

Bullying, Harassment or Reasonable Management?



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Bullying and Work Duties

These days at work we're all much more aware of the laws and policies about harassment, bullying and other forms of unacceptable behaviour.

From time to time employees have questions about what is a fair and reasonable work request and what is not. Sometimes they feel that they've been harassed.

So, we've provided information that will assist all employees better understand workplace harassment and what is expected when giving and receiving work directives and performance feedback.

The most common issues that supervisors and team members raise are listed here.

Team members ask about:

- Supervisors making unreasonable job demands.
- Being asked to do tasks that are offensive to them.
- Heavy handed orders.
- Work decisions that seem unfair.
- Favouritism by giving some people more attractive tasks or special treatment.
- Being overlooked or isolated because there is a history of conflict or bad blood.
- Threats, insults or abuse.

Supervisors ask about:

- Being able to provide corrective feedback to a team member without damaging the working relationship.
- Dealing with poor attitudes and behaviour when workplace directives are given.
- Avoiding employees that are argumentative or hostile when they're asked to do work.
- Dealing with employees who sabotage the task.
- Having to repeat requests to undertake a task, with limited results.
- Accusations of vitimisation following a work request or unfavourable decision regarding an employee.
- Copping ongoing negativity from employees.
- Having harassment or discrimination

Everyone's Responsibilities

From time to time difficulties arise within teams because people feel poorly treated. In some instances these matters are not able to be resolved easily and may lead to conflict, misunderstandings or complaints.



What things
am I
responsible
for?

So that we avoid any confusion, let's find out more about what it is we're responsible for at work.

Team Members are responsible to:

- Receive and carry out job instructions responsibly (without causing unnecessary difficulty.)
- Work in with the operational requirements of your supervisor.
- Avoid cutting corners or putting undue pressure on other team members.
- Ensure the job is performed and work requirements are met.

Supervisors are responsible to:

- Set a good example in the team.
- Provide support and encouragement.
- Communicate job requirements and decisions in a way that gains the greatest cooperation from the team.
- Treat all team members fairly and avoid favouritism.

Everyone is responsible to:

- Uphold work expectations.
- Abide by all laws and workplace policies, specifically OSH, EEO and standards of conduct.
- Treat all team members with respect and courtesy.
- Make sure that everyone knows the job requirements.
- Demonstrate co-operativeness and goodwill in solving team problems.

Workplace Harassment and Legitimate Management Decisions

A 1995 decision of the Federal Court clarified the difference between workplace harassment and legitimate management decisions.

It is not uncommon for employees to claim that actions taken by their supervisors are harassment.

Where supervisors are male and the subordinate employee is female corrective action is sometimes seen as sexual harassment. In the same way, people of different race or culture backgrounds may allege racial harassment on the basis of feeling offended.

The 1995 Federal Court Case

Following an investigation by the Commonwealth Merit Protection and Review Agency (the MPRA), a Commonwealth employee was found to be harassed by the Director and Deputy Director of the Australian War Museum.

The definition of harassment applied by the MPRA was:

'Harassment is any type of behaviour that can be reasonably expected to cause a person to feel threatened, uncomfortable or unable to cope with their work environment.'

A finding was appealed to the Federal Court. The Federal Court found an inherent flaw in the definition of workplace harassment. The Court that the definition failed to differentiate between possible causes for the complainant's feelings of offence.

In quashing the finding of the investigation, the Federal Court held that the MPRA's definition lacked the vital element which differentiates between *offensive* and *inoffensive* management techniques.

The Court pointed out that it is not workplace harassment for managers to manage.

They ruled that the definition of 'workplace harassment' needs to ensure that management decisions are not confused with harassment issues.

The Court argued that a definition of 'workplace harassment' which focuses on the feelings of the person said to be harassed may not take into account legitimate management decisions.

Differentiation must occur between offensive and inoffensive management.

Managers Can Manage

The Federal Court has pointed out that it is not workplace harassment for managers to manage.



Considerations for Supervisors

Performance Feedback

Workplace harassment must not be confused with legitimate comment and advice (including relevant negative feedback) from managers and supervisors on the work performance or work related behaviour of an individual or group.

Feedback on work performance or work related behaviour differs from harassment in that feedback is intended to assist employees to improve work performance or the standard of their behaviour.

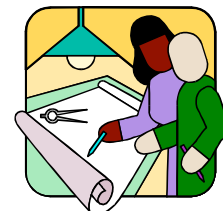
Undesirable Tasks

In addition, a request to an employee to undertake an undesirable task is not harassment. Nor do repeated requests to undertake a task constitute harassment.

It must be kept in mind that a manager's role is to ensure that the job gets done and it is the employee's responsibility to respond to reasonable management directive to carry out a task.

