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ANTI-DISCRIMINATION LAW AND EMPLOYMENT

Under federal and state laws, it is against the law to discriminate against people (treat them unfairly compared with others), or to harass them, in various areas of public life. One of these areas is employment. In NSW, the combined effect of these laws means that employers must not treat employees/job applicants unfairly, or harass them, because of their age, carers' responsibilities, disability, homosexuality, marital status, race, sex, transgender status. It is also against the law to treat people unfairly, or harass them, because of the age, disability, homosexuality, marital status, race, sex or transgender of any relative, friend or colleague of an employee or job applicant. For example, it is against the law to refuse to employ someone because their partner is Aboriginal (as this would be discrimination because of the race of that person's relative).

This means that throughout Australia all employers, managers and supervisors must treat all their employees, and anyone who applies for a job with them, fairly - that is, generally on the basis of their individual merit rather than irrelevant personal characteristics. It also means that they must do their best to make sure that their employees are not harassing any other employee or job applicant.

The Anti-Discrimination applies to the recruitment process, the terms and conditions of employment and dismissal, retirement or redundancies. In general, all jobs (including traineeships and apprenticeships) must be open to all people on the basis of merit, and only merit. This means that people's sex, race, age, marital status, disability, homosexuality, transgender status, and carers responsibilities, must not bar them from applying or being properly considered for the job.

Once employees are on the job, they should be treated fairly in relation to salaries, wages, employment packages, training and promotion, whether they are permanent, casual, full-time or part-time. Neither should they be unfairly dismissed or forced to retire.

Benefits of following anti-discrimination law or EEO

Following anti-discrimination law or EEO ensures that:

- the best person gets each job;
- the right employees are trained in the right skills;
- the best employees are promoted;
- each employee's skills are developed to reach their full potential no matter what sex, race, age and so on, they are;
- everyone is able to work productively in a non-threatening and non-harassing environment;
- you link the diversity of your (potential) markets with a similar diversity within your workforce;
- your team and your organisation are more productive; and
- you don't end up in court fighting costly discrimination or harassment claims.

DETRIMENTS OF NOT FOLLOWING ANTI-DISCRIMINATION LAW OR EEO?

The following outlines some of the costs involved in resolving discrimination and harassment complaints:

- The average cost of sorting out a relatively serious or complex discrimination or harassment grievance within an organisation - this includes the salary/wages and lost productivity costs of those actually involved in the grievance itself, and of those resolving the grievance - \$35,000;
- The cost of an employee who earns \$30,000/year going on 10 days paid stress leave for trauma related to discrimination or harassment - \$1,625. Plus possible workers compensation claim, productivity reduction and/or replacement costs - \$2000 minimum.
- The average cost of losing an experienced junior to middle manager due to dissatisfaction with EEO/harassment type issues, or the fact that they can get a better 'EEO deal' elsewhere is - this includes the costs of separation, recruitment, training of a new employee, and of performance difference between the more experienced and new employee - \$50,000
- The average per day of legal costs of running a tribunal or court case - \$3,000;
- Compensation payable for each separate discrimination/harassment complaint - \$100,000 maximum in NSW applying to events of discrimination after 1 January 2009 (No ceiling federally.) This does not include the costs related to lowered productivity or bad publicity.



EMPLOYERS ADVISORY SERVICE

This is a free, specialist advisory service for NSW employers, managers and their representatives. For confidential, practical advice about anything to do with employment-related discrimination or harassment.

You can contact this service for:

- confidential (and anonymous, if you want) advice on handling a particular discrimination or harassment issue or grievance;
- staff training support;
- procedures and policies development advice

GRIEVANCE PROCEDURES

Many organisations have a grievance procedure as part of their award or enterprise agreement. However, these procedures are often not as comprehensive as they should be for handling serious or sensitive discrimination or harassment complaints. To be effective, a grievance procedure should be user-friendly and trusted by all parties. It must be written in easy to understand language, communicated to all staff and used consistently within the organisation. For more information about grievance procedures, please refer to the Anti-Discrimination Board's publication, *Grievance Procedure Guidelines*. The Guidelines also contain a model grievance procedure that you can adapt to your own organisation.

LEGAL RESPONSIBILITY AND FOLLOWING THE LAW?

ORGANISATIONAL LEGAL LIABILITY

In general, it is against the law for an employer to act in a discriminatory way. Depending on the structure in your organisation, legally, the employer could be the individual owner of the business, the partners of a firm, the directors of the company, and so on.

When the employer, or someone who is specifically authorised to act on behalf of the employer, (such as a manager or supervisor), acts in a discriminatory or harassing way, the employer will be legally liable and responsible for the discrimination or harassment.

The employer is also legally responsible when any employee behaves in a discriminatory or harassing way - unless they can show that they took 'reasonable steps' to prevent the discrimination or harassment from happening. This type of legal liability is called 'vicarious liability.'

PERSONAL LEGAL LIABILITY

If your organisation can show that it has taken all reasonable steps to prevent discrimination and/or harassment, it might be possible to transfer all or some of any legal liability to the particular employee(s) who caused the problem.

Why choose the Anti-Discrimination Board?

Employers will be held legally liable for workplace discrimination and harassment unless they are able to show they took 'all reasonable steps' to prevent it. The Board's services are designed to help employers develop, implement and manage the necessary steps to maintain a discrimination and harassment free working environment.

We have extensive experience in producing, designing and delivering publications, education and training programs on this subject to suit both private and public sector needs.

We are responsible for administering the law and conciliating complaints of unfair treatment and harassment. Because you are dealing directly with the source, you know that the information we provide you is comprehensive and up to date. We have a proven ability to handle difficult and controversial questions about discrimination in a light, yet thought provoking manner. You will be provided with direct access to one of the Board's senior consultants who will be able to provide you with continuing support after you've attended our seminars. We have wide experience in providing practical advice to all sectors about how best to design policies and procedures that will turn anti-discrimination law to your advantage and help you maximise the effectiveness of your people management and service delivery.

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SOURCES OF FURTHER INFORMATION:

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