



Case Studies

Sexual Harassment in Employment Complaints

(Note: All names have been changed to protect the parties' privacy. These case studies, while additional to the information provided in *A Bad Business: Review of Sexual Harassment in Employment Complaints 2002*, are summaries of actual allegations made by complainants in nine of the complaint files reviewed.)

1. The staff Christmas party

Two months after Amy started work as a short-term contract delivery person, she attended the staff Christmas party at a local hotel. She alleges on arriving at the hotel with her sister, a group of about 10 male co-workers wolf-whistled and made sexual remarks about Amy and her sister. Shortly afterwards, a co-worker, Evan, walked over to the table where Amy and her sister were sitting having a drink. He started to dance, and lifted his T-shirt, exposing his stomach and chest. He then allegedly proceeded to loosen his pants and turned around and bent over, exposing his bare backside directly in front of Amy and her sister. Later in the evening, while Amy was playing pool with another co-worker, Evan allegedly approached Amy from behind and pulled down her top, exposing her right breast. She claims she hit Evan over the head with her pool cue because she was frightened and embarrassed. After this incident, Mark, another co-worker, approached Amy and tried to wrench the pool cue from Amy's hand. Amy claims she was also intimidated by Evan, because he was sitting across the room, staring at her.

Amy complained to her manager the following work day about these incidents, and her employer conducted an investigation into the complaint. Her allegations were substantiated. Evan was transferred to another work-site, while Mark was reprimanded. After making her complaint, Amy alleged that her co-workers treated her coldly and her contract was not renewed. Amy lodged a complaint with HREOC seeking financial compensation and the introduction of a more transparent sexual harassment complaint and discipline procedure. Amy's employer settled her complaint privately for an undisclosed amount, prior to going to a conciliation conference.

2. Alleged harassment by the boss

Eleanor was 15 years old when she started working as a casual shop assistant in a suburban store after school and on weekends. Five months after starting work, Jeremy, the 32-year old owner and manager of the store allegedly asked Eleanor if she had a boyfriend and whether she had had sex. He allegedly read pornographic magazines in front of Eleanor asking her whether she was 'turned on' by them. Eleanor claimed that Jeremy began to kiss and touch her on a regular basis. He allegedly told Eleanor of his sexual experiences, exposed his penis to her, started calling Eleanor on her mobile phone when she was at school, put his fingers into Eleanor's vagina, asked her to suck his penis and masturbated in front of her. Eleanor claimed that Jeremy frequently tried to have sex with Eleanor in the store after closing time. Eleanor resigned from her employment once she was eligible for Youth Allowance.

Eleanor lodged a complaint with HREOC against Jeremy and the store alleging sexual harassment and sex discrimination.

The complaint settled at conciliation with Eleanor receiving \$17,000 by way of damages, payable in two installments.

3. Alleged harassment by co-workers

Sue was employed as an advertising sales executive at a regional newspaper. On the evening of Sue's birthday she joined co-workers at the local pub for a drink. At the pub, Wayne, a co-worker, allegedly approached Sue, and showed her a picture he had created. Sue claimed that the picture consisted of her head superimposed onto a pornographic image of a woman. This image had allegedly been circulating around Sue's workplace for about a week before.

The next day, Sue lodged a complaint with the newspaper's Sexual Harassment Officer and the General Manager. Sue claimed that management assured her that Wayne would be dismissed for his behaviour.

Three weeks later, upon returning from leave, Sue discovered that Wayne had not been dismissed at all; rather he had been required to take long service leave.

Sue claimed that she was taunted and ridiculed by Wayne's friends. They allegedly criticized her work, berated her for other people's mistakes and made sexual comments about her appearance and sexual ability. They allegedly called her a "cry baby" who had gone "crying to the Boss" and who was unable to take a joke.

Unable to deal with this situation at work which Sue claims was making her unwell, she transferred to another job at a different location even though it meant a reduction in wages. However Sue was still required to have some contact with Wayne's friends. Sue went on sick leave shortly thereafter. She claimed she was dismissed from her job while her employer claimed she resigned.

