



Sexual Harassment at Work. Should you make a Workers Compensation claim?

*Please note that this is general information
& may not be relevant to your particular
matter. This toolkit should not be taken as
legal advice.*



**WORKING
WOMEN'S
CENTRE**

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We often think about Workers Compensation claims as being claims for physical injuries. A construction worker with bad knees might spring to mind, a worker who types all day might have a compensable repetitive strain injury (RSI) condition or a landscaper might have a bad back.

It is important to remember that the South Australian workers compensation system (administered by an independent entity known as Return to Work SA) can also assist you if you are suffering from a psychological injury caused by sexual harassment in the workplace.

The South Australian workers compensation system is a no-fault system. This means that you can be compensated for your injury regardless of whose fault it is. It can however be a long and traumatic process and we do encourage you to seek out support while you make a claim.



What is Sexual Harassment?

The Sex Discrimination Act 1984 defines sexual harassment as:

(1) A person sexually harasses another person (the person harassed) if:

(a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or

(b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

Examples of sexual harassment in the workplace

- unwelcome touching;
- staring or leering;
- suggestive comments or jokes;
- sexually explicit pictures or posters;
- unwanted invitations to go out on dates;
- requests for sex;
- intrusive questions about a person's private life or body;
- unnecessary familiarity, such as deliberately brushing up against a person;
- insults or taunts based on sex;
- sexually explicit physical contact; and
- sexually explicit emails or SMS text messages.

Sexual Harassment in the Workplace

Sexual harassment in the workplace is at epidemic levels within Australian workplaces.

In 2018, the Australian Human Rights Commission released its workplace sexual harassment survey and found that 1 in 3 workers had been sexually harassed at work in the previous five years.[1]

In the 2017/2018 financial year, sexual harassment complaints to the South Australian Equal Opportunity Commission (EOC) were the second most prevalent. The 2017/2018 complaints were predominately from women but the Commission saw an increase in complaints from men too.

In 2016, the EOC was commissioned to deliver a report into sex discrimination and sexual harassment in the South Australian Police (SAPOL). In that report, the EOC found that 21% of women and 8% of men have experienced sexual harassment in the previous 5 years.

In December 2018, the Australian Council for Trade Unions (ACTU) released the findings from their 2018 survey into sexual harassment which found that 64% of women who responded to the survey had personally experienced sexual harassment in the workplace on one or more occasions. The survey also showed that 41.2% of those who had experienced sexual harassment did not disclose the sexual harassment to anyone. The ACTU survey elicited 9600 responses, a feat most statisticians wouldn't sneeze at.

We could provide further statistics, at a local and international level but there is no need. It is well established that sexual harassment in the workplace is prevalent, has serious consequences for victims and workplaces, and seriously limits women's equal participation in the workforce. This is why Sex Discrimination Commissioner, Kate Jenkins, led an enquiry into sexual harassment in the workplace and made 55 recommendations in the recently published Respect @ Work Report.[2]

[1] The results of that survey can be found here: <https://www.humanrights.gov.au/ourwork/sex-discrimination/publications/everyones-business-fourth-national-survey-sexual>.

[2] Respect at Work: Sexual Harassment National Inquiry Report (2020) can be found online: <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexualharassment-national-inquiry-report-2020#Za70h>

Has sexual harassment caused you to suffer a psychiatric injury?

The Return to Work Act 2014 [3] (the law that underpins the SA workers compensation system) defines injury as either a physical or mental injury. A mental injury is described in the Return to Work Act 2014 as a psychiatric injury and this means an injury that is 'pure mental harm.'

To be eligible for workers compensation, work needs to have been the significant contributing cause of the mental injury.

Case Study

Julie works as an administrative assistant at a busy real estate agency. Julie works with all of the real-estate agents but spends most of her time assisting Graham, the owner of the agency. At first, Julie really enjoyed working with Graham. Graham was kind and took time to explain things to her when she wasn't sure. After 6 months of work, Graham began emailing Julie and asking her about her weekend and other personal questions. Julie would tell Graham that she had a nice weekend and would give general details about her life. Julie wasn't too worried about these questions but did think it was strange that Graham had such an interest her life. Graham would also regularly ask Julie about her boyfriend and details about their relationship. Julie began to feel uncomfortable but didn't feel as though she could say anything. One night, Julie stayed back on a Friday night to have work drinks with her colleagues. At the end of the night, Graham asked Julie whether she enjoys having sex with her boyfriend. Graham then grabbed Julie's breasts and tried to kiss her. Julie froze and tried to pull away. Julie left the party and Graham sent her explicit text messages. Julie was too scared to go to work on Monday and thought about just quitting. Julie wasn't sleeping or eating and she was having panic attacks when she thought about having to see Graham. Julie decided to see her doctor. Julie's doctor diagnosed her with depression and anxiety.

