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Appropriate Workplace Behaviour Policy

1. Introduction

Title

This is the <<ClientName>> (**Company**) Appropriate Workplace Behaviour Policy (**AWB Policy**).

Purpose

The purpose of this is to make you aware of:

what 'unlawful discrimination' and 'unlawful harassment' mean;

your obligations in relation to unlawful discrimination and unlawful harassment;

the procedures that the Company has in place to deal with complaints relating to discrimination and harassment; and

who you can talk to at the Company if you wish to make a complaint.

Who needs to comply with this AWB Policy?

This AWB Policy applies to all employees and contractors of the Company (**Staff**).

What does this AWB Policy apply to?

This AWB Policy applies to behaviour or conduct by Staff in connection with work including:

in the workplace, including while working outside normal working hours;

while undertaking work activities, including interaction with clients or other third parties or while working away from the office; and

at work-related events (eg, client functions, social functions and conferences).

Status of AWB Policy

The policies and procedures in this AWB Policy are not a term of any contract, including any contract of employment and do not impose any contractual duties, implied or otherwise, on the Company. The policies and procedures contained in this AWB Policy may be varied from time to time by the Company in its sole discretion.

Unlawful Discrimination

What is unlawful discrimination?

**Unlawful discrimination** means treating one person or group less favourably than another, or causing them disadvantage, in certain circumstances.

Australia has laws regarding discrimination at the Federal level such as the *Age Discrimination Act 2004* (Cth), *Disability Discrimination Act 1992* (Cth), *Racial Discrimination Act 1975* (Cth) and the *Sex Discrimination Act 1984* (Cth) and in each state or territory.

These laws make discrimination unlawful on a variety of grounds (unlawful grounds), including a person's:

sex, pregnancy or breastfeeding;

marital or relationship status;

sexual orientation, transgender status, gender identity, intersex status;

race, colour, descent, nationality, national origin, ethnicity, ethno-religious origin or social origin;

religious belief or activity;

political belief or activity;

family responsibilities or responsibilities as a carer;

disability or impairment;

age;

service in the voluntary defence forces; or

others, depending on the state or territory in which you work.

Whether it is unlawful to discriminate against a person for one of these reasons will depend on the particular circumstances and the legislation which applies.

How can unlawful discrimination occur?

Discrimination can occur in the recruitment process, during the course of employment or upon termination of employment. Discrimination can also occur in the provision of goods and services. Staff should not discriminate against work colleagues or customers. Similarly, suppliers should not discriminate against Staff.

Discrimination can be direct or indirect.

**Direct discrimination** occurs where someone is treated less favourably because of their sex, age or race etc. An example of direct discrimination is when an employee misses out on an internal promotion because they are considered too old for the job.

**Indirect discrimination** occurs where everyone is treated on the same terms according to a rule, policy or directive but which has the effect of being less favourable to people of a particular sex, age, race, and which is not reasonable in all the circumstances. An example of indirect discrimination would be a security company that has height and weight requirements for its employees – this may exclude a large proportion of women - and this requirement is not reasonable.

There are exceptions from anti-discrimination law which may apply in some situations – for example, because of the inherent requirements of a particular job.

Bullying may also occur at the same time as unlawful discrimination and may also be a breach of work health and safety laws. Complaints regarding bullying are dealt with separately to unlawful discrimination under the Company's Anti Bullying Policy.

Unlawful Harassment

What is unlawful harassment?

Unlawful harassment is a form of unlawful discrimination. Unlawful harassment includes sexual harassment and other types of harassment which the law does not allow in particular circumstances. In general, unlawful harassment is any form of behaviour that:

is unwelcome (not wanted) or uninvited (not asked for);

a reasonable person would have anticipated would humiliate, offend or intimidate the person exposed to the conduct; and

is based on one of the grounds of unlawful discrimination.

In some cases a single action or incident can create unlawful harassment. In other cases there may need to be a persistent pattern of behaviour before unlawful harassment has occurred.

Harassment will not be unlawful, as such, if it is not based on one of the unlawful grounds, although it may amount to bullying and be a breach of work health and safety laws. Complaints regarding bullying are dealt with separately to unlawful harassment under the Company's Anti Bullying Policy.

In any event, the Company expects its Staff to treat each other and other people whom they come into contact as representatives of the Company with respect and courtesy.

Examples of unlawful harassment

Unlawful harassment can include, but is not limited to:

sexual harassment (see below);

verbal abuse or comments that degrade or stereotype people because of their race, sexual orientation, pregnancy, disability, etc;

jokes based on race, sexual orientation, pregnancy, disability etc;

mimicking someone's accent, or the habits of someone with a disability;

offensive gestures based on race, sexual orientation, pregnancy, disability etc;

ignoring or isolating a person or group because of their race, sexual orientation, pregnancy, disability, etc; or

display or circulation of racist, pornographic or other offensive material (including in electronic format).

What is unlawful sexual harassment?

Unlawful sexual harassment occurs where a person:

makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person; or

engages in other unwelcome conduct of a sexual nature in relation to the other person,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated **the possibility** that the person harassed would be offended, humiliated or intimidated.

