Workplace Harassment and Sexual Harassment

Policy Number: E5 (QH-POL-228)
Publication date: May 2014

Purpose: To outline the responsibility all employees have in ensuring the workplace is free from workplace harassment and sexual harassment.

Application: This policy applies to all employees working in and for the Department of Health.

Delegation: The ‘delegate’ is as listed in the Department of Health Human Resource (HR) Delegations Manual, as amended from time to time.

Legislative or other authority:
- Anti-Discrimination Act 1991
- Sex Discrimination Act 1984 (Cth)
- Work Health and Safety Act 2011
- Guide for Preventing and Responding to Workplace Bullying
- Dealing with Workplace Bullying – A Worker’s Guide

Related policy or documents:
- Workplace Equity and Harassment Officers HR Policy E8 (QH-POL-265)
- Requirements for reporting official misconduct HR Policy E9 (QH-POL-218)
- Code of Conduct for the Queensland Public Service

Policy subject:

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2 Workplace Harassment
3 Sexual harassment
4 Examples:
5 Definitions:
6 History:

SCHEDULE ONE Requirements to ensure the workplace is free from harassment

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1 Policy Statement

The Department of Health is committed to providing a workplace free from workplace harassment and sexual harassment (‘harassment’).

Harassment will not be accepted in any work related context which includes, but is not limited to, conferences, work functions, training events, business trips, work related social events (inside and outside work hours) and interactions with patients and clients.

All employees are responsible for ensuring the workplace is free from harassment (requirements are outlined in Schedule One of this policy), and must not engage in any behaviour that could amount to harassment.

An employee who has engaged in harassment may be held individually liable for their actions or subject to private legal action. Further, the Department of Health may be held vicariously liable.

Managers have an obligation to take appropriate action should a person raise concerns about harassment. If an employee asks that no action be taken, a manager will need to consider the nature and seriousness of the alleged conduct in determining whether action is taken.

Acts of unlawful discrimination are not covered under this policy - refer to Anti-Discrimination HR Policy E2.

2 Workplace Harassment

The Department of Health defines workplace harassment as repeated and unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety.

Workplace harassment does not include single incidents of unreasonable behaviour, reasonable management action taken in a reasonable way, or discrimination and sexual harassment.

Action will be taken against employees found to have engaged in behaviour that amounts to workplace harassment. This may include disciplinary action up to and including termination of employment. Action will also be taken against any employee who victimises or retaliates against a person who has complained about, or provided information in relation to, alleged workplace harassment.

Workplace harassment may constitute suspected official misconduct and may need to be reported in accordance with Requirements for Reporting Official Misconduct HR Policy E9.

Complaints of workplace harassment should be made in accordance with Employee Complaints HR Policy E12.

Allegations of workplace harassment are very serious and carry severe penalties as outlined above. Vexatious complaints will be subject to management and/or disciplinary action under the code of conduct.

3 Sexual harassment

The Department of Health defines sexual harassment as conduct that occurs when an employee:

a) subjects another person to an unsolicited act of physical intimacy, or
b) makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person, or
c) makes a remark with sexual connotations relating to the other person, or
Sexual harassment is unlawful under the *Anti-Discrimination Act 1991* and action will be taken against employees found to have engaged in behaviour that amounts to sexual harassment. This may include disciplinary action up to and including termination of employment. Action will also be taken against any employee who victimises or retaliates against a person who has complained about, or provided information in relation to, alleged sexual harassment.

Sexual harassment may constitute suspected official misconduct and may need to be reported in accordance with Requirements for Reporting Official Misconduct HR Policy E9.

Allegations of sexual harassment are very serious and carry severe penalties as outlined above. Vexatious complaints will be subject management and/or disciplinary action under the code of conduct.

**Examples:**

<table>
<thead>
<tr>
<th>Workplace harassment</th>
<th>Examples of behaviour, whether intentional or unintentional, that may be considered to be workplace harassment if they are repeated, unreasonable and create a risk to health and safety can include, but are not limited to:</th>
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<tbody>
<tr>
<td></td>
<td>• inappropriate labelling</td>
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<td></td>
<td>• threats</td>
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<td>• intimidation</td>
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<td>• belittling the opinions of another person</td>
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<td>• spreading lies and rumours</td>
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<td>• making a person feel isolated, alienated or excluded</td>
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<td>• unwarranted criticism of work performance</td>
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<td>• creating and/or imposing unrealistic deadlines or pressure</td>
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<td>• undermining work performance or inappropriately withholding information</td>
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<td>• giving an untrue referee report.</td>
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<thead>
<tr>
<th>Sexual harassment</th>
<th>For the purposes of this policy, complaints that meet the definition of sexual harassment in the <em>Sex Discrimination Act 1984 (Cth)</em> will also be considered sexual harassment. The <em>Sex Discrimination Act 1984 (Cth)</em> states a person sexually harasses another person (the person harassed) if:</th>
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<tr>
<td></td>
<td>a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed, or</td>
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<td></td>
<td>b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed, in circumstances where a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.</td>
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</tbody>
</table>
Examples of sexual harassment can include, but are not limited to:
- unwelcome physical touching
- sexual or suggestive comments, jokes or innuendo
- unwelcome requests for sex
- intrusive questions about a person’s private life
- comments about a person’s appearance or physical attributes
- the display of material such as posters or pictures of a sexual nature
- unwanted invitations of a sexual nature
- staring or leering
- sex based insults or taunts
- communications, including telephone calls, letters, faxes, email, text messages and social media broadcasts of a sexual nature.

