

Is your law firm a **safe place?**

All employers have an obligation to provide a safe workplace for their employees that goes far beyond reducing the risk of tripping over electrical cords. High pressure environments, like law firms, can be exposed to claims of overwork and bullying. Recent high profile cases have also highlighted the risk of sexual misconduct within the legal profession. Clearly, proper systems are essential to create a safe workplace culture within your law practice.

Overwork and stress

In other professions, large compensation awards have demonstrated the need to limit employee work hours to avoid overwork claims being brought against employers.

In the unfair dismissal case of *Sathanathan v BT Financial Group [2019] FWC 5583*, an employee complained to his employer that his workload was excessive as he was doing the job of an underperforming colleague as well as his own.

After resigning, the employee lodged an unfair dismissal claim on the basis that he was constructively dismissed. The Fair Work Commission (FWC) commented that the Applicant

"... was regularly working in excess of 70 hours per week in his role ... and this was objectively unreasonable in the context of that position and

the reasonable expectations of the parties."

Along with the number of hours the employee was working, the FWC was concerned with BT's failure to investigate his complaints. The FWC concluded that the employee had no real option but to resign and ordered his employer pay him \$45,990 in compensation.

Better processes for handling employee complaints would have assisted the employer in this instance.

Sexual harassment and bullying

Allegations of sexual harassment in the legal profession are also attracting media attention. In a recent, worldwide report by the *International Bar Association* entitled 'Bullying and Sexual Harassment in the Legal Profession', Australia recorded the highest rate of sexual harassment and bullying with 47% of women reporting having been sexually harassed during their career. Failure to address sexual harassment complaints can lead to allegations that the law practice is an unsafe work environment and

cause reputational damage to the law practice far outweighing the cost of the claim itself.

The Sex Discrimination Commission 2020 report *Respect@Work* related a number of anecdotal occurrences of sexual harassment within the Australian legal profession. The aggressive culture within some law practices, as well as in court, can lead to verbal abuse, sledging or sexually suggestive comments designed to 'psych out' an opponent. Law practices which do not address this type of workplace culture run the risk of employment claims and even Fair Work investigations.

The report further states that rigid hierarchies within law practices, where senior positions tend to be male dominated, can foster a culture where poor behaviour goes unpunished and sexually aggressive behaviour is normalised.

Even law practices with respectful cultures are not immune from sexual harassment claims though, when employees are expected to entertain clients. 22% of women responding to the Sex Discrimination Commission survey reported having been sexually harassed by clients. A law practice's obligation to keep employees safe includes implementing processes for employees to report sexual harassment, experienced inside and outside the law practice, and for the law practice to address it.

Risk mitigation

There are steps law practices can take to mitigate the risks of workplace health and safety or employment claims being made:

- ▼ Set the tone from the top. Law practices should have a no tolerance policy for inappropriate behaviour in the workplace
- ▼ Spend time developing clear HR policies including sections on bullying, workplace harassment and sexual misconduct
- ▼ Develop a robust complaints process and ensure staff understand how to raise concerns. Always investigate complaints, even informal comments can be viewed by courts as workplace complaints

▼ Remember that you are responsible for staff when they are outside the office. Interactions in court, at client functions and at work conferences can all lead to workplace complaints and claims.

As well as instituting the right types of policies and procedures to ensure efficient business practices, law practices can offset their risk by insuring against losses. Many insurers offer coverage for management liability which can provide cover for the types of claims outlined above. Lawcover offers Lawyers Management Liability insurance which is specifically tailored for law practices and includes employment practices liability and statutory liability coverage.

For more information, please visit <https://www.lawcover.com.au/lawyers-management-liability/>

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