Sue lodged a complaint with HREOC alleging sexual harassment against the three co-workers responsible for the harassment and her employer. She sought compensation for the loss of income resulting from her dismissal and recompense for the hurt, humiliation and victimization she experienced.

The matter settled at a conciliation conference with the newspaper paying Sue damages to the sum of \$5,000.

4. Alleged harassment by a co-worker

Shilpa was employed as a process worker in a large factory. A co-worker, Jim, allegedly began to make comments to Shilpa such as, "you look very sexy today" and "you wear very nice clothes – they make you look sexy". Shilpa claimed that Jim would put his arms around her and try to share her chair when she was eating lunch in the lunch room. Jim allegedly started to persistently ask Shilpa out for dinner or lunch which she always refused. She claimed that Jim would deliberately brush his arm against Shilpa's breasts when she was working on a machine near him and say things like "how do you and your husband ever have sex if you're working the afternoon shift?" Jim allegedly then started touching Shilpa from behind, grabbing her bra strap and trying to undo it. Shilpa then claimed that Jim began grabbing her on her breasts, trying to pretend he had tripped and landed in that position.

Shilpa claimed that eventually Jim got the message that she was not interested in him. However Jim allegedly started to criticize Shilpa's work and make her work on the most difficult machine constantly, rather than be rotated around the other machines like the other staff members.

Shilpa lodged a formal complaint with the production manager. As a result of Shilpa's complaint, a formal performance review of all staff in the area was undertaken. However, Shilpa claimed that Jim was instrumental in carrying out the review. From this point onwards, Shilpa claimed that she was constantly called into Jim's office for minor incidents that other staff members were not criticized for nor questioned about. Shortly thereafter Shilpa was given a verbal warning as to her work performance.

Due to the stress Shilpa claimed that she developed a mental condition that required medication. She was declared unfit to return to the workplace and was placed on workers' compensation.

Shilpa lodged a complaint with HREOC alleging sexual harassment, sex discrimination and victimization. This matter did not settle at a conciliation conference and was terminated on the ground of no reasonable prospect of conciliation. Shilpa lodged an application with the Federal Court of Australia but the matter was discontinued.

5. Alleged harasser “from the old school and doesn’t know any better”

Tracey commenced working for a telecommunications company through an employment agency as an administrative officer. A co-worker, Sam, allegedly started to make innuendos and comments of a sexual nature including “I know what you need”, “are you wearing a G-string?” Tracey also claimed that Sam stared at her breasts, tried to hold her hand when he was passing her something, and invited Tracey to sit on his lap.

After almost 12 months of this behaviour, Tracey stated that she was suffering from stress headaches and hated going to work. She complained to the manager who responded by allegedly saying that Sam was “from the old school and doesn’t know any better” and to wait a few days or a week and see what happens. No action was taken by the telecommunications company. Tracey lodged a complaint with HREOC alleging sexual harassment against Sam and the telecommunications company.

Prior to going to a conciliation conference, the parties decided to negotiate settlement privately. The terms of the final settlement remain undisclosed.

6. Alleged harassment by a customer

Bianca had recently moved to a country town. Bianca claimed that her new neighbour, David, helped her find a job as a casual bar attendant at the local boat club, of which David was a member. Within two weeks, Bianca was appointed part-time Assistant Manager. From the day Bianca commenced work, David allegedly started to make unwanted sexual comments to Bianca such as “you owe me big time for this girl, big time” and “come on show me your tits and that will be enough”. Other comments that Bianca claimed David made included “we want you to go in a wet t-shirt competition, you would win hands down”. On one occasion when Bianca was at work behind the bar, David allegedly kept repeating to Bianca and other patrons at the bar “you’re a lesbian aren’t you”. This continued for about two months. Bianca decided to make a complaint to the manager of the boat club. No action was taken.

Bianca requested a meeting with the board of the boating club. Instead of investigating Bianca’s complaint, Bianca claimed that the board members accused her of lying and demoted her to a casual. Bianca claims, due to the mental and emotional stress, she was unable to work.

The matter went to conciliation but the parties failed to reach a settlement. Bianca filed an application for hearing of her case in the Federal Magistrates Court, but the matter settled prior to hearing.

