

Employment & Safety Alert

Recent Discrimination Act Amendments

July 2011

The *Sex Discrimination Act 1984* (Cth) (**Act**) was amended on 20 June 2011 with the most substantial change relating to the expansion of the definition of sexual harassment.

To succeed, a claim for sexual harassment now only requires that a reasonable person would anticipate '**the possibility**' of the person harassed being offended, humiliated or intimidated because of the conduct.

The reasonable person's assessment now also takes into account a number of subjective factors, including characteristics of the affected person.

This amendment means that a broader range of behaviour will be classified as unlawful sexual harassment - in fact, any unwelcome conduct of a sexual nature is now likely to be sexual harassment.

Other Changes

Some of the other changes to the Act include:

- Changing the basis of the Act so that it now clearly protects men as well as women from sex discrimination.
- Extending the protection of workers against discrimination on the ground of family responsibility to '**all areas of their work**', not just in relation to dismissals.
- Including specific protection against discrimination on the ground of breastfeeding.
- Expanding sexual harassment law so that it is clear that employees who work offsite, or at the workplace of another employer, can be held accountable for their behaviour at that other workplace.
- Prohibiting sexual harassment by people who are seeking or receiving goods, services or facilities from another person. This is likely to have the most impact on the retail, hospitality and other service industries.

These are significant changes which expand the protections offered to employees. They also expand liability to people other than employers.

Recommendations

In order to minimise the risk of successful claims, employers must ensure that their policies are updated, and that their procedures and training work in practice to prevent unlawful discrimination from occurring.

In particular, employers should:

- Ensure that decisions made in any way because of an employee's family responsibilities do not breach the Act or any other anti-discrimination legislation.
- Ensure that breastfeeding employees, and in some cases customers, clients or visitors, are appropriately accommodated in the workplace.

- Amend policies dealing with sexual harassment to reflect the Act's new definition.
- Train staff about sexual harassment in the workplace, including the way the new provisions work. Include staff who work off-site or at other workplaces in this training.
- Introduce mandatory procedures to report instances of sexual harassment by customers or clients in the workplace.
- Promptly respond to concerns raised by staff in relation to complaints of sexual harassment, whether by co-workers, employees from other organisations or customers.

Thomsons Lawyers' Employment and Safety Team can assist you to implement appropriate policies, procedures and training to deal with these amendments.

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