



2.4 Equal Employment Opportunity Harassment and Discrimination

PURPOSE AND SCOPE

INTENSIVE CARE AT HOME has a legal obligation, as an employer under Federal, State and Territory equal opportunity laws to prevent and prohibit harassment and discrimination. INTENSIVE CARE AT HOME is committed to providing a workplace free from harassment and discrimination, where all members of staff, Customers and people with whom INTENSIVE CARE AT HOME has dealings are treated with dignity, courtesy and respect. This policy pertains to all INTENSIVE CARE AT HOME's facilities and business units in relation to recruitment, training, promotions and transfers.

INTENSIVE CARE AT HOME will not tolerate harassment or discrimination under any circumstances and will:

- Promote appropriate standards of behaviour at all times
- Treat complaints in a sensitive, fair, timely and confidential manner
- Provide an effective procedure for complaints to be addressed
- Encourage the reporting of behaviour which breaches the harassment and discrimination policy
- Ensure protection from victimisation or reprisals
- The Director and Managers are responsible to ensure Customers, employees and contractors are not subjected to discrimination and harassment

DEFINITIONS

Discrimination

Discrimination is treating one person or a group of people less favourably than another. Discrimination on the basis of a number of grounds or attributes has been made unlawful by a range of federal, state and territory legislation. Discrimination on the basis of any of the following grounds or attributes is prohibited:

- Sex, marital status, pregnancy or potential pregnancy, breastfeeding, parental status or family responsibilities
- Sexual preference, gender identity, lawful sexual activity or transsexuality
- Race, colour, descent, nationality, social or national origin, ethnicity or religion
- Disability or impairment
- Mental, intellectual or psychiatric disability
- Age
- Political or religious belief or activity
- Trade union membership, union or industrial activity or membership of an employee or employer organisation
- Profession or occupation
- Responsibilities or status as a carer
- Physical features (eg, person's height, weight, size or appearance)
- Medical record
- Irrelevant criminal record and spent convictions
- Discrimination on the basis of having an association with a person who has any of the attributes listed above may also be unlawful. Unlawful discrimination includes:
 - Obviously less favorable treatment
 - Making assumptions about an individual or groups of people
 - Setting unreasonable conditions or requirements which impact disproportionately on a particular group based on a particular attribute and can be classified as either direct or indirect

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Defence to Claims of Discrimination

Subject to the relevant legislation INTENSIVE CARE AT HOME and/or persons against whom claims of discrimination are made may be able to raise defences to such claims that having regard to a particular attribute of an employee or potential employee, such person cannot perform the inherent requirements of the position, reasonable accommodation for the attribute cannot be made or insisting on a particular condition is reasonable in the circumstances of the employment.

Harassment

Harassment is a form of unlawful discrimination, intentional or unintentional, that a reasonable person ought to have known would result in a person feeling offended, humiliated or intimidated. Harassment in the workplace can take many forms such as:

- imitating someone's accent
- spreading rumours
- offensive jokes or innuendo
- threats or insults
- name calling
- the use of language that is not suitable in the workplace
- pushing, shoving or jostling

Sexual Harassment

Sexual harassment is any unwanted, unwelcome or uninvited behaviour of a sexual nature, which makes a person feel humiliated, offended or intimidated. While it is predominantly women who experience sexual harassment, both men and women can be subjected to it from a person(s) from the same or opposite sex. Reciprocal relationships between people do not constitute sexual harassment as they involve choice and consent.

Sexual harassment can include but is not limited to the following behaviours:

- uninvited and unnecessary physical contact or gestures
- sex-based insults, taunts or teasing
- sex-based jokes, comments or innuendo
- repeated invitations to go out after a prior refusal
- persistent questions or insinuations about a person's private life
- displays of sexually graphic material
- staring or leering at a person or parts of their body
- offensive email messages, computer visual images and/or screen savers
- invading someone's personal space
- remarks of a sexual nature about someone's clothing or body
- unwelcome and inappropriate letters, telephone calls, electronic mail or other communication
- unwelcome requests for sexual favours

Mutual attraction is not sexual harassment. Conduct which is welcome or consensual is not unlawful and friendships (sexual or otherwise) which develop between people who meet at work is a private concern. This is subject of course to this relationship not interfering with the individuals' ability to properly and productively perform their work.

Employees are encouraged to take great care before engaging in conduct which they believe to be consensual or welcome. It is very important to remember that some people may not feel comfortable telling someone that their conduct is unwelcome. This may be because of that person's personality or may be due to the relative status of the people involved, eg an employee may find their manager's conduct to be unwelcome but may be worried about the impact on their employment if they discuss this with their manager.

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It is not a defence to claim that an individual did not mean or intend to humiliate, offend or intimidate someone. What is important is how the behaviour affects the person it is directed towards. People's reactions differ and it is the way that person perceives the behaviour that is important even when there was no intention to harass or offend and even if others see the activity as trivial or inoffensive.

