



EEO, DISCRIMINATION AND HARASSMENT

What is Equal Employment Opportunity (EEO)?

EEO means that employees are treated fairly and equitably.

It means that employees are judged on their ability to do the job based on merit (skills, qualifications and experience) rather than different characteristics such as their sex, race, marital status etc.

It also means promoting a working environment that is free from sexism, racism and other forms of discrimination. This applies to customers, fellow employees and independent contractors.

What is Discrimination?

Discrimination is essentially any distinction, exclusion or preference between individuals or groups, based upon unlawful grounds, that has the effect of detrimentally affects equality of opportunity or treatment in employment or occupation. Examples of the unlawful grounds include:

- Race
- Sex
- Physical / mental ability
- Family responsibilities
- Pregnancy / possible pregnancy
- National extraction or social origin
- Industrial activity
- Lawful sexual activity or sexual orientation
- Gender identity
- Colour
- Age
- Marital status
- Religious beliefs or activities
- Political beliefs or activities
- Physical features
- Carer status
- Breastfeeding in Public
- Sexual orientation

Examples which may amount to discrimination if based on an unlawful ground include:

- rejection of job applications,
- termination from employment,
- lack of promotion or opportunity for training

Discrimination can be effected 'directly' or 'indirectly' as described below:

Direct discrimination refers to individual actions or behaviour which directly impact in a discriminatory manner

Indirect discrimination involves instances where groups disadvantaged by apparently neutral policies, practices or procedures that are unfair or unequal in their effect on that person or group because of one of the unlawful grounds (ie. their age). For example, a policy of 'last on, first off' may impact upon a group of people with the characteristic of being 'younger' who cannot have had the same length of service as an employee who is older.

What is Harassment?

Harassment consists of unwelcome, embarrassing, offensive, abusive, belittling or threatening behaviour directed at an individual or group because of some real or perceived attribute such as a person's ethnicity, sexuality, or disability - in circumstances in which a reasonable person, would have anticipated that the person harassed would be offended, humiliated or intimidated.

Harassment can occur on the basis of any of the grounds of discrimination.

Examples of harassment might include:

- practical jokes
- bullying
- a demand or inappropriate request for sexual/romantic favours
- crude jokes, derogatory comments, offensive messages or phone calls
- name calling, physical threats and offensive gestures
- campaigns of hate and silence
- leering, patting, pinching, touching
- displays of offensive posters, pictures or graffiti

If such behaviour makes an employee feel offended, humiliated or intimidated, then harassment and/or discrimination is occurring.

What is an Employer's liability regarding EEO, Discrimination and Harassment

Under Federal, State and Territory legislation employers are 'vicariously liable' for instances of discrimination and harassment in their workplace. **Vicarious liability** is the responsibility an employer has for the actions of their workers or agents towards others as they do their work.

If these actions are found to be unlawful under State or Federal Anti-Discrimination legislation both the person complained about *and the employer* may be held responsible.

However an employer can take measures to avoid vicarious liability.

How can an employer ensure they are not held to be held vicariously liable?

If an employer can show they did all that was 'reasonable' to prevent discrimination and harassment occurring in the workplace they will not be held vicariously liable for the actions of their employees.

Actions which amount to 'reasonable steps' are not listed in the legislation however they include:

- having an EEO, Discrimination and Harassment policy
- having a procedure to address complaints
- appointing a contact officer as a point of contact for employees
- providing training to staff, especially managers and supervisors who will be responsible for enforcement and monitoring;
- investigating complaints when made and being vigilant about preventing instances of discrimination and harassment in the workplace

How can IR Assist help you to meet these obligations?

IR Assist can provide the following:

- an EEO, Discrimination and Harassment policy
- a complaints procedure
- training in discrimination and harassment, investigations and addressing complaints
- conducting investigations and drafting investigation report
- representation in commissions regarding complaints



IndigoField
Industrial Relations

If you have any questions regarding this fact sheet or would like assistance regarding IR/HR/OHS contact IR Assist for more information:

p: 1300 393 519 | m: 0408826625 | e: info@irassist.com.au