

## **Workplace Bullying and Harassment: What you need to know!**

All employees have the right to be free from workplace bullying and harassment, similarly, all employers have the responsibility to ensure they provide a safe working environment.

In order to reduce the risk of bullying and harassment in the workplace it is paramount employers know what is considered bullying and harassment and how to action a complaint if one arises.

### **What is workplace bullying?**

Workplace bullying is defined as repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety. Unreasonable behavior includes victimizing, humiliating, intimidating or threatening.

However, not all behaviour that may make a person feel upset or undervalued at work is considered workplace bullying. The behaviour can be intentional or unintentional but must be repeated, unreasonable and create a risk to health and safety.

Examples of workplace bullying include:

- Aggressive behaviour;
- Teasing or practical jokes;
- Excluding someone from work-related events;
- Unreasonable work demands;
- Belittling or humiliating comments; or
- Pressuring someone to behave inappropriately.

It is important to note that reasonable management action is not considered workplace bullying. A manager or supervisor can address poor performance issues, take disciplinary action and direct and control the way work is performed in a reasonable way.

### **What is harassment?**

Harassment is unwelcome conduct from a superior, colleague or group of colleagues that is directed towards a protected attribute like sex, gender, race or a disability. Harassing behaviour is anticipated to offend, humiliate or intimidate the person. It is important to note that unlike bullying, harassment can be a one-off incident.

Harassment can include:

- Telling insulting jokes about a particular race;
- Unwelcome or unwarranted sexual conduct, e.g. sending explicit or sexually suggestive emails or text messages to a colleague;
- Making derogatory comments or taunts about a person's attributes or disability; or
- Asking intrusive questions about someone's personal life, including their sex life.

### **What you should be doing:**

Employers have the obligation to prevent, respond to and address any and all issues of bullying and harassment in the workplace. The best way to do this is to have a comprehensive Bullying and Harassment Policy in place. This Policy should clearly define and give examples of bullying and harassment, and provide the framework for how your business will address bullying and harassment in the workplace.

If you receive a bullying or harassment complaint from an employee, you need to take it seriously!  
Complaint handling processes should ensure:

- Complaints are treated seriously and responded to promptly;
- Complaints are investigated impartially;
- Confidentiality is maintained;
- Support and advice is available and provided to all persons involved; and
- A range of resolution options are available and used, including but not limited to, counselling, apologies, written warnings or other disciplinary action.

If you follow the above steps and ensure you monitor the behaviour of employees in the workplace, you will be giving your business the best chance at providing and maintaining a safe and happy work environment for all.

**Bullying and harassment in the workplace is a serious issue that carries significant risks if not addressed properly. If you are having trouble understanding your obligations as an employer or need additional help and support, please contact the VANA Employment Relations Team on (02) 9083 0091.**

## **5 common workplace myths busted**

There are a number of myths floating around the employment relations sphere that may impact on the way you manage your workforce. Below we bust some of the most common!

### **1. Three warnings before dismissal**

One of the most common myths is the idea that an employee must receive three warnings before they can be dismissed. However, there is no rule which dictates you must, at a minimum, give three warnings before terminating an employee.

Deciding whether or not to give an employee a warning or move to termination is very circumstantial and will depend on the conduct of the employee in question.

In general, any warning that you do give to an employee should be correctly documented against the employee file, and considered when exploring termination.

### **2. Terminating an employee within 'probation' is risk free**

Terminating an employee within their Minimum Employment Period (6 months for a business with 15 or more employees) means the employee cannot bring an Unfair Dismissal Claim. However, an employee's length of service will not prevent them from bringing a General Protections claim or a claim under Australia's anti-discrimination legislation. It is important to be aware of any other risks that may arise with a termination of employment, regardless of whether the employee is in 'probation.'

### **3. Employers do not need to pay staff for meetings or training outside normal working hours.**

If training or team meetings are held outside of an employee's rostered hours, and is compulsory to attend, the employee must be paid for that time, and minimum engagement periods under the relevant award will apply.

It is also important to keep in mind the time of the meeting as overtime payments may be applicable as well.

### **4. An employer can only request a medical certificate for absences of more than 2 days**

An employer has the right to request a medical certificate on any day an employee is off work due to illness or injury, regardless of the length of the absence or the day it is taken!

### **5. Employers only need to provide employees pay slips if they request them.**

Payslip must be given to an employee within 1 working day of being paid, even if an employee is on leave. All employers are obligated to give payslips to all employees regardless of whether the employee requests them or not.

**For more information on employment myths, wages and how to minimise your risk please contact the VANA Employment Relations Team on (02) 9083 0091.**

**Fair Work Commission rejects union public holiday claim in retail and fast food industries.**

The Full Bench of the Fair Work Commission (FWC) has recently rejected an application by the SDA to vary retail and fast food awards to give workers an extra day's pay or day off when a public holiday falls on their non-working day.

FCB Group (the team behind the VANA employment relations line) played a leading role in representing employers in the case, which if successful would have cost businesses millions of dollars.

The union sought to argue it was necessary to include an additional right for full-time and certain part-time employees where a public holiday fell on their non-working day. The underlying motive of the union's claim was to address an imbalance between employees on non-standard working arrangements and those working Monday to Friday who do not miss out on public holidays.

The FWC however was not satisfied the variations proposed by the SDA were necessary to ensure the relevant awards met their objectives and therefore rejected the claim.