A work directive may be unwelcome or the nature of the task unappealing to the employee.

That doesn't make it harassment.



Bullying or Legitimate Management?

Here are some examples to help you understand the difference between victimisation, harassment and acceptable management practice.

It is not discrimination or harassment to:

- Ask somebody to turn up for work.
- Ask somebody to do their job.
- Counsel employees about absenteeism or failing to notify absence from work.
- Give feedback on an employee's behaviour or work performance.
- Counsel an employee for poor work performance or work behaviour.
- Request an employee to carry out a reasonable lawful directive even if they are offended by a task or by the request.
- Take disciplinary action if an employee fails to carry out a reasonable, lawful directive.
- Investigate concerns about work performance or workplace behaviour that have come to the supervisor's attention.

Keep in mind:

- Feedback should be given in a fair and respectful manner.
- It is not a threat to let an employee know the consequences of failing to meet job requirements should the problem continue.
- *(The rules of the workplace require the company to inform employees of the consequences of breaches.)*

It is not intimidation or bullying to:

- Make appropriate requests to carry out duties.
- Discuss or warn about behaviour or work performance.
- Ask questions about progress at work.
- Monitor a person's work performance or workplace behaviour.

Intimidation or bullying will not be tolerated as a management style, ways of getting things done, getting back or getting even.

It is unlawful to:

- Single someone out for unreasonable treatment because of any of the protected grounds of EO legislation (*race, gender, age, religion, family responsibility, sexual orientation, disability etc.*)
- Behave in such a way that the work environment becomes a physically and/or psychologically unsafe for others.

It is unacceptable to:

- Single someone out for unfavourable treatment because you don't like them.
- Set people up to fail because they are unpopular individuals.
- Give people a hard time for no justifiable reason.
- Subject a person to such inappropriate behaviour that a reasonable person, having regard to all circumstances, would experience harm to their health, wellbeing or ability to perform their job.

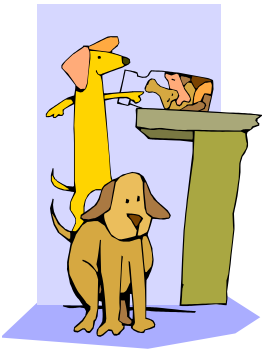
Whilst some people will feel uncomfortable or offended by work or performance matters being brought to their attention, the offence taken does not constitute victimisation, discrimination or harassment.



General Performance and Behaviour Standards

At work it is expected that you will communicate and work with others in a way that achieves expected work outcomes.

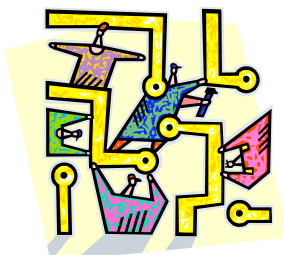
We also expect that while you are on the job you will contribute to, and support, a positive work environment that functions smoothly.



It is not acceptable to subject a person to such inappropriate behaviour that a reasonable person, having regard to all circumstances, would experience harm to their health, wellbeing or ability to perform their job.

The problems to be avoided include:

- Preventing or making it difficult for other members of the team to do their job properly (eg, late for work; not communicating about work matters, freezing people out).
- Undermining others by making destructive or corrosive comments about clients or co-workers, including spreading gossip or rumours.
- Behaving in a hazardous way or in a way that endangers the health or wellbeing of yourself or others (eg, holding grudges, ganging up or being deliberately unco-operative).
- Allowing conflict in the team to drag on to the extent that team members stop taking responsibility for problems and start blaming each other.



Recognising Problems and Getting Assistance

It is important that any issues that interfere with the smooth operation of work are dealt with and resolved as quickly as possible.

Blaming others, holding grudges or taking sides are not acceptable solutions to problems within a team.

It is also not acceptable to label other people as 'dobbers', or pay out on them if they raise genuine concerns about a team matter to a supervisor.

Somebody can help you resolve these issues without anybody being blamed!

Our problem solving procedures are designed to keep the job safe for everybody and to manage issues before they become a bigger problem.

When concerns are reported, they will be taken seriously. The matter will be assessed and the correct course of action taken.

In most situations, problems can be sorted out using a 'no-blame' approach and work operations can continue smoothly.

In other matters where there is 'vicarious liability' or 'duty of care', there is a duty to investigate, particularly if it involves safety, work behaviour or work practices.

If you want to know more about ...

- what we expect of all employees, whether in supervisory or front line roles,
- what's OK and what's not OK treatment at work,
- what we can expect an employee to do,
- What is and isn't acceptable management practice,

... then, talk to your Supervisor, a Line Manager, Human Resources, a Safety Rep or a Union Rep.