

Sexual Harassment Prevention Guidelines for Managers and Supervisors

The University's Responsibility

The University has a legal obligation to provide a learning and working environment that is free from sexual harassment and can be held vicariously liable for the wrongs committed by its staff, students, agents, customers, contractors, visitors or individuals engaged in official formal relations with the University.

As well as being unlawful, sexual harassment is an important issue for the whole University community because of the negative impact it has on the physical and psychological well-being of staff and students. Sexual harassment often results in communication breakdowns, conflict, avoidable absenteeism, and resignations.

The role of supervisors and managers

As a manager or supervisor you have a personal and legal obligation to comply with the legislation and to take all reasonable steps to prevent sexual harassment from occurring in the area for which you are responsible.

Failure to do so may result in the University being held vicariously liable for sexual harassment, whether or not you were aware that sexual harassment was occurring. Under the legislation there is also a possibility that individual supervisors or managers may be held liable if they fail to respond appropriately to complaints of this nature or victimise someone who makes a complaint of sexual harassment.

The nature of your position means that you are required to assume a leadership role, communicate effectively to your staff and create a supportive atmosphere that actively discourages sexual harassment in the workplace.


Step 1. Identifying sexual harassment

The University's definition of sexual harassment reflects the legislative definition.

Sexual harassment is any unwelcome behaviour of a sexual nature that makes a person feel offended, humiliated or intimidated, and which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person would be offended, humiliated or intimidated.

If someone believes they have been offended, humiliated or intimidated in their work or learning environment, then the University has an interest in resolving the concerns of all parties involved in the issue fairly and effectively. This is true whether or not most people would view the person's distress as a reasonable or predictable response to the circumstances.

At law, the intention of the person who allegedly harasses another is irrelevant. Under the relevant legislation and the University's Policy, the significant factor to take into consideration is whether, given the circumstances, a reasonable person (as distinct from the particular person involved), having regard to all the circumstances, would have anticipated the possibility that the harassed person would be offended, humiliated or intimidated by the behaviour.

A wide range of behaviours can constitute sexual harassment under the [Sexual Harassment Prevention Policy](#) (opens in new window) .

Sometimes it is hard to tell whether sexual harassment or discrimination is occurring in an environment for which you have responsibility. People who are offended, humiliated or intimidated by workplace behaviour do not necessarily bring their concerns to the attention of managers. As the Anti-Discrimination Board of NSW noted, this reluctance may be due to:

- fear of work-related reprisals
- distrust of management
- not wanting to be seen as a troublemaker
- wanting to fit in
- mistrust of grievance procedures
- guilt that something they did encouraged the behaviour
- low self esteem
- differing cultural values about what they think is acceptable behaviour
- a feeling that sexual harassment and/or discrimination are a 'normal' part of workplace culture, and that nothing can be done about it.

The fact that people have not complained about sexual harassment or discrimination does not mean that it is not occurring. It is your role as a supervisor or manager to monitor the work environment and identify whether sexual harassment is evident.

Step 2. Preventing sexual harassment

Managers and supervisors need to take all reasonable steps to prevent sexual harassment in their area of responsibility to avoid liability. By implementing the following simple strategies, you can encourage a respectful climate in the workplace and demonstrate that all reasonable steps are being taken to prevent sexual harassment:

- ensuring that all staff in your area undertake the EO Online Course at induction and that all staff undertake refresher training every two years
- emphasising at appropriate times that civility, respect and professionalism are expected of University staff in both formal and informal workplace and work related contexts
- Displaying and/or distributing copies of the University's [Sexual Harassment Prevention Policy](#) and Sexual harassment Prevention Guidelines for Students & Staff;
- asking Equity and Diversity to arrange an information session or workshop about sexual harassment and discrimination for staff in your work or learning area.

As a Manager or Supervisor your own conduct is important in leading and fostering a culture that is civil, respectful and receptive to diversity.

Step 3: Monitoring the workplace and reviewing risk management


The only way to maintain best practice with regard to the elimination of sexual harassment is to monitor the workplace culture.

Remember, even if there is no evidence to suggest that people have experienced sexual harassment in your work environment, that environment is not static. Everyone, including newly-appointed staff, need to be aware of the University's Sexual Harassment Prevention Policy and Guidelines and the [Complaints Handling and Resolution Policy and Investigation Procedures](#).

