

Discrimination Harassment and Bullying Policy

Version 2, May 2020



1. Purpose

This Policy is designed to assist LivCor in its aims to provide an environment where clients, students, employees and others in the workplace are treated fairly and with respect, free from unlawful discrimination, harassment and bullying and to ensure that when employment, enrolment or competency assessment decisions are made, they are based on merit and not on irrelevant attributes that an individual may possess. LivCor also tries at all times to create a work environment that promotes good working relationships.

2. Scope

This Policy applies to employees, agents, contractors, training partners and enrolled students, collectively referred to in this Policy as 'workplace participants'.

This policy is not limited to the workplace or work hours, but extends to all functions and places that are work related, such as conferences and client functions.

3. Discrimination

Direct discrimination occurs when a person is treated less favourably than another because of a reason or ground which is prohibited by law. Indirect discrimination includes rules, practices or policies which appear to be non-discriminatory and equally applicable, but operate in such a way that certain groups of people are excluded without just cause.

The prohibited grounds of discrimination are set out in the Federal, State and Territory anti-discrimination and equal-opportunity laws. A full list of the grounds of discrimination that operate federally and in the State or Territory in which workplace participants undertake their work or training will be relevant and are:

- race (including colour, nationality, descent, ethnic, ethno-religious or national origin)
- religious belief, affiliation, conviction or activity
- sex
- marital status, domestic status, relationship status
- pregnancy (including potential pregnancy)
- homosexuality, transsexuality, sexuality, sexual preference/orientation, lawful sexual activity, gender identity
- carers' responsibilities, family responsibilities, carer or parental status, being childless
- disability/impairment, including physical, mental and intellectual disability
- breastfeeding

- age (including compulsory retirement)
- physical features (VIC only)
- profession, trade, occupation or calling (ACT only)
- industrial/trade union membership, non-membership or activity
- political belief, opinion, affiliation, conviction or activity
- employer association membership, non-membership or activity
- irrelevant criminal record (NT and TAS only)
- employment activity (VIC only)
- irrelevant medical record (NT and TAS only)
- HIV/AIDS
- defence service
- association (i.e. association with a person who has one or more of the attributes for which discrimination is prohibited)
- religious appearance or dress (in work or study) (SA only)
- gender history (WA only)
- association with a child (in customer service) (SA only)
- spent convictions (ACT only).

Separately to ordinary discrimination laws, there are laws in the Commonwealth, New South Wales, Queensland, the Australian Capital Territory, Northern Territory, Western Australia and Tasmania, that prohibit persons from taking spent criminal records into account or otherwise disclosing the details of a spent criminal record.

4. Harassment

Harassment is unwelcome conduct directed towards a person based on a ground of discrimination (as set out above), that a reasonable person would expect to offend, humiliate or intimidate.

Sexual harassment is unwelcome conduct of a sexual nature, which makes a person feel offended, humiliated or intimidated. Conduct can amount to sexual harassment even if the person did not intend to offend, humiliate or intimidate the other person. However, conduct will not be sexual harassment if a reasonable person, having regard to all the circumstances, would not have anticipated that the conduct would offend, humiliate or intimidate the other person.

Sexual harassment does not have to be directed at a particular individual to be unlawful. Behaviour that creates a hostile working environment for other workplace participants can also be unlawful.

Examples of sexual harassment include, but are not limited to:

- physical contact such as pinching, touching, grabbing, kissing or hugging
- staring or leering at a person or at parts of their body
- sexual jokes or comments
- requests for sexual favours
- persistent requests to go out, where they are refused
- sexually explicit conversations
- displays of offensive material such as posters, screen savers, internet material etc.
- accessing or downloading sexually explicit material from the internet
- suggestive comments about a person's body or appearance
- sending rude or offensive emails, attachments or text messages.

5. Bullying

Bullying is repeated, unreasonable behaviour by an individual or group of individuals, directed towards another individual or group of individuals that creates a risk to health and safety. It includes both physical and psychological risks and abuse.

'Repeated behaviour' refers to the persistent nature of behaviour and can refer to a range or pattern of behaviours over a period of time (for example, verbal abuse, unreasonable criticism, isolation and subsequently being denied opportunities – i.e. a pattern is being established from a series of events).

