

# EMPLOYER POSITIVE DUTIES FACTSHEET

Under sex discrimination and harassment laws, employers have a 'positive duty' to eliminate, as far as possible, unlawful conduct, including:

- sexual harassment;
- sex-based discrimination; and
- hostile workplaces based on sex.

This duty includes protecting employees, contractors, volunteers and visitors. Businesses must focus on prevention rather than reactive measures, making it essential to embed anti-discrimination measures into everyday practices.

## UNLAWFUL CONDUCT



Sex discrimination occurs when someone is treated unfairly because of their sex. **Direct discrimination** includes actions like denying promotions, while **indirect discrimination** involves policies that disadvantage one sex, such as not allowing breastfeeding breaks.

Sexual harassment is **unwanted sexual advances** or requests for sexual favours, or any other **unwanted sexual behaviour** towards the person.

Sex-based harassment is when someone **treats another person in a demeaning way** and does this because of the person's **sex** or a trait typically associated with that sex.

## ENFORCEMENT



Non-compliance with the positive duty may lead to **legal action, financial penalties and reputational harm**. The Australian Human Rights Commission may take action if your business fails to meet its obligations. Current and former employees may also apply to the Federal Court for compensation for an alleged breach of the positive duties. Ultimately, employers should be proactive and investigate complaints seriously. To avoid enforcement measures, you should engage legal experts, conduct compliance audits, and regularly update business policies.

## ENSURING COMPLIANCE



Compliance with this positive duty requires 'reasonable and proportionate' steps based on the size of your business, available resources, and implementation costs, among other considerations.

Reasonable and proportionate measures include:

- **training senior leaders** to set a good example and stay informed about the law;
- **creating a safe and inclusive culture** that supports diversity and equal opportunity;
- **setting clear behaviour rules** for what is right and what is not; and
- **having fair consequences** for sex discrimination.

Regular assessments can help identify gaps, address risks, and ensure that preventive measures are effective and current.

## CONTACT US

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