



**Ask
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Sexual Harassment in the Workplace

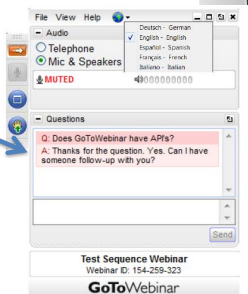
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Women's Legal Service NSW


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Welcome

- Use your control panel to ask questions by typing in the question box.
- Participate and enjoy!



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Disclaimer

All care has been taken in the presentation of information in this workshop.

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What we will cover today

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The focus of today's Webinar is how to assist women who are being sexually harassed in the workplace.




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Remember!

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It is important to remember that there are other grounds of unlawful discrimination. For example, in many areas it is unlawful to discriminate on the basis of:

- sex;
- pregnancy;
- carer's /family responsibilities;
- race
- disability;
- homosexuality;
- marital status;
- age; and/or
- transgender status.


These topics are outside the scope of our webinar today but if you need further advice or assistance please contact your local community legal centre.

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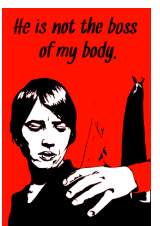
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Sexual Harassment

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Sexual harassment in the workplace is against the law in NSW!




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Legislation

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Protection against sexual harassment can be found in:


- Sex Discrimination Act 1984 (Cth); and*
- Anti-Discrimination Act 1977 (NSW)*

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Sexual Harassment

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Sexual harassment is unwelcome sexual conduct which a reasonable person would anticipate that this behavior might make the person feel humiliated, offended, or intimidated.

It includes things like:


- staring and leering;
- sexual comments and jokes;
- inappropriate questions about your private life or your body;
- sexual or physical contact such as slapping, kissing, touching, hugging and massaging;
- circulating or displaying emails, texts, posters, magazines and screen savers of a sexual nature.

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What circumstances can be taken into account?

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The circumstances that can be taken into account include:

- the sex;
- age;
- sexual orientation;
- gender identity;
- intersex status;
- marital or relationship status;
- religious belief;
- Race, national or ethnic origin of the person harassed;
- the relationship between the person harassed and the person who made the advance or request or who engaged in the conduct; any disability of the person harassed; and
- any other relevant circumstance.


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When is it against the law? 

It is against the law for a person to sexually harass an:

- employee of the person; commission agent or contract worker;
- Prospective employee; commission agent or contract worker;
- Colleague, partner, fellow commission agent or contract worker;
- Any other workplace participant.


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Employer obligations 

An employer has an obligation to take all reasonable steps to prevent sexual harassment occurring in the workplace.

Things that they could do to prevent sexual harassment include:

- clear sexual harassment policy;
- clear complaint process; and
- training for staff and management.


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Is Sexual Harassment a criminal offence? 

Some forms of sexual harassment may also be a criminal offence for example:


- Unlawful sexual intercourse (sex without consent);
- Indecent assault;
- Physical assault; and
- Indecent exposure

These type of offences can be reported to the NSW Police immediately.

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Question 1

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Could questions about a person's sexual activity be sexual harassment?


a) Yes
b) No

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Question 2

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Could repeated sexual invitations be sexual harassment?


a) Yes
b) No

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Question 3

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Could repeatedly flicking someone with a rubber band be sexual harassment?

a) Yes
b) No

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Scenario 1



Emma works for a large accounting firm. They have their Christmas party in early December on a large yacht owned by the CEO. Emma and her work colleagues have been looking forward to the party all year as their boss is very generous and they know there will be lots of free drinks and food. Emma attends with some of her work friends. She doesn't drink much herself but her work friends make the best of it and have plenty to drink. The work party ends at about 1am. Afterwards they all head to a local bar to keep dancing the night away. At about 2am Emma gets a taxi home. Her work colleague Michael lives near her so he jumps in the cab as well. Emma thinks this is a good idea as Michael had a lot to drink on the yacht and at the bar was starting to say and do some offensive things. Emma didn't want him getting into trouble at the bar. While in the cab Michael kisses Emma and puts his hand up her dress. Emma pushes him away and says "STOP!". Michael continues to kiss Emma and Emma has to push him away again. She gets out of the cab crying and walks home.



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Question 4



Can Emma's employer be held liable for Michael's conduct?

- a) Yes
- b) No



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Employer liability for sexual harassment that occurs outside of the office




- Sexual harassment is unlawful if it occurs in the workplace.
- The definition of "workplace" can be quite broad and includes a place where a person carries out functions connected to work
- There needs to be a nexus or sufficient connection to the place and the persons employment and this will depend on the situation.



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Scenario 2

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You are a manager at a youth service. Mary, a youth worker employed by your service is responsible for running an outreach service in partnership with another agency. Tom is employed by that partner agency to run the outreach with Mary.

Mary sends you an email. The email reads:

Dear Sarah,

I need to tell you about something that has happened to me. For the last few months Tom has been emailing me on my personal email address. Sometimes he sends me photos of himself and sometimes he asks me if I would like to go for a drink with him after outreach. I've just ignored it. But, 2 weeks ago, during a break, he came up behind me and touched my bottom. I told him to get his hands off me. He just laughed at me. Then last week, he came up behind me as we were locking up after outreach and he reached around and touched me on the breasts. Again I told him to stop it and he just laughed at me.


I'm telling you because I want it to stop and no matter what I've done so far, Tom doesn't seem to take it seriously. I don't know what else to do. I need you to talk to Tom for me otherwise I'm not going to go back to outreach next week.

Mary

What will you do in response to this email?
 What action could Mary take in relation to these incidents?
 Assume now that Tom is employed in your agency as a youth worker and you receive the above email from Mary. What would you do differently?

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How do I make a complaint?


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If someone is experiencing discrimination or sexual harassment in the workplace they may be able to make a complaint to the:

- Australian Human Rights Commission (AHRC) (**6 month time limit**); or
- NSW Anti-Discrimination Board (ADB) (**12 month time limit**)

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How do I make a complaint?

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In some circumstances the conduct may constitute a criminal offence and should be reported to the police. For example, conduct that involves a physical/ sexual assault is a crime.


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Other options


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If an employee has been discriminated against in the workplace or treated adversely as a consequence of making a complaint or exercising their workplace rights, then they may alternatively be able to make a:


- General Protections complaint to the Fair Work Commission; or
- Unfair Dismissal complaint to the Fair Work Commission (where complainant is terminated).

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Other options

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If someone feels that they are not safe at work then they also may be able to make a complaint to **WorkCover** 13 10 50.

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HELP!!!

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WORKING WOMEN'S LEGAL SERVICE

(02) 8745 6954

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Other referrals

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Australian Human Rights Commission – 1300 656 419

Anti-Discrimination Board NSW – 9268 5544

Fair Work Ombudsman – 13 13 94

Fair Work Commission – 1300 799 675



WorkCover – 13 10 50

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Any Questions?


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