

Sexual Harassment

The Anti Discrimination Act 1991 prohibits sexual harassment in the workplace.

At McNamara and Associates we have a REAL approach to sexual harassment claims.

As a firm that has been around more than 80 years we are:-

1. **Reliable**

As a local law firm with families and connections to the Ipswich region, we place a high value on offering high quality legal help to our clients, our reputation depends upon it!

2. **Experienced**

When it comes to effectively and efficiently resolving your legal problem, experience matters! With over 80 years of experience working with the people of the Ipswich and Lockyer Valley regions of Queensland, we get you!

3. **Approachable**

We've been around long enough to know that for many people legal problems are both difficult and stressful. What we bring to the table is not only experienced and dedicated legal help, but an approach that our clients often remark as "refreshing." In our firm, being "**approachable**" is a core value that we always aspire to live up to.

4. **Local**

We've been helping the people of Ipswich and Lockyer Valley regions for over 80 years. Today we are one of the largest law firms in the local area with a deep-seated commitment to giving back.

McNamara and Associates understand that the financial strains that could result from these types of complains can place pressure on relationships.

If your relationship has deteriorated because of sexual harassment, you should seek advice from one of McNamara and Associates family lawyers.

Can you make a claim

Sexual harassment is defined by the Anti-Discrimination Act 1991 as:-

- a.** Subjection to an unwelcome act of physical intimacy; or
- b.** Subjection to an unwanted demand or request (whether that request is direct or implied) for sexual favours from the other person; or
- c.** Subjection to a sexual comment with sexual suggestion; or
- d.** Engagement in any other unwelcome sexual conduct of a sexual nature in relation to the other person;

and the person engaging in the conduct described above does so:-

- a.** with the intention of offending, humiliating or intimidating the other person; or
- b.** in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

Sexual harassment, whether it be from a co-worker, a manager, or supervisor is not acceptable in any situation.

In some instances sexual harassment can be easily identifiable, such as, a physical assault that is witnessed by others, however there are some instances where it is sometimes difficult to prove that sexual harassment has occurred or that you, as the employee, were not a willing participant to the conduct. The Courts have accepted that there are usually three ways in which a person will respond to sexual harassment:-

- a.** Ideally, the victim would make it abundantly clear to the perpetrator that the comments are unwanted. Then if they continue, he or she would complain to management. This ideal approach is not always practical and may not be available if the employer is likely to be unsupportive, or to require proof: some employers regard the making of unsubstantiated allegations as a disciplinary matter;

Can you make a claim (cont)

- b. Other employees faced with this problem might try to ignore the harassment and hope that it ceases;
- c. A further way to deal with it would be to go along with the harassment to some extent and that way try to stop it getting out of hand.

If any of these events have happened to you, you may be able to make a sexual harassment claim.

Is your complaint kept private

In most instances, there is no policy that an accusation of sexual harassment remain confidential as the nature of these complaints will require investigation by the employer, and discussion with witnesses. This creates a problem for those who may wish to keep their complaint confidential.

If a complaint is filed with the Anti Discrimination Commission of Queensland, then the accused is given an opportunity to respond to the Complaint, but any conciliation conference is held in private.

If the matter cannot be resolved, the final stage is a Hearing in the Queensland Civil Administrative Tribunal. Unfortunately the nature of these Hearings are usually public.

If you did not want to go through a Hearing, the McNamara and Associates could assist you and obtaining the best resolution at a private conciliation conference.

What injuries can you claim for

In most cases the harassment will cause insult and offence.

In more serious cases, the harassment can result of a psychiatric injury, however in the most severe cases there can be an assault that causes physical injury.

How do you claim

An individual who has been sexually harassed may want to deal with the situation themselves and tell the person or people involved that they object to what they are doing and ask them to stop.

However this option may not be appropriate or the individual may not feel able to deal directly with the harasser.

How do you claim (cont)

If the incident happened at work, you should seek assistance and further options from their manager, union representative, human resource personnel or equity contact officer.

If the incident happened at a school or educational institution, you should seek assistance from a teacher, guidance officer or other welfare staff.

If these options are not appropriate for you, then you can lodge a complaint with the Anti Discrimination Commission of Queensland.

The complaint form can be obtained from the Anti Discrimination Commission of Queensland, or otherwise McNamara and Associates have extensive experience in preparing these complaints.

How you fill out the form can significantly affect both the amount of compensation you receive and the way the Commission, and Respondent treats you.

If you are successful in proving sexual harassment then you may be compensated for:-

- 1.** Non-economic loss – for the insult and hurt of the actions, but also included is compensation for any diagnosable injury you may have suffered such as anxiety or depression; and
- 2.** Economic loss – for any lost earnings you have suffered because of the harassment which can include any past loss but also future loss.

What happens after you lodge a claim

Once the complaint has been lodged the Anti Discrimination Commission will contact your previous employer and the person who harassed you to discuss the matters complained of and to see if they would be willing to resolve the matter informally.

If the matter cannot be informally resolved than the Anti Discrimination Commission will arrange a Conciliation Conference for the parties to meet either face to face, or by way of telephone.

The purpose of the Conciliation Conference is to enable the parties to discuss the complaint and explore options for settlement of the dispute.

If the complaint cannot be resolved then you may elect to commence proceedings through the Queensland Civil Administrative Tribunal.

How long will your claim take

The following is a basic timeline of the likely progress of your complaint with the Anti Discrimination Commission of Queensland. This is a guide only.

STEP	TIME
Lodge complaint of sexual harassment with the Anti Discrimination Commission of Queensland	Within 12 months of the sexual harassment
Written complaint received, acknowledged and assessed by the Anti Discrimination Commission of Queensland	Within 28 days of receiving the complaint
If the complaint is accepted. Parties notified and respondent given opportunity to provide written response or request early conference. Date set for compulsory conference	No more than 6 weeks after notification
If the complaint does not resolve at compulsory conference - Complainant has option to refer complaint to the Queensland Industrial Relations Commission (work-related), and the Queensland Civil and Administrative Tribunal (non-work related).	28 days after compulsory conference

If the complaint is rejected by the Anti Discrimination Commission of Queensland you should seek urgent legal advice.

What are the time limits

You only have 12 months from the date of harassment to lodge a complaint with the Anti-Discrimination Commission otherwise you will forever lose your right to make a complaint of the harassment, unless special circumstances apply.

It is important that you make your complaint as early as possible.

What else should you know

It is sometimes not clear if your employer is at all responsible for the sexual harassment (if the harassment was from another employee).

Sometimes your employer could be responsible for the sexual harassment by one of their employees. This is known as vicarious liability.

An employer would not normally be held vicariously liable if they can prove that they took reasonable steps to prevent the harassment. That used to be simply proving that at some stage employees were told that harassment is bad and they were not to do it. The test has now developed into something a bit more complicated.

It is now accepted that a diligent employer will:-

1. Implement a sexual harassment policy – this policy should have clear and significant consequences for perpetrators of sexual harassment at work;
2. Regularly train staff about sexual harassment and the policy;
3. Take complaints seriously and manage investigations well;
4. Avoid any actions that may be perceived as victimising a complainant. These could include standing down or dismissing a complainant, or demoting or transferring a complainant to another work site;
5. Treat the safety of workers from harassment as a primary and over-riding duty;
6. Educate managers about sexual harassment.

Failure to take these actions could result in the employer being held responsible for their employee's actions.

It is also critical that you consider if the harassment occurred at work, you could also be entitled to make a workers compensation claim.

In this case you may have other rights which may be lost if you do not take steps within extremely short time limits.

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