

NEWS&VIEWS NOVEMBER 2023

Sexual Harassment – Record Payout of \$268K

By now, you're probably aware that the laws on sexual harassment in Australia have been significantly tightened.

Legislative amendments

Amendments to the *Sex Discrimination Act 1984* (Cth) impose new obligations and prohibitions that place a **positive duty** on employers and persons conducting a business or undertaking (PCBU) to take **reasonable steps** to eliminate:

- **sexual harassment**
- **sex-based discrimination**
- **hostile workplaces**
- **acts of victimisation at work.**

The amendments also address enforcement with expanded powers granted to two key bodies:

1. The **Australian Human Rights Commission** can now assess and enforce this positive duty. It can also investigate systemic unlawful discrimination.
2. The **Fair Work Commission** can issue *stop sexual harassment orders* and deal with sexual harassment disputes.

These laws have been designed for a common purpose: to prevent harm in the workplace and ensure all workers are protected from this kind of behaviour.

Introducing this positive duty means that employers can no longer turn a blind eye to sexual harassment. They must take active steps to eliminate it. Failing to do so may result in **significant fines or awards of damages** against the employer or PCBU.

Recent sexual harassment case

In the decision, *Taylor v August and Pemberton Pty Ltd* [2023] FCA 1313, Justice Katzmann of the Federal Court recently handed down a decision on the new sexual harassment laws, ordering **record damages of \$268,000** against an employer. She found that the employer had:

1. Badgered his employee with unwanted advances, and
2. Engaged in victimisation after the employee complained to the Human Rights Commission in 2020.

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For several years, the employer had expressed romantic feelings to the employee and made repeated advances, despite the employee telling him she was not interested. The employer's conduct included comments about her appearance, inappropriate text messages and lavish gifts. He was also found to have slapped her on the buttocks.

The judgment amount included:

- **\$140,000 in damages for hurt feelings**
- **past and future lost wages**
- **aggravated damages**
- **out-of-pocket expenses**
- **\$40,000 for suffering victimisation at work.**

The employer was also ordered to pay the employee's legal costs.

The award of \$140,000 for hurt feelings is a clear message that **the courts are willing to impose significant penalties** against employers or PCBU's who allow or perpetrate behaviour of this kind.

What's next?

If you're an employer or PCBU, it's time to stand up and take this seriously. Previously, these types of claims may have been "settled" for a few thousand dollars, but those days are long gone.

It is critically important to conduct risk assessments to:

- **Identify risks.**
- **Decide how to manage risks.**
- **Implement control measures to manage the risks.**
- **Check that adequate policies and procedures are in place.**
- **Implement sexual harassment awareness and complaints procedure training for all employees (including the boss).**

The training must be regular; doing it once is not enough.

Employees who engage in sexually harassing behaviour are a **liability for your business**. If it cannot be corrected with training, you need to consider whether they should continue to be employed.

Be vigilant. You must regularly review your organisation's systems for training needs and risk assessment. Implement changes as necessary.

If you are in doubt or need any help with managing the risk, training or implementing changes, contact us for advice.

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