7. Work-related travel

Tammy was employed as a full-time receptionist/tour guide/shop assistant at a tourism facility. She accompanied the co-director of the small company that owned the tourism facility on a buying trip overseas. Upon arrival at the destination, Tammy claimed that Joshua, the co-director and her direct supervisor, had only booked one double room (with a double bed) for them to share. After Tammy complained, Joshua allegedly changed the booking to a twin room with two single beds but still expected Tammy to share the motel room with him. Tammy claimed that Joshua told her not to worry if she saw him naked as that was how he slept. He also allegedly said that Tammy should not worry because “it was only small”, while looking at his groin area.

After returning home, Tammy complained to Monica, the other co-director of the company and Joshua’s girlfriend. Monica allegedly apologized for Joshua’s behaviour and told Tammy that she would deal with it. Shortly thereafter, Tammy’s hours were reduced.

Tammy lodged a complaint with HREOC alleging sexual harassment and victimization. Her complaint was terminated on the ground of there being no reasonable prospect of the complaint settling via conciliation. Tammy made an application for hearing of her case by the Federal Magistrates Court of Australia but the case was discontinued.

8. No employment relationship

Melanie was employed as a delivery driver for a company that supplied vehicle spare parts. Upon delivering a consignment of spare parts to a customer of the company, Gary, an employee of the customer, allegedly lifted a long screwdriver up between Melanie's legs all the way to her crotch. On another occasion, Gary allegedly struck Melanie in the crotch with an airgun. Upon returning to her workplace, Melanie claimed that she reported the incidences to the acting manager. Melanie's manager contacted Gary's manager who allegedly apologized for Gary's behaviour and advised that Gary would come and give Melanie a verbal apology. Melanie claimed that this did not occur.

Several days later, two of Melanie's managers visited Gary's workplace and spoke to Gary's manager about the complaint. Gary's manager allegedly said that Melanie flaunted her body in the workshop so she "asked for it". Melanie claimed that Gary's manager said that he would provide a written apology but this did not eventuate either.

Melanie lodged a complaint with HREOC alleging sexual harassment against Gary and Gary's employer. The President of the Commission terminated the complaint on the ground that it was not unlawful as there was no employment relationship between Melanie and Gary, nor between Melanie and Gary's employer.

9. No joking matter

Alice, a 51-year-old woman, worked as a temp. She was contracted out to perform administrative duties at a security company. Alice claimed that Geoffrey, a co-worker, was very friendly to her, stopping in the mornings to have lengthy conversations with her and compliment her on what she was wearing. A few days after Alice started work, she was in the lunchroom when Geoffrey allegedly walked behind Alice and rubbed her shoulders. Trying to fit in, Alice said that it felt good and that she could be bribed, joking as she was responsible for giving out the car parking stickers.

A week or so later Alice claimed that Geoffrey came to Alice's office first thing in the morning when no one else was around and rubbed her shoulders again. Alice asked Geoffrey what he wanted but he didn't answer. Geoffrey allegedly kissed Alice lightly on the head and started to walk out, leaving Alice feeling very uncomfortable. Alice said seriously "I think you've taken advantage of me" and Geoffrey allegedly answered "I don't think anyone could take advantage of you". Alice claimed that she blushed at this response, wondering if he meant that she was cheap or had encouraged him.

Alice claimed that in the weeks that followed, Geoffrey would often enter her office when no one else was around and walk around Alice's desk to stand closely beside her. He would put his hand on her shoulder and lean over her. Geoffrey would also stare at Alice's chest when he was speaking to her.

Alice spoke to Geoffrey's supervisor, Max, about Geoffrey's behaviour. When Alice suggested it was sexual harassment, Max allegedly laughed and loudly made jokes about sexual harassment about the office.

A month later, Alice's contract was not renewed. Alice lodged a complaint with HREOC against Geoffrey, Max and the security company alleging sexual harassment and sex discrimination.

The matter settled at conciliation with the company agreeing to pay general damages in the sum of \$4,750, and to provide a written employment reference. Geoffrey agreed to provide a private letter of apology