Training activities, induction procedures, and performance reviews all provide opportunities to check whether your staff are aware of the University's policy and procedures for dealing with sexual harassment. That way, they will know what to do if they are sexually harassed or where to refer someone to if they are approached with a query or concern about sexual harassment or if they become aware of sexual harassment occurring in any area of the University.

Step 4: Responding to instances of sexual harassment

As a manager or supervisor, you have an obligation to take prompt action if you observe, or are informed of, instances of sexual harassment in the workplace. When someone informs you that they have been sexually harassed, you should:

- Listen carefully to them and assess whether the behaviour described falls within the definition of sexual harassment.
- If you decide the behaviour is not sexual harassment you still need to act to address the situation. It may be that the situation represents a breakdown in communication or some unacceptable behaviour.
- If you do decide the behaviour falls within the definition of sexual harassment you will need to organize a meeting to talk to the alleged harasser. It is important that this meeting is held in a private location, that the alleged harasser can bring along a support person if they want to and that they have the chance to put forward their response to the complaint. Sensitively tell the person of the behaviours that concern you and the effects that they are having. Allow them to explain the situation from their perspective.
- Seek guidance from Equity and Diversity or Office of People and Culture if you feel the nature of the complaint is outside your expertise
- Maintain strict confidentiality about the issue in order to minimise the risk of defamation claims and the escalation of the issue
- Provide advice about the University's Sexual Harassment Prevention Policy and Guidelines to all parties
- Advise all parties of the support mechanisms available to them through the University such as the [Employee Assistance Scheme](#) (opens in new window) 
- If you determine that there has been an incident of sexual harassment you need to explain that regardless of the reasons for the behaviour, such behaviour is not acceptable and that the behaviour must cease immediately.
- After you have spoken with the alleged harasser organize a meeting to discuss the results of your meeting and the actions that you have taken

Step 5: Maintaining confidentiality and avoiding claims of defamation

You need to maintain strict confidentiality with regard to any complaints about sexual harassment that are brought to your attention as a supervisor or manager. Defamation laws aim to protect a person's reputation from being damaged in the public domain. Private and appropriate communications made in good faith (such as statements made to the appropriate people under the Sexual Harassment Prevention Policy, communications made in the course of counselling to a counsellor, and legal advice) are generally protected from actions in defamation.

This means that only the people who need to know about any allegations or counter allegations should be told what is happening. If you are called upon to make practical changes to work structures or supervisory arrangements as the result of someone raising an issue through the Sexual Harassment Procedures, be as discreet as possible in handling the matter. Remember that whilst some people may need to be informed that a change has been made, they probably don't need to be told the specific reason for the change. Confidentiality issues also arise in the context of record keeping. Any records you make about issues that have been raised with you should be brief and factual, and should not include the names of the people involved or your own reactions or views of those involved. As with all confidential records, they must be

secured in locked storage or be password protected and be inaccessible to other people. Should the matter proceed to a formal investigation or become a legal matter, you may need to refer back to your records.

Step 6: Action to prevent victimization and manage risk

Victimisation of someone who makes a complaint about sexual harassment is unlawful.

It is important that staff members making a complaint or staff members supporting another person in making a complaint are not subjected to adverse treatment as a result of a complaint.

If a person (or an associate or witness) raising a concern or making a complaint of sexual harassment using University's procedures is subject to victimisation, this could give rise to a successful complaint under State or Federal legislation.

Step 7: Making a formal complaint

If it is not possible to resolve the issue the complainant can make a formal complaint to the [Complaints Resolution Unit](#).

The University's procedures for handling complaints are based on confidentiality, impartiality, procedural fairness, protection from victimisation and prompt resolution.

Processes for handling complaints are outlined in the [Complaints Handling and Resolution Policy](#) (opens in new window) .



Disciplinary Action

Disciplinary action may be taken against students or staff who are found to have sexually harassed other students or staff.

Breaches of the policy will be considered to be misconduct or serious misconduct in the case of employees, and "non-academic misconduct" in the case of students, and may result in the most serious cases in permanent expulsion (for students) or dismissal (for staff).

What if the person wants to take legal action outside the University?

Someone who has been sexually harassed or someone against whom an allegation of sexual harassment has been made can seek legal advice at any time from:

- [The Human Rights Commission](#) (opens in new window) 
- [Anti-Discrimination Board of NSW](#) (opens in new window) 
- [The Fair Work Ombudsman](#) (opens in new window) 