Racial Harassment

Racial harassment is unlawful conduct which is based on a person's race, national or ethnic origin or colour. Racial harassment can include but is not limited to the following behaviours:

- Intimidating gestures
- Derogatory remarks about a person's skin colour or appearance
- Unwelcome remarks about a person's cultural observances
- Racist jokes
- Negative stereotyping of a particular ethnic group
- Racist graffiti
- Physical threats or intimidation
- Seriously racially offensive or abusive behaviour is a crime in some states.

What are your obligations?

Everyone at INTENSIVE CARE AT HOME has the legal obligation not to discriminate against or harass for any unlawful reason any employee, agent, contract worker, contractor, client or visitor of INTENSIVE CARE AT HOME. They also have the legal obligation not to sexually harass any workplace participant or supplier of INTENSIVE CARE AT HOME. All

INTENSIVE CARE AT HOME employees need to ensure that their behaviour is consistent with this policy not only at INTENSIVE CARE AT HOME workplaces but also at:

- Other work sites such as customer businesses where they are performing work on behalf of INTENSIVE CARE AT HOME
- Off-site work events such as seminars or conferences
- INTENSIVE CARE AT HOME work related functions such as Christmas parties, events or promotions
- INTENSIVE CARE AT HOME sponsored client or customer parties, events or promotions

Responsibilities

All staff are responsible for promoting this policy by ensuring:

- You treat other staff with respect and courtesy
- Incidents of discrimination /harassment are reported to the Director
- You fully participate in any investigation into an incident of discrimination

Liability

It is important to remember that employees can be found to be individually liable for their conduct.

PROCEDURE

What to do if you believe you are being harassed or discriminated against

It is important that you do not ignore the circumstances where you feel you are being unlawfully discriminated against or harassed, thinking it will go away. Ignoring the behaviour could be taken as tacit approval by the person causing the harassment or discrimination.

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Informal Action

- If you can, try to resolve the problem yourself with the person or people involved as soon as possible. You may find that they didn't mean to do what they did.
- Speak to the Director to discuss your options.

Formal Action

- Lodge a complaint with the Director

They should investigate the matter within 2 working days and take action to prevent further harassment or discrimination occurring.

- You can also seek external advice at any time eg, your state or territory Equal Opportunity Commission
- Keep a note of any harassment that occurs with dates, times, witnesses (if any), what happened, what you did, said or felt

If you do make a complaint you are responsible for ensuring that you:

- Make the complaint honestly and in good faith
- Provide all facts relevant to the complaint and
- Co-operate with the resolution process

The legislation also prohibits the victimisation of a person who makes a complaint or intends to make a complaint of either discrimination or harassment under the legislation.

INTENSIVE CARE AT HOME may not be able or prepared to assist you to deal with a complaint where:

- The complaint has been satisfactorily dealt with or resolved previously (unless another alleged incident has occurred since)
- The complaint is made anonymously without sufficient detail being provided so as to allow investigation or resolution of the matter
- The complaint is frivolous, vexatious or malicious, for example, where false or misleading information is provided, relevant information is withheld, facts are distorted or there is no demonstrated commitment to resolution. Depending on circumstances these types of complaints could lead to disciplinary action, including dismissal, being taken against the person making the complaint
- The complaint does not constitute discrimination and/or harassment as defined by the policy

Responsibility of INTENSIVE CARE AT HOME

INTENSIVE CARE AT HOME has a legal responsibility to prevent harassment and discrimination in the workplace.

All staff have a responsibility to:

- model appropriate behaviours
- monitor the working environment to ensure acceptable standards of conduct are observed at all times
- promote the INTENSIVE CARE AT HOME Harassment and Discrimination Policy within their work area
- treat all complaints seriously and take positive and constructive action to investigate and resolve issues within 2 working days. This can include appointment of an external/internal person with the requisite expertise and seniority to properly investigate any complaints
- understand the complaints procedure and their role in it
- document complaints

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- report all complaints to the Director

Responsibility of Staff

All staff have the responsibility to:

- comply with the INTENSIVE CARE AT HOME Harassment and Discrimination Policy. Failure to do so may result in disciplinary action, including termination of employment
- offer support to a person who feels they have been harassed or discriminated against and encourage them to seek advice from trained staff
- refuse to join in with any harassing behaviour
- maintain complete confidentiality if they provide information during the investigation of a complaint
- staff are not required speak to the person who has been accused of harassment or discrimination on behalf of the person making the complaint
- staff must not spread rumours which may expose them to defamation action

What if a complaint has been made about me?

- If a complaint has been made about you, you are responsible for ensuring that you:
- Co-operate with the resolution process
- Provide a written or verbal response to the complaint which has been made
- Provide all relevant facts to the person conducting the investigation
- INTENSIVE CARE AT HOME will take whatever action it considers appropriate if there has been unlawful discrimination or harassment, including disciplining or dismissing offenders.

Confidentiality

- Anyone involved in a complaint or its investigation must ensure that the circumstances and facts of the complaint are disclosed only to those people who are directly involved in progressing its resolution or have a “need to know”. In particular it is important that staff who either make a complaint or may be witnesses to the circumstances giving rise to a complaint do not discuss the matter outside the resolution process.