'Unreasonable behaviour' means behaviour that a reasonable person, having regard to all the circumstances, would view as unreasonable in the circumstances and may result in that workplace participant feeling victimised, humiliated, undermined or threatened by that behaviour.

Bullying behaviours can take many different forms, from the obvious (direct) to the more subtle (indirect). The following are some examples of both direct and indirect bullying.

Direct bullying includes:

- abusive, insulting or offensive language or comments
- spreading misinformation or malicious rumours
- behaviour or language that frightens, humiliates, belittles or degrades, including over-criticising, or criticism that is delivered with yelling or screaming
- displaying offensive material
- inappropriate comments about a person's appearance, lifestyle, family, sexual preferences or any personal or private matter
- teasing or regularly making someone the focus of pranks or practical jokes
- interfering with a person's personal property or work equipment
- harmful or offensive initiation practices.

Indirect bullying includes:

- unreasonably overloading a person with work, or not providing enough work
- setting timeframes that are difficult to achieve, or constantly changing them
- setting tasks that are unreasonably below, or above, a person's skill level
- deliberately excluding or isolating a person from normal work activities
- withholding information that is necessary for effective performance of the person's job
- deliberately denying access to resources or workplace benefit and entitlements
- deliberately changing work arrangements, such as rosters and leave to inconvenience a particular worker or workers.

The above examples do not represent a complete list of bullying behaviours. They are indicative of the type of behaviours that may constitute bullying and therefore are unacceptable to LivCor.

A single incident of unreasonable behaviour does not usually constitute bullying. However, it should not be ignored as it may have the potential to escalate into bullying behaviour.

A person's intention is irrelevant when determining if bullying has occurred. Bullying can occur unintentionally, where actions which are not intended to victimise, humiliate, undermine or threaten a person actually have that effect.

Bullying in the workplace is harmful not only to the target of the behaviour but damages LivCor culture and reputation. It is unacceptable and will not be tolerated.

Managing workplace participants does not constitute bullying, if it is done in a reasonable manner. Managers have the right, and are obliged to manage workplace participants. This includes directing the way in which work or training is performed, undertaking performance assessments or reviews and providing feedback (even if negative), and disciplining and counselling staff or students.

Examples of reasonable management practices include:

- setting reasonable performance goals, standards and deadlines in consultation with workplace participants and after considering their respective skills and experience
- allocating work fairly
- rostering and allocating working hours in a fair and reasonable manner
- scheduling training hours in a fair and reasonable manner
- transferring a workplace participant for legitimate and explained operational reasons
- deciding not to select a workplace participant for promotion, following a fair and documented process
- informing a workplace participant about unsatisfactory work performance in a constructive way and in accordance with any workplace policies or agreements
- informing a workplace participant about inappropriate behaviour in an objective and confidential way
- implementing organisational changes or restructuring
- conducting performance management processes.

6. Rights and responsibilities

All workplace participants must:

- understand and comply with this Policy
- ensure they do not engage in any unlawful conduct towards other workplace participants, customers/clients or others with whom they come into contact through work
- ensure they do not aid, abet or encourage other persons to engage in unlawful conduct
- follow the Complaints and Appeals Policy if they experience any unlawful conduct
- report any unlawful conduct they see occurring to others in the workplace in accordance with the Complaints and Appeals Policy
- maintain confidentiality if they are involved in the complaint procedure.

Workplace participants should be aware that they can be held legally responsible for their unlawful conduct.

Workplace participants, who aid, abet or encourage other persons to engage in unlawful conduct, can also be legally liable.

7. Failure to comply with this policy

All workplace participants are required to comply with this Policy at all times.

If an employee breaches this Policy, they may be subject to disciplinary action. In serious cases this may include termination of employment.

Agents, contractors and training partners who are found to have breached this Policy may have their contracts or partnering agreements with LivCor terminated or not renewed.

Students who fail to comply with this policy may have their enrolment cancelled.

If a workplace participant makes an unfounded complaint or a false complaint in bad faith (for example, making up a complaint to get someone else in trouble or making a complaint where there is no foundation for the complaint), that person may be disciplined and may be exposed to a defamation claim.