

# How much is a sexual harassment claim actually worth?

Misa Han

A recent landmark Federal Court decision on sexual harassment dished out close to half a million dollars in damages, in one of the highest awards yet, but lawyers say there are still difficulties in winning cases.

The case is unlikely to open the floodgates to others, according to experts, because of the challenges associated with recovery and high legal fees.

In the decision handed down earlier this year, the court awarded \$476,163 to plaintiff Jemma Ewin, including \$110,000 in general damages, which set a new benchmark for sexual harassment payouts.

Ms Ewin was found to have been sexually harassed by her colleague Claudio Vergara four times, one of which involved drunken sex without consent after a work event.

Then an accountant, she had privately settled the case with her employer for \$250,000 and the court

deducted the amount from the final payout, but Ms Ewin is yet to recover the remaining \$200,000 and her legal cost from Mr Vergara.

It is understood she will be filing a fresh proceeding to intervene in Mr Vergara's family law matter to attempt to recover the payout and legal cost.

General damages refers to compensation for loss of quality of life, such as pain and suffering, loss or expectation of life or non-economic loss. Historically, general damages for sexual harassment remained somewhere between \$10,000 and \$40,000, keeping the total compensation relatively low.

K&L Gates partner Gerard Phillips said the record payout indicated that courts were starting to bring the damages payment into the 21st century.

"The damages in [sexual harassment] cases remained where they were in the 1970s. The damage awarded in this case is light years away from previous decisions," Mr Phillips said. "It's a pretty strong message coming from

## Luck of the draw

### Sexual harassment case payouts

Case	Payout
Vergara v Ewin	\$476,163
Richardson v Oracle	\$130,000
Alexander v Cappello	\$24,300 *
ABC v DEF Restaurant	\$10,000

\* Excluding damages payment for victimisation

SOURCE: FINANCIAL REVIEW

the Federal Court; damages are going to be much more severe."

He said the case was likely to drive up payouts for sexual harassment in informal settlements. Traditionally, employers forked out between \$20,000 and \$40,000 in general damages for sexual harassment claims, plus other costs such as loss of earnings.

But CBP Lawyers employment lawyer Melissa Demarco said the Ewin case did not necessarily mean higher payouts in future sexual harassment cases.

The case involved the most extreme scenario – sexual intercourse without consent – and about three-quarters of her payout was awarded for the loss of past and future earnings. This meant a lower payout was likely than what was awarded to Ms Ewin, who worked as a chartered accountant, she said.

Ms Demarco said the non-economic cost of bringing a sexual harassment claim could take a toll on the employees. "It's not only the financial cost, but also the emotional cost that is quite high and the effect on your reputation. When you look at a case like this, confidential settlement far outweighs principles," she said.

The record payout follows the damages payment in the Oracle case, handed down by a full bench of the Federal Court in July this year, where former project manager Rebecca Richardson was awarded \$130,000 after being sexually harassed by her co-worker Randol Tucker, \$100,000 of which was in general damages.

In the Oracle case, Ms Richardson stacked up more than \$200,000 in legal fees to Harmers Workplace Lawyers even before the case got to the hearing. Without the judgment, she would have been liable to pay Oracle's legal costs, which would have left her out of pocket given the modest \$18,000 payout in the first instance court decision.

Compensation is also unpredictable. In September, a kitchen hand who was sexually harassed was awarded just \$10,000 after more than a year of legal battles before the NSW Anti-Discrimination Board and the NSW Civil and Administrative Tribunal.

The number of sexual harassment cases remains relatively low. According to draft numbers obtained by *The Australian Financial Review*, only about 4 per cent of all claims filed with the Human Rights Commission make it to court. In 2012-13, the commission received about 470 complaints under the Sex Discrimination Act, including complaints for sexual harassment.