

37 million reasons to avoid sexual harassment complaints



Joe Murphy
principal advisor –
legal, Australian
Business Lawyers

In August last year, Kristy Fraser-Kirk lodged a \$37,000,000 claim against her then employer, David Jones, the former CEO, Mark McInnes and individual board members. The claim was based on allegations that Ms Fraser-Kirk had been subject to unwelcome and inappropriate conduct of a sexual nature by McInnes towards Fraser-Kirk.

Whatever view you have about the claim, the focus of discussion should now be ‘what can you do as a business to prevent a claim arising in the first place?’

An employer can be held legally responsible for acts of sexual harassment committed by its employees unless the employer can prove it took ‘all reasonable steps’ to prevent sexual harassment occurring. Reasonable steps are not prescribed but must be active, preventative

measures and at a minimum should include:

1. a clear sexual harassment policy;
2. effective implementation, communication and monitoring of the policy;
3. investigation of complaints; and
4. appropriate remedial action for offenders.

If a director knows or should reasonably know about sexual harassment occurring, then they could also be held to be personally liable. To limit liability, a board of directors can consider a range of additional mechanisms, including:

1. reporting structures to manage the risks;
2. audit committees to monitor performance and improvement; and
3. consider whether a whistleblower or similar policy is necessary.

HR tip

The damage to reputation in the David Jones matter is likely to far outweigh the reported \$850,000 that the claim is alleged to have settled for. While many scoffed at the \$37,000,000 claim at the outset, damages are not capped in all jurisdictions. The reality is that legal liability for sexual harassment arises in a number of ways, including workers’ compensation, work health and safety, and now claimants will also consider the novel cause of action mounted by Ms Fraser-Kirk.

Kick off 2011 with a review of your policies, procedures and other preventative measures to help protect your employees, your business and board of directors from the ugliness of sexual harassment.