

Good practice, good business



Australian
Human Rights
Commission

everyone, everywhere, everyday

Eliminating discrimination and harassment from your workplace

ANTI-DISCRIMINATION POLICIES AND COMPLAINT HANDLING FOR SMALL BUSINESS

Policies

There is increased potential in small businesses for issues of discrimination and harassment to occur due to the sometimes complicated nature of the relationship between employers and their employees.

It is recommended that small businesses, particularly those nearing 20 employees, have a written policy on discrimination and harassment, particularly sexual harassment. Generic model harassment policies on this page for large organisations can be adapted by small business to suit their particular needs. You can also contact employer organisations, small business associations and industry associations for assistance.

Small businesses in a particular industry sector may wish to consider developing a joint policy for implementation throughout the industry. Interested businesses should approach the relevant industry association for assistance in co-ordinating the process.

Complaints

Employers in small business should nominate themselves or a responsible senior employee as a discrimination or harassment complaints officer. This person should be provided with any training or resources offered by employer organisations, small business associations, industry associations, the Australian Human Rights Commission (the Commission) or state/territory anti-discrimination agencies. The general principles that apply to informal and formal complaint procedures should be observed.

Assistance with harassment issues

If assistance is required to deal with a complaint, advice should be obtained from employer organisations, small business associations, industry associations, the Commission or state/territory anti-discrimination agencies.

The employer should distribute brochures and display posters on discrimination and harassment. These can be obtained from the Commission, state/territory anti-discrimination agencies and employer organisations.

Case example: small business

A woman made a sexual harassment complaint against a male co-worker in a small cleaning business. She told her employer about the harassment but it continued.

Since her employer had actual knowledge of the harassment, it was not necessary for the court to determine whether all reasonable steps had been taken. However, Justice Wilcox made important comments indicating what a small business must do to establish that it took all reasonable steps to prevent harassment. He said:

[i]t may be more difficult for a small employer, with few employees, to put into place a satisfactory sexual harassment regime than for a large employer with skilled human resources personnel and formal training procedures. But the Act does not distinguish between large and small employers, and the decided cases show that many sexual harassment claims concern small businesses, often with only a handful of employees. A damages award against such an employer may have devastating financial consequences; so there is every reason for such an employer to be careful to prevent claims arising.

Justice Wilcox said that there was a “simple procedure” that would go “a long way” towards allowing a small business employer to argue that all reasonable steps had been taken to prevent sexual harassment. This was:

...to prepare a brief document pointing out the nature of sexual harassment, the sanctions that attach to it and the course that ought to be followed by any employee who feels sexually harassed. ...[S]uch a document could be provided to each employee on recruitment, as a matter of routine and before there was, or could be, any suggestion that the employee had done anything wrong or was the victim of inappropriate conduct.

Gilroy v Angelov (2001) 181 ALR 57

