

# BUSINESS COMPLIANCE UNDER UPDATED SEXUAL DISCRIMINATION LAWS

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Right at the end of 2022 there were a flurry of bills presented to Parliament that would have large scale impacts on employment practices. One of the focusses of these would be the prohibition on sexual harassment within the workplace. To prevent this the Federal Government signed into law the following:

- The Respect at Work Act 2022 (Anti-discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022)
- The Secure Jobs, Better Pay Act 2022 (Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022)
- The Gender Equality Act (Workplace Gender equality Amendment (Closing the Gender Pay Gap) Act 2023 (Cth))

These changes expand the previous protections around sexual harassment in the workplace which are provided by Discrimination, Human Rights and Work, Health and Safety laws.



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## “Sexual harassment in the workplace is prohibited and a breach of this prohibition can result in claims and civil penalties.”

The amendments will help to protect workers (e.g. employees, contractors, subcontractors, apprentices, students, volunteers etc.), prospective workers, third parties (e.g. clients and customers) and persons conducting or undertaking a business from sexual harassment.

Under the Act, sexual harassment in the workplace is prohibited and a breach of this prohibition can result in claims and civil penalties with employers being given a grace period until 13 December 2023 to ensure they are compliant.

Effective from 6 March 2023, The Fair Work Commission (FWC) can issue a Stop Sexual Harassment order if it is satisfied the aggrieved person has been sexually harassed and there is a risk that the aggrieved person will continue to be sexually harassed. The FWC may make any order it considers appropriate (other than an order requiring payment of a pecuniary amount) to prevent the aggrieved person from being sexually harassed.

The new legislation will also address discrimination based on breast feeding, gender identity and intersex status extending the previous protections under the Fair Work Act 2009 (Cth).

The Respect at Work Act 2022 puts a Positive Duty on employers to ensure their workplace is free from sexual harassment, including prohibiting:

- Sexual harassment in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility of offence harassment or intimidation,
- Sexual discrimination,
- Sex-based harassment, meaning unwelcome conduct of a demeaning nature because of a persons sex, or characteristics that generally apply to a particular sex in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility of offence harassment or intimidation; and
- A hostile work environment on the ground of sex.

Not all of the above require a specific complainant or for the offence to be directed at someone. For example a hostile work environment can occur when a reasonable person, having regard to all the circumstances, would have anticipated the possibility of the conduct resulting in a workplace environment being offensive, intimidating or humiliating because of a persons sex or characteristics related to a persons sex, comments such a “man flu” could fall into this category.

After 13 December 2023 employers can be investigated at random and without a complaint. As such, it is not enough to “know” that your workplace does not engage in unlawful actions and assume that this will mean no complaint will be made and so no investigation could occur.

## What do employers need to do?

Identify the hazards and risks that can lead to sexual harassment and put control measures in place which can include:

- Develop knowledge and leadership on the risks of sexual harassment and ensure those in senior positions fully understand their duty under the law.
- Develop a plan on how to manage sexual harassment in the workplace.
- Develop and implement policies and procedures around preventing and responding to Sexual Harassment.
- Create a positive and respectful workplace culture.
- Provide information, instruction, training and support about the importance of preventing and addressing sexual harassment in the workplace.
- Conduct a risk assessment on this risk of sexual harassment, ensuring to focus on all potentials including customers and contractors entering the business.
- Address unwanted or offensive behaviour early.
- Encourage reporting of sexual harassment and having effective complaints procedures.
- Respond to reports of sexual harassment.

If you would like some assistance in preventing sexual harassment in your workplace, please contact ProcessWorx. They can assist on a consultancy basis, or you can purchase a package which gives you everything you need to prevent and respond to sexual harassment at work and maintain compliance with legislation.

### How ProcessWorx can help your business:

With over 10 years of experience working with small businesses, ProcessWorx knows the importance of understanding and protecting your business from ongoing changes to the Industrial Relations landscape, while ensuring you remain compliant.

If you need assistance implementing any changes in your business or would like a review of your current workforce planning and contracts, please contact ProcessWorx and they can assist you with your IR compliance.

If you would like more information about Industrial Relations for your business, please contact ProcessWorx on **(08) 9316 9896** or email **[enquiries@processworx.com.au](mailto:enquiries@processworx.com.au)**