Unlawful sexual harassment includes, but is not limited to:

* + 1. pressure or demands for dates or sexual favours;

unnecessary familiarity - for example, deliberately brushing against a person or constantly staring at a person;

unwanted physical contact - for example, touching or fondling;

sexual jokes or innuendo;

offensive telephone calls;

offensive sexual gestures;

unwelcome comments or questions about a person's sex life;

display or circulation of sexual material, including magazines, posters or pictures and email messages (including in electronic format);

sending email or text messages which contain sexual content or tone; or

sexual assault.

It is important to understand that some of these forms of sexual harassment are also criminal behaviour and may be treated as a criminal offence. These include:

* + 1. sexual assault;

physically molesting a person;

indecent exposure; and

obscene phone calls or emails/letters.

What is not unlawful sexual harassment?

Mutual attraction between people is not sexual harassment. Conduct which is welcome or consensual is not unlawful, and friendships (sexual or otherwise) which develop between people who meet at work are a private concern provided they do not adversely impact on the workplace or create a conflict of interest.

However, you should take great care before engaging in conduct you believe to be welcome. Always remember that some people may not feel comfortable telling you that your behaviour is offending them and is not welcome. This may be because of their personality or may be because of the relative status of the people involved (eg, they are too worried about the possible impact on their employment if they complain).

It is your responsibility to ensure that you do not engage in conduct which is not welcome.

You should also remember that even conduct which is welcome may not be appropriate in the workplace. If you are unsure whether conduct is appropriate, you should speak to your manager or Human Resources.

What Are Your Obligations?

Everyone at the Company has the legal obligation not to discriminate against, or harass for any unlawful reason any employee, contractor, supplier or customer.

You must always consider how your behaviour will be viewed by the person or people you are dealing with. You might unlawfully discriminate against or unlawfully harass someone even if you do not mean to do or say anything offensive. It is not a legally acceptable defence to say that 'it was just a joke' or that you did not mean to, or intend to, humiliate, offend or intimidate someone else.

It is sometimes difficult to know whether someone will find your behaviour acceptable. What is offensive to one person may not be offensive to another. You should be careful not to risk being misunderstood and, as a result, becoming the subject of a complaint.

You will be personally liable for your own actions if you engage in unlawful discrimination or unlawful harassment. An employer may be required to share liability for your actions because of the legal principle relating to vicarious liability, although generally not where the employer has made you aware of your own obligations and taken steps to prevent such behaviour.

What can you do if you are being unlawfully discriminated against or harassed?

If you feel that you are being unlawfully discriminated against or harassed, then we encourage you to take action which may resolve the problem.

Do not ignore circumstances where you feel you are being unlawfully discriminated against or harassed, thinking it will go away. Ignoring the behaviour could be taken as tacit approval of the behaviour by the person causing the discrimination or harassment.

Where you feel comfortable ask the person to stop, or make it clear that you find the behaviour offensive or unwelcome. Maybe the alleged discriminator/harasser is not aware that his/her behaviour is intimidating or unwelcome and will stop once they are told. It may be useful to speak with your manager or the Human Resources Manager in the first instance to seek guidance on how to do this.

Alternatively, or concurrently, you may wish to make a complaint to your manager or the Human Resources Manager under this AWB Policy, as soon as possible after the incident(s) have occurred.

If your issue is about your manager or the Human Resources Manager then you should raise it with their manager under this AWB Policy.

Although you may feel the need to tell a trusted friend or work colleague about the matter, you should be careful. Accusations of discrimination or harassment can harm the reputation of those involved and could ultimately lead to legal action for defamation. Do not allow rumours to spread.

What will happen if you make a complaint?

The Company

All complaints will be treated seriously and generally in accordance with this AWB Policy. As each complaint will differ, the Company will determine the most appropriate method of dealing with the complaint. This may vary depending on the nature of the specific complaint and a number of other factors. Potential steps the Company may take include informal or facilitated discussions, mediation or an internal or external investigation.

The Company will treat the matter as confidentially as possible but may need to speak to others to appropriately deal with the complaint.

The Company will take whatever action it considers appropriate if there has been unlawful discrimination or harassment, including disciplining or dismissing offenders.

You

You should also be aware that if you make a complaint you are responsible for ensuring that you:

make the complaint honestly and in good faith;

provide all facts relevant to the complaint;

co-operate with the resolution process; and

keep the complaint confidential within the resolution process.

If the complaint is vexatious or if you lie about or exaggerate a complaint, or do not provide all facts relevant to the complaint at the outset, or do not co-operate with the process the Company adopts to address the complaint, the Company will view this as a very serious matter, and you may be disciplined or dismissed.

What will happen if a complaint is made about you?

If a complaint has been made about you, you are responsible for ensuring that you:

cooperate with the resolution process;

provide a written or verbal response to the complaint which has been raised, if requested; and

provide all relevant facts to the person dealing with the complaint, if requested.

Victimisation

You must not victimise a person because they made or propose to make a complaint of unlawful discrimination or harassment or because they have provided information in relation to a complaint. Victimisation means subjecting a person to some detriment, for example, ostracising a person.

If you feel that you are being victimised because you have made or propose to make a complaint of unlawful discrimination or harassment or because you have provided information in relation to a complaint you should raise the issue as soon as possible with your manager or the Human Resources Manager.

Contact person

If at anytime you have any questions regarding this AWB Policy, your obligations or the complaints process outlined above, we encourage you to contact your Manager or the Human Resources Manager.