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Article

Guidance produced by human rights institutions has largely monopolized the regulatory space for prevention of sexual harassment at work, resulting in longstanding neglect of primary prevention measures. Recently, there has been a shift from reliance on complaints-based regimes stemming from equality and non-discrimination legislation to end sexual harassment at work to integration of prevention measures in work health and safety (WHS) regimes. This article examines the legal architecture for prevention of sexual harassment under the WHS regimes of Belgium, Australia, and Canada (federal law) according to criteria drawn from key aspects of the ILO Violence and Harassment Convention. The study concludes that whether sexual harassment is framed as a separate category of risk, a psychosocial hazard, or a form of violence and harassment, assessment of the specific risk factors for sexual harassment is an important feature of an effective approach to prevention.

Legislation Note

Over the last 30 years, the Australian work health and safety (WHS) regulatory regime, and the anti-discrimination and industrial relations legislative frameworks, have undergone incremental, yet significant, changes in attempts to better regulate psychosocial harm from work. This Legislation Note outlines the evolution of these laws, with a particular focus on recent amendments that enact the first regulation for psychosocial hazards under WHS laws (The Work Health and Safety (Psychosocial Risks) Amendment Regulation 2022), and that introduce associated new codes of practice (The Managing Psychosocial Hazards at Work Code of Practice and the Sexual and Gender-based Harassment Code of Practice). The Note explains how these new provisions interact with existing provisions in the harmonised Australian WHS Acts — the officers' due diligence duty; workers' duties; duties to consult, collaborate and cooperate; the provisions for worker representation and participation; and the regulators' inspection and enforcement powers — in supporting the primary duty to protect workers and others from harm from exposure to psychosocial hazards. The Note concludes with a brief discussion of other (non-WHS) laws such as fair work and anti-discrimination laws that apply to bullying and sex-based harassment at work.

Case Note

The right to request flexible work was recently amended to allow employees to challenge employer responses before the Fair Work Commission (FWC). However, in the first FWC decision under the amended right, Quirke v BSR Australia Ltd (Quirke), the FWC found that the request was ineligible and beyond the purview of their jurisdiction. For the first time, the Full Bench raised the issue of whether a worker had proved their relevant eligibility criterion and established a 'nexus' between their criterion and the requested flexible work arrangement. Other flexible work requests have since been similarly found to be ineligible. This case note inspects the evidentiary requirements set out in Quirke to make an eligible flexible work request and critiques its legitimacy as being inconsistent with a plain reading of the text, the legislation's intended purpose and existing precedent.

Book Review