

What is unacceptable behaviour?

Unacceptable behaviour is defined by legislation in Australia at federal, state and territory levels. These are defined as follows:

Discrimination

Discrimination means treating a person with a legally protected attribute or personal characteristic less favourably than a person who does not have the attributes and personal characteristics. Discrimination is unlawful, could include sex, age, religious belief, political belief, pregnancy, breastfeeding, disability, impairment, marital status, family responsibilities, sexual orientation, gender identity, race and cultural background.

Examples include being:

- Passed over for promotion because of racial background
- Denied operating lists due to family or parental responsibilities
- Excluded from a meeting directly related to your role due to your religious belief
- Assigned meaningless tasks unrelated to your role due to age
- Excluded from social events where other colleagues have been invited due to sexual orientation
- Denied training opportunities based on pregnancy

Indirect discrimination occurs when a work requirement, condition, rule or practice appears neutral and seems to apply to and treat everyone equally, actually unfairly disadvantages an individual or a group of people because of a legally protected attribute or personal characteristic.

Examples include:

- There are a few car spaces directly outside the office, but all staff are required to park in the Staff car park located a block away from the hospital, including the doctor with one leg who uses crutches.
- The requirements for everyone to work a 12 hour shift over the peak period may appear to treat everyone equally; however it may unreasonably disadvantage an employee with a young baby who has recently returned from maternity leave.

Harassment

Harassment is a form of discrimination. Harassment is unwanted, unwelcome or uninvited behaviour, based on a legally protected personal characteristic that makes a person feel humiliated, intimidated or offended. Harassment can include racial hatred and vilification, be related to disability; or the victimisation of a person who has made a complaint.

A single incident can amount to harassment. Intent or motive is irrelevant - it is the impact and the nature of the behaviour that is assessed. The reasonable person's test is applied. This refers to where a reasonable person having regard to all the circumstances would consider the behaviour to offend, intimidate or humiliate. Harassment may occur at work or in a work-related environment, including via text messaging or social media. It can also take place when interacting with someone at a work related social function or during internal or external training

Examples include:

- Derogatory comments about a colleague's religious beliefs on Facebook
- Mocking gestures related to a person's physical disability
- Referring to the male trainees by name but to the female trainees as "sweetheart" or similar term.

Sexual harassment

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favours and other unwelcome conduct of a sexual nature by which a reasonable person would be offended, humiliated or intimidated. A single incident can amount to sexual harassment as can behaviour of a sexual nature that creates a hostile working environment or permeates a work or training environment.

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Sexual harassment may include, but is not limited to:

- Inappropriate staring, leering, wolf whistling or gestures of a suggestive or sexual nature
- Sending sexually explicit emails or text messages
- Sexually offensive social media posts
- Accessing sexually explicit internet sites at work or on work equipment
- Displays of sexually suggestive picture, videos, audio tapes, emails, blogs, books or objects
- Sexual taunts or innuendo, sexually explicit or offensive jokes
- Intrusive comments or graphic verbal commentaries about an individual's body
- Sexually degrading words used to describe an individual
- Questions or insinuations about a person's sexual or private life
- Persistent requests for dates
- Unwelcome sexual flirtations, advances or propositions
- Unnecessary familiarity or intimacy, unwelcome touching such as deliberately brushing up against a person, or hugging or kissing
- Pressure for sexual favours
- Molestation, indecent exposure, indecent assault, sexual assault or rape

Some sexual harassment also amounts to a criminal offence, including stalking and obscene communications.

Vilification

Vilification occurs in a public place when a person incites harm, hatred, serious contempt or severe ridicule towards a person, or a group, on the basis of race, religion, sexual orientation, gender identity or disability. While legislative coverage of attributes varies RACS deems vilification on any of these attributes as unacceptable.

Examples include:

- A supervising surgeon mocked an Indian trainee's accent in front of him and other trainees and surgeons, and knowingly called him Rudi (which is insulting in Punjabi) encouraging others to call him by his new nickname at weekly meetings.
- An article stating homosexuality is a sin, was photocopied and pinned to noticeboards in a regional hospital, with the name of a patient written across the top on the day the patient was admitted for surgery.

