



WOMEN'S HEALTH & WELLBEING

Barwon South West

Employers have a **legal obligation** to prevent staff experiencing sex discrimination.

What is sex discrimination? Sex discrimination is when someone is treated unfairly or unreasonably disadvantaged, because of their sex, or a characteristic commonly associated with people of their sex/gender. This includes discrimination against women, men, transgender and non-binary people.*

Attitudes that can lead to sex discrimination in a work context include:

- making assumptions about the sort of work that people are/are not capable of because of their sex or gender identity
- thinking that people are suited to different kinds of work because of their sex
- having a personal preference for working with people of a particular sex
- thinking that treating people exactly the same ensures fairness between people of different sexes.

Discrimination on the grounds of sex is one of the drivers of sexual harassment ([watch a 1min video](#)). Sexual harassment is an unacceptably common feature of Australian workplaces, with one in three workers experiencing workplace sexual harassment in the last five years ([National Survey, 2022](#)).

Employers' legal obligation to reduce the risk of sex discrimination in their workplace is referred to as a 'positive duty' (Sex Discrimination Act 1984, updated 2022). Employers' **positive duty** requires them to take 'reasonable and proportionate measures' to eliminate, as far as possible:

- discrimination on the ground of sex (or expressed gender*) in a work context
- sexual harassment in connection with work
- sex-based harassment in connection with work
- conduct that creates a workplace environment that is hostile on the ground of sex
- related acts of victimisation (see [AHRC, 2023](#) pp. 7-9).

What conduct creates a hostile workplace on the ground of sex?

Workplace environments may be hostile and intimidating to people of a particular sex, even if behaviour does not target a specific person. This is because *general actions* can contribute to a workplace culture that makes people feel degraded, humiliated or offended in ways that are associated with their sex. Hostile workplace cultures foster sexism and make it more difficult for workers to speak up and report unlawful conduct. Sexual harassment and sex-based harassment can thrive in hostile workplaces.

Behaviours that may create a hostile workplace include:

- conduct involving gendered stereotypes, e.g., making women responsible for office cleaning
- demeaning comments about physical appearance, or topics such as pregnancy, menstruation or menopause
- displaying or circulating obscene, sexist, pornographic or sexual photos, materials, posters or gifts
- making sexist, derogatory, suggestive or sexual comments, jokes or banter
- sexist, derogatory, suggestive or sexual emails, phone calls, text messages or online interactions – including the use of emojis with sexual connotations. See this [1 min video](#) by Our Watch for further clarification



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What drives these forms of unlawful conduct?

- Power imbalances
- Gender inequality
- Lack of accountability
- Intersecting forms of discrimination and exclusion

How can employers fulfil their positive duty to reduce the risk of sex discrimination?

Following these four principles will reduce the risk of discrimination based on sex or gender in your workplace:

1. **Consult** workers about what they need for a workplace to be (and feel) safe and respectful. Ask them what steps they'd like to see taken to eliminate unlawful conduct.
2. **Aim for gender equality.** All actions to implement the positive duty should contribute to achieving gender equality – where people of all genders have equal rights, rewards, opportunities and resources.
3. **Use an intersectional approach.** Understand that experiences of discrimination, harassment and victimisation are shaped and increased by overlapping structural inequalities. For example, LGBTIQ+ women are at greater risk of workplace sexual harassment than people who identify as straight or heterosexual.
4. **Person-centred and trauma-informed approaches** ensure that workplace systems, policies and practices affirm people's safety and dignity.

For further information on how to fulfil your positive duty, please read page 17 of this [guide](#).

NOTE: This legislation uses the term sex to include both **sex** and **gender**.

- Sex: biological category assigned at birth, determined by the presence of chromosomes.
- Gender: social expression, reflects how a person perceives and chooses to express themselves. Examples include man, woman, or non-binary person ([further reference](#)). Cisgender is when chromosomes and social expression match; transgender is when these do not match, e.g. biologically female presents as a man.

References

Australian Human Rights Commission (2023) A Quick Guide for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth), AHRC, Sydney. [5th National Survey, 2022](#)

Australian Institute of Company Directors (2023) A director's guide to preventing and responding to sexual harassment at work. Available: agec.org.au

Infographics summary of sexual harassment presented are available [here](#)

Information sheets and useful resources available at [Safe Work Australia](#)