Julie's depression and anxiety was caused by her work and this injury could be classified as a psychiatric injury for the purposes of lodging a workers compensation claim.

[3] Return to Work Act 2014 section 4.

Lets break down what 'psychiatric injury' means

In the Working Women's Centre's experience, psychiatric injuries often include depression disorders, post-traumatic stress syndrome, anxiety disorders and adjustment disorders.

All of these disorders have a range of symptoms including but not limited to feeling sad, moody, low, hopeless, nervous and feeling elevated stress or worry. Sometimes in a sea of feelings it is also hard to pinpoint what you're feeling and that's okay. Beyond Blue have provided a helpful checklist to help you navigate your way through this.

Here is a link:

https://www.beyondblue.org.au/the-facts/anxiety-and-depression-checklist-k10?gclid=CjwKCAiAgqDxBRBTEiwA59eENyS3Jrp5tjC3jsEixZwIXYseVtffkyMU22K9wom6l_Ngdg67TrkX3BoCS-MQAvD_BwE

There are many reasons why you might be suffering a psychiatric injury, this fact sheet deals with psychiatric injuries caused by sexual harassment in the workplace.

It doesn't take a rocket scientist to understand that if you're suffering from a psychiatric illness, it may affect your work. In many cases, a psychiatric illness might manifest in high absenteeism (sick days), effect productivity, or effect your ability to cope with your workload and workmates.

Like any work injury, our community recognises that if your psychiatric injury has been caused by work then you may need time off to recover, receive medical attention and consider rehabilitation options. This is why we have a worker's compensation system to help workers recover and rehabilitate. If your psychiatric injury has been caused by sexual harassment in the workplace and it has caused you to require medical attention or time off work, then you should seriously consider making a worker's compensation claim. If you broke your arm at work, would you think twice about making a claim? Probably not! Psychiatric injuries are just as legitimate and therefore just as compensable!

How to make a worker's compensation claim?

A step by step guide:

The first step is to make an appointment with your doctor to discuss your injury. Before you can make a claim, you will need to obtain a medical certificate (a Return To Work Capacity Certificate that certifies that you are suffering from an injury).

The second step is to notify your employer of your injury by providing them with your medical certificate or simply telling them about your injury. If possible, do this in writing so you have a record of it. The notification could be as simple as writing an email to the HR department or your manager.

The third step is to complete a Return to Work SA claim form and provide this form to your employer. This form is found at <https://www.rtwsa.com/media/documents/claim-form.pdf>

Your employer must provide this form to the claim's agent within 5 business days of you providing it to them. If you do not feel comfortable providing this information to your employer (this might be the case in many small businesses), then you can send your medical certificate and claim form directly to the claim's agent. The claim's agent will then contact your employer. In many workplaces, if you are away from work for more than 2 days then you will be required obligation to advise your employer of your illness and provide a medical certificate. Of course this obligation can vary so it is best to check your policies.

If you do not know who the relevant claims agent is then you can go to the Return to Work SA website: <https://www.rtwsa.com/insurance/insurancewith-us/claims-agent-lookup>

Look up which claims agent has responsibility for your workplace. In South Australia, your employer will either be covered by Gallagher Bassett, or Employers Mutual Limited, however larger employers and government agencies are self- insured (this means that they manage their own claims).

How to make a worker's compensation claim? A step by step guide:

The claims agent will then have a maximum of 13 weeks to determine your claim. In many cases, the claimant might receive interim payments (weekly payments while the claim is determined). If your claim is accepted, you will be entitled to the following:

- Payment of reasonable medical expenses - doctor, psychologist, psychiatrist appointments, medications, counselling)
- Income Maintenance (weekly payments while you are unable to work due to your psychiatric injury) – up to 2 years of income support (full rate of pay for first year of income and 80% of your income for the second year)
- Rehabilitation - support to rehabilitate you back to your workplace if possible.

If your claim is not accepted and you wish to dispute the determination, then please contact the Working Women's Centre SA and we will provide you with further information.

What if the sexual harassment has aggravated my pre-existing mental health issue? Can I still make a claim?

If you have been suffering from a mental health condition and the sexual harassment in the workplace has aggravated the injury, you still may be entitled to workers compensation for the aggravation. That is because the Return Work Act 2014 defines an injury that includes an injury that is, or results from, the aggravation, acceleration, exacerbation, deterioration or recurrence of a prior injury.[4]

[4] Return To Work Act 2014 section 4.

Important Extras to Remember

- *Your injury is only compensable to the extent of and for the duration of the relevant aggravation, acceleration, exacerbation, deterioration or recurrence.*
- *The law also says that if your psychiatric injury is caused by some reasonable action then the claims agent may reject your claim on the basis that you are suffering an injury as a result of reasonable administrative action. We do not propose to deal with this caveat in this factsheet.*