Bullying

Bullying is unreasonable behaviour that creates a risk to physical or mental health and safety. It is behaviour that is repeated over time or occurs as part of a pattern of behaviour. 'Unreasonable behaviour' is behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, intimidate, undermine or threaten the person to whom the behaviour is directed.

Examples include:

- Repeated hurtful remarks, attacks or abuse, or making fun of your work, your family, or you as a person
- Excluding you or stopping you from working with people, or isolating you at work
- Psychological harassment, such as playing mind games, taunting, or ganging up on you
- Intimidation, derogatory or abusive interactions
- Assigning meaningless tasks for the purpose of embarrassing or undermining you
- Repeatedly giving you impossible jobs that can't be done in the given time or with the resources provided, or for which you do not have the required training
- Deliberately changing your work hours or schedule to make it difficult for you
- Deliberately withholding information you need to undertake your work properly
- Initiation, pranks, or hazing
- Abusive or offensive language or comments
- Repeated unjustified criticism
- Spreading malicious gossip or misleading information on purpose
- Overly aggressive manner in theatre, huffing and sighing when questions are asked by trainees

Workplace tension can surface on occasion but this is not bullying. A one off abrupt comment is not bullying. Some practices in the workplace may seem unfair but will not necessarily amount to bullying. Assigning work and setting performance goals, informing and warning a worker about inappropriate behaviour or unsatisfactory work performance, undertaking performance reviews and providing constructive feedback conducted in a fair way is not bullying.

An employer is allowed to transfer, demote, discipline, counsel, retrench or terminate employment as long as they are acting reasonably and ensured procedural fairness.

Cyber-Bullying and Stalking

Cyber-bullying and stalking can constitute bullying. These willful, repeated behaviours (or obsessive attention) arouse apprehension and fear placing physical or mental health and safety at risk.

Stalking involves intent and is often calculated. This form of unacceptable behaviour can be in person (including utilising a third party) or via other intrusive means such as surveillance, spying, interfering with property, or the repeated delivery of messages, items or gifts.

Cyber-bullying utilises technology and operates via social media sites, text messages, chat and websites. Examples include multiple abusive text messages, rumours or embarrassing images posted on-line and establishing false on-line profiles for people

Violence

Violence refers to any incident where a person is physically attacked or threatened, or subjected to aggression. It can be a single incident where a person is abused, or assaulted. It covers a range of unacceptable aggressive behaviours that place physical or mental health and safety at risk. It is conduct that would usually amount to a criminal offence.

A verbal threat to harm, maim or kill, or the application of force by a person to the body, clothing or equipment worn by another person, can amount to violence.

Other examples include:

- Threatening to commit a violent act
- Throwing objects or equipment at a person or in a dangerous manner
- Attacking a person with a weapon or makeshift weapon (e.g. equipment, knife, or a syringe)
- Locking a person in a car-boot, room or cupboard
- Bomb threats
- Physical acts such as spiking a person's drink, pushing, kicking, striking, punching, biting, spitting or other unwelcome physical contact that would amount to assault

If you have been the victim of these unacceptable behaviours:

Report it to your manager, a health and safety representative, People and Culture, a Positive Workplace Advocate, or someone in authority.

Ask for Western Health's policies on discrimination, bullying, harassment, sexual harassment and victimisation.

Ask someone in authority to speak to the person who has bullied you and see if there is an opportunity to find out what their perspective is. Sometimes the person demonstrating the unacceptable behaviour doesn't understand the impact of their behaviour and this provides an opportunity for them to reflect and amend their behaviour.

Remember you can raise your complaint anonymously through the Employee Positive Workplace Issue Resolution (EMPOWIR) by contacting a Positive Workplace Contact Officer (details available through the Western Health Intranet).

Alternatively you can lodge matters which relate to inappropriate workplace behaviours that you have witnessed or experienced via the Positive Workplace Issue Centre (PWIC) or The Vault'.

When you submit the notification by email you will receive a response that outlines the next steps you can take. You simply email and indicate if you just want to leave it as registered in 'The Vault'.

It can also act as a question and answer post and advise you of available Positive Workplace Contact Officers and/or how the EMPOWIR process can be used.

The email address is: pwic@wh.org.au