

Changes to the Sex Discrimination Act

The *Sex Discrimination Act 1984 (Act)* has recently been amended, and now includes changes intended to:

- extend protection from discrimination on the grounds of 'family responsibilities' to both men and women in all areas of work;
- establish breastfeeding as a separate ground on which discrimination is unlawful; and
- provide greater protection from sexual harassment in the workplace for both men and women.

This update highlights some of the key changes that apply to employers generally, that will also affect Clubs. The amendments have extensive implications and it is recommended that Clubs take steps to be fully informed and seek legal advice where necessary.

Discrimination - family responsibilities

Previously, Clubs were required not to discriminate against an employee by terminating their employment because of their family responsibilities. 'Family responsibilities' means caring for, or supporting, a dependent child or other immediate family member who is in need of care and support.

In addition, it will now be unlawful to discriminate against a person on the grounds of their family responsibilities in their work, including:

- in the course of recruiting new staff; and
- in dealing with current Club employees.

For example, a Club must not discriminate against an employee because of their family responsibilities by denying them a promotion, or by subjecting them to any detriment. In summary, a Club must not treat an employee (or prospective employee) less favourably because of their family responsibilities than the Club would treat any other employee (or prospective employee) who does not have such family responsibilities in similar circumstances. The Act also includes similar prohibitions on discriminating against contract workers on this ground.

Breastfeeding

The Act previously gave indirect protection to women who were breastfeeding. However, it now specifically states that it is unlawful to discriminate against a person on the

grounds of breastfeeding (which includes expressing milk) in a range of areas, which include employment and Club membership. A Club must not discriminate against a person on the grounds of breastfeeding:

- in the course of recruiting new staff;
- in dealing with current Club employees; or
- when assessing membership applications or dealing with current Club members.

In relation to employment, a Club must not treat an employee less favourably than the Club would treat any other employee who is not breastfeeding, in similar circumstances. Also, a Club must not discriminate against an employee by imposing (or proposing to impose) a condition, requirement or practice that has or is likely to have the effect of disadvantaging the employee because they are breastfeeding. The Act also includes similar prohibitions on discriminating against contract workers on this ground.

Clubs also need to be aware that it is unlawful to discriminate against a person on these grounds when supplying goods or services, or in the way that the Club makes its facilities available. As a result Clubs must not discriminate against Club members or guests on these grounds.

Sexual harassment

The changes to the Act have introduced new factors in defining 'sexual harassment'. Previously sexual harassment occurred as a result of:

- an unwelcome sexual advance;
- an unwelcome request for sexual favours; or
- other unwelcome conduct of a sexual nature;

where a reasonable person would anticipate that the person harassed **would be** offended, humiliated or intimidated.

Under the new changes, such conduct will be sexual harassment where a reasonable person **would have anticipated the possibility** that the person would be offended, humiliated or intimidated.

In considering those circumstances, a range of factors need to be taken into account, including:

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- the sex, age, marital status, sexual preference, religious belief, race, colour, or national or ethnic origin of the person harassed;
- the relationship between the people involved; and
- whether the person harassed has any disability.

This introduces more subjective elements to the test, and is considered likely to widen the range of situations in which sexual harassment will be taken to have occurred.

It is well established that it is unlawful for an employer to sexually harass an employee, or for an employee to sexually harass another colleague. The Act now extends protections to other workplace situations, such as:

- It is unlawful for a workplace participant to sexually harass another workplace participant at a place that is a workplace of **either or both** of them. This will include contractors and others like sales representatives at the Club's premises.
- It is unlawful for a person to sexually harass another person in the course of seeking, or receiving, goods, services or facilities from that person. This means it would be unlawful for a Club member or guest to sexually harass a Club employee when using the Club's facilities.

Clubs are also reminded that there is a specific section of the Act which states that it is unlawful for a member of a Club's Board to sexually harass a Club member or applicant for Club membership.

Recommendations

It is recommended that:

1. Clubs review their HR policies regarding anti-discrimination and sexual harassment and update the policies where necessary to take account of these changes.
2. Clubs review the training they provide on anti-discrimination and sexual harassment and update the training where necessary to take account of these changes. Training will need to be provided to staff and Board members as appropriate.

As a part of that training it is recommended that staff be made aware that there are prohibitions on Club staff sexually harassing another person attending or working in their workplace (including contractors, sales representatives and suppliers), and conversely. Procedures on how any such incident can be reported and dealt with could be included in the Club's policies.

3. Clubs review the procedures for making facilities available to Club members and guests. For example, it would be a breach of the Act to discriminate against a person by refusing to serve them in a Club bistro or restaurant on the ground that the person is breastfeeding. All staff, and contractors on the Club's premises (e.g. caterers), should be made aware of the changes to the law and of the Club's requirements.
4. Clubs identify a procedure for handling any complaint from Club staff regarding sexual harassment by a Club member or guest, and how that may need to be integrated with any disciplinary procedures under the Club's Constitution.

For further information or a confidential discussion, please contact our team.

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