc.gov.au](http://www.apsc.gov.au)

[www.lawlink.nsw.gov.au](http://www.lawlink.nsw.gov.au)

[www.workplaceinfo.com.au](http://www.workplaceinfo.com.au)

[www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au)

Tamworth Regional Development Corporation  
File: FS 6.4\_Workplace Harassment  
Version: 1:00

### **Disclaimer**

This publication has been prepared by Tamworth Regional Development Corporation to provide general guidance and direction on aspects of human resources. The information contained herein is provided voluntarily as a service to our clients and is made available in good faith and is derived from sources believed to be reliable and accurate at the time of publishing. However, the information is provided solely on the basis that readers will be responsible for making their own assessment and that they should verify all relevant representations, statements and information. Neither the Corporation nor its officers take any responsibility for statements or representations, nor shall the Corporation or any of its officers be liable in respect of any such statement or representation, whether by reason of negligence, lack of care, or for any other reason whatsoever.