

SEX DISCRIMINATION AND SEXUAL HARASSMENT REMEDIES

-----FOR WORKERS IN NSW-----

		Fair Work Commission			Discrimination		
		Unfair dismissal	General protections	Stop Sexual Harassment orders	Sexual Harassment dispute	Federal discrimination	NSW discrimination
		<i>Can apply for both together</i>					
Focus of conduct	Dismissal harsh, unjust, unreasonable	1. Workplace right (complaint/inquiry) 2. Discrimination 3. Engaging in industrial activities 4. Sham arrangements	Sexual harassment		Discrimination including sexual harassment, harassment on the grounds of sex, hostile work environment		Discrimination including sexual harassment
Who can apply	Employees who: <ul style="list-style-type: none"> are an employee within the private sector in NSW are covered by the NES have been employed for at least 6 months in a large business or 12 months in a small business; and have been earning less than the high income threshold 	<ul style="list-style-type: none"> Most employees including prospective hires Independent contractors 	Workers still connected to workplace Includes: <ul style="list-style-type: none"> Employees Independent contractors Labour hire placements Trainees Volunteers 		<ul style="list-style-type: none"> Employees including prospective hires Independent contractors Labour hire placements Trainees Volunteers <p>Harassment can take place anywhere if connected to a complainant being a worker or PCUB</p>	<ul style="list-style-type: none"> Employees including prospective hires Independent contractors Labour hire placements Trainees Volunteers <p>Harassment has happened at the workplace</p>	
Who can't apply	<ul style="list-style-type: none"> Most State or Local government employees (exceptions include NSW Trains/Sydney Trains) Independent contractors Labour hire placements Volunteers Vocational placements Casual employees Apprentices and trainees if their employment finishes at the end of their training contract 	<ul style="list-style-type: none"> Most State or Local government employees (exceptions include NSW Trains/Sydney Trains) Labour hire placements Volunteers Vocational placements 	Member of ADF			<ul style="list-style-type: none"> Federal public servants People with intersex status discrimination claims Where employment relationship arises in private household; in employers with less than five staff; or by a private educational authority 	
Time limit	21 days	21 days/6 years	24 months		24 months	12 months	
Wait for conciliation	Approx. 5 weeks	Approx. 5-10 weeks	FWC begin to deal with within 14 days		6-12 months	4-6 months	
Process	1st stage	<ul style="list-style-type: none"> Telephone conciliation No prior contact with conciliator 	<ul style="list-style-type: none"> Conference No prior contact with conciliator/Member 	<ul style="list-style-type: none"> Member conciliation No prior contact with Member 	<ul style="list-style-type: none"> Face to face, telephone conciliation Prior contact with conciliator 	Face to face, telephone conciliation	
	2nd stage	Less formal (FWC hearing or formal conference)	More formal. Can go to arbitration or Court	Less formal (FWC conference or hearing)	More formal. Can go to arbitration or Court	More formal (Court)	Less formal (NCAT)
Costs	Generally, no costs	Generally, no costs	Generally, no costs	Generally, no costs	Costs (court)	Generally, no costs	
Application fee	The fee for the application is \$83.30	The fee for the application is \$83.30	The fee for the application is \$83.30	The fee for the application is \$83.30	N/A	N/A	

Outcome	Capped at 26 weeks wages	Uncapped	Stop SH order No compensation	<ul style="list-style-type: none"> • FWC opinion that SH has occurred • Uncapped compensation • Lost remuneration • Stop SH order (untested) 	Uncapped	\$100,000 (NCAT)
Onus of proof	Generally, burden on applicant, unless misconduct.	Reverse onus	Burden on applicant. Employer to establish they took all reasonable steps to prevent the sexual harassment		Burden on applicant	Burden on applicant
Indirect discrimination	Not relevant	The meaning of "discriminate" has been held to include indirect discrimination.	Not relevant		Set out in <i>Sex Discrimination Act</i> (Cth)	Set out in <i>Anti-Discrimination Act</i> (NSW)

*This fact sheet is not a substitute for legal advice. Australian law and policy are subject to change.
This factsheet may not reflect all of the most recent changes or developments in law and policy*

Other remedies may apply, including common law tort, workers compensation and whistleblower protections

Wait times current as at 10.2023

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