



LEGAL EXPERT

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SEXUAL HARASSMENT IN THE DIGITAL AGE

According to the Australian Human Rights Commission (AHRC), one in five women experience sexual harassment in Australian workplaces. Sexual harassment is defined in the *Sex Discrimination Act* as a form of discrimination which consists of, "any unwelcome or unwanted sexual behaviour which makes a person feel offended, humiliated and/or intimidated where that reaction is reasonable in the circumstance."

Unwelcome behaviour may occur electronically through email, mobiles and social media. The accessibility of email and social media sites through portable devices makes communication instantaneous and can blur the distinction between personal communications and workplace conduct, exposing employers to potential claims of sexual harassment.

In October 2012 the AHRC report *Working without fear: Results of the Sexual Harassment National Telephone Survey 2012* pointed to an increasing incidence of sexual harassment in the workplace, despite greater public awareness about the issue. Women under 40 are reportedly most likely to be sexually harassed by a male co-worker. Men harassing women accounted for 56 per cent of reported sexual harassment, while male harassment of men accounted for 23 per cent. The most common behaviours were sexually suggestive comments, offensive jokes and intrusive questions, occurring over a variety of media. What's not clear is whether direct person-to-person sexual harassment is as prevalent, or whether the incidence of electronic harassment is increasing.

Recent decisions dealing with sexual harassment demonstrate that electronic harassment is occurring in Australian

workplaces and illustrate the circumstances in which women have reported being subjected to electronic sexual harassment by male co-workers. In 2011, a professional services firm settled a sexual harassment claim where allegations of sexual harassment involved communications over the firm's email system. In that case, the complainant asserted she became the subject of office gossip and rumours after having a brief intimate encounter with a co-worker. She lodged a sexual harassment claim against the firm, which relied upon emails sent by a male colleague from his work email address. The firm denied that any of the conduct was done "in connection with employment" and asserted that it took all reasonable steps to prevent its employees from engaging in the type of behaviour in the complaint.

Unless employers take reasonable steps to prevent employees from engaging in inappropriate electronic behaviour, they may be found liable for their employees engaging in sexual harassment electronically by way of email or social media sites while at work or on personal electronic devices.

Employers should review their harassment policies to ensure they prohibit inappropriate use of technology and inappropriate electronic communications and/or behaviour. Policies should specifically highlight that sexual harassment is unlawful under the *Sex Discrimination Act* and under state and territory anti-discrimination legislation. All employees should be trained in harassment policies on a periodic basis and training records should be maintained. And employers are encouraged to act promptly when they receive harassment complaints and investigate them fully, reasonably and fairly.

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