



Employment Relations Fact Sheet

Ministry of Internal Affairs
Government of the Cook Islands

Discrimination, Harassment & Duress

This fact sheet provides general guidance to workers and employers on their obligations and rights in regards to discrimination, harassment and duress.

Discrimination is defined as the unjust treatment or consideration of a person based on the group, class or category to which that person belongs.

Harassment is defined as the act of unwanted and annoying actions of one person or a group, towards another person or group.

Duress is defined as when a person uses actions (such as threats or violence) to coerce another person to perform an act against their will or better judgment.

Why is preventing discrimination, harassment and duress in the workplace important?

A workplace free of discrimination, harassment and duress is one that:

- fosters good moral, productivity and healthy employees.
- creates a respectful workplace and reduces the risk liability and potential unnecessary costs to employers.

Employer's obligations

Every employer has a legal obligation to provide a workplace free from discrimination, harassment and duress to all its employees.

Employee's obligations

Every worker, as a representative of their employer, has a legal obligation to ensure that they do not discriminate, harass or impose duress on other employees they work with.

Examples of discrimination

An employer or representative of an employer discriminates against an employee if they take adverse action, either directly or indirectly, because of one or more of the following:

- a) Race, ethnic origin, skin colour or appearance;
- b) National origin;
- c) Opinion and belief;
- d) Religion;
- e) Gender or sexual preference;
- f) Disability;
- g) Age;
- h) Health status;
- i) Maternity.

What is an adverse action?

An employer or a representative of an employer takes adverse action against an employee if they:

- a) Terminate the employee's employment for reasons relating to their capacity or conduct;
- a) Subjects the employee to a detriment effecting the employee's employment, employment performance or employment satisfaction;
- b) Retires the employee or causes the employee to retire or resign;
- c) Refuse to employ a prospective employee, or discriminates against the prospective employee in relation to the terms and conditions of employment offered.

What constitutes harassment?

An employer or a representative of an employer must not subject an employee to sexual or racial harassment.

Examples of harassment can included written and spoken language, visual material or physical behaviour that the employee may find directly or indirectly offensive and unwelcome, or causes a detrimental effect on their employment, job performance or job satisfaction.

What is duress?

An employer or a representative of an employer must not subject an employee to duress.

Examples of duress include threats, violence, constraints, pressure or other action to coerce the employee to performance an act against their will or better judgment.

How can discrimination, harassment and duress in the workplace be prevented?

The implementation of discrimination and harassment policies and procedures within the workplace can help in prevention. Educating employees on these policies, procedures and the Employment Relations Act 2012 can also assist in prevention and reduce the risk of liability to the employer.

What can you do if you feel you are being discriminated, harassed or subjected to duress?

Under the Act, an employee has a personal grievance against an employer if the employee claims that they have been discriminated against, sexually harassed, racially harassed or subjected to duress. A personal grievance is an employment dispute and can be resolved by following the Employment Dispute Resolution Process outlined in Part 6 of the Act.

A fact sheet on Employment Disputes is available on the website at www.intaff.gov.ck and outlines the full process for resolving disputes including personal grievances relating to discrimination, harassment and duress.

Further information

Contact the Ministry of Internal Affairs
employment@cookislands.gov.ck or +682 29370

Disclaimer

This document is a guide only. It should not be used as a substitute for legislation or legal advice. The Ministry of Internal Affairs is not responsible for the results of any actions taken on the basis of information in this document, or for any errors or omissions.