**Definitions:**

<table>
<thead>
<tr>
<th><strong>Employee</strong></th>
<th>Includes permanent, temporary and casual employees, Visiting Medical Officers and other partners, contractors, consultants, students, volunteers and others who exercise power or control resources for or on behalf of the Department of Health.</th>
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<tbody>
<tr>
<td><strong>Disciplinary action</strong></td>
<td>For the purposes of this policy disciplinary action is action pursuant to s187 and s188 of the Public Service Act 2008. Where a person is not subject to the disciplinary provisions of the Public Service Act 2008 (e.g. a contractor) other appropriate action may be taken which may lead to termination of the relationship with the Department of Health.</td>
</tr>
</tbody>
</table>
| **Reasonable management action** | The following examples of management action do not constitute workplace harassment, provided such action is reasonable and taken in a reasonable way:
- performance management processes
- action taken to transfer or dismiss an employee
- a decision not to provide a promotion in connection with the employee's employment
- disciplinary action
- allocated work in compliance with systems and policies
- injury and illness processes
- business processes such as workplace change or restructuring. |
Repeated behaviour

“Repeated” (for the purpose of defining workplace harassment) refers to the persistent nature of the behaviour and can involve a range of behaviours over time.

A single incident of unreasonable behaviour is not considered to be workplace harassment, however may constitute a breach of the Code of Conduct for the Queensland Public Service.

Unreasonable behaviour

“Unreasonable” (for the purpose of defining workplace harassment) refers to behaviour that a reasonable person, having considered the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

Vexatious complaints

Where an employee knowingly makes a false complaint.

History:

<table>
<thead>
<tr>
<th>Date</th>
<th>Events</th>
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<tbody>
<tr>
<td>May 2014</td>
<td>- Policy amended to:</td>
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<td></td>
<td>- update reference to Code of Practice</td>
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<td></td>
<td>- update definition of workplace harassment (including definitions of ‘unreasonable behaviour’ and ‘repeated behaviour’) to align to definition in Guide for Preventing and Responding to Workplace Bullying</td>
</tr>
<tr>
<td>January 2014</td>
<td>- Policy formatted as part of the HR Policy Simplification project.</td>
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<tr>
<td></td>
<td>- Policy amended to:</td>
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<td></td>
<td>- update title from ‘Sexual Harassment’ to ‘Workplace Harassment and Sexual Harassment’</td>
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<tr>
<td></td>
<td>- incorporate provisions of Workplace Harassment HR Policy E13</td>
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<tr>
<td></td>
<td>- limit the application of the policy to Department of Health employees</td>
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<td></td>
<td>- remove ‘possible causes of workplace harassment’ and ‘possible consequences of workplace harassment’ sections</td>
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<tr>
<td></td>
<td>- update definitions section</td>
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<td>- update references and naming conventions.</td>
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<tr>
<td>March 2010</td>
<td>- Protected IRM 3.1-2 reformatted as part of the HR policy consolidation project in accordance with EB7.</td>
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<tr>
<td>April 2008</td>
<td>- Developed as a result of HR Policy Framework consolidation (sexual harassment).</td>
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<tr>
<td>July 2008</td>
<td>- Amended to remove Queensland Health Guidelines for Managers and Supervisors – Preventing and Resolving Sexual Harassment, which are not available.</td>
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<tr>
<td>October 2007</td>
<td>• Amended IRM 3.1-2 Workplace Harassment – Standards Of Appropriate And Ethical Behaviour In The Workplace</td>
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<td>---------------------------------------------------------------------------------------------------</td>
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</table>
| Previous    | • Workplace Harassment HR Policy E13  
• IRM 3.1-2 Workplace Harassment – Standards of Appropriate and Ethical Behaviour in the Workplace  
• IRM 3.15-5 Sexual Harassment                                                                                                                                                      |
Workplace Harassment and Sexual Harassment – Schedule One
Requirements to ensure the workplace is free from harassment

The following information is provided as the minimum mandatory standard practice, procedure or process to enable satisfactory compliance with this Department of Health HR policy.

Local guidelines/procedures may be developed to facilitate implementation of this policy. Any local guidelines/procedures must be consistent with this policy and schedule and ensure employee entitlements continue to be met.

Employees are responsible for ensuring the workplace is free from workplace harassment and sexual harassment (‘harassment’). The minimum requirements are outlined as follows:

1 Executives

Executives in the Department of Health are required to:

• model appropriate behaviour
• provide leadership on the implementation of awareness initiatives which promote a workplace free from harassment
• ensure compliance with legislative obligations
• ensure appropriate resources are available to support and implement awareness initiatives
• ensure that principles which promote a workplace free from harassment are integrated into everyday management practices.

2 Managers and supervisors

Managers and supervisors are required to:

• model appropriate behaviour
• monitor the workplace to ensure acceptable standards of conduct are observed
• take reasonable steps to promote this policy and educate employees about appropriate and acceptable workplace behaviour
• treat all allegations of harassment seriously and sensitively
• take appropriate action to address allegations of harassment.

3 All employees

All employees are required to:

• understand what is harassment
• not engage in behaviour which may amount to harassment
• not encourage other employees to engage in conduct which could amount to harassment
• report behaviour which could amount to harassment
• comply with the requirements of this policy.