



Gold Coast PHN

HR Update Sexual Harassment Positive Duty

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HR in Health

www.healthindustry.com.au

**HEALTH
INDUSTRY**
EMPLOYMENT SERVICES



About Us

Health Industry Employment Services (HIES) was founded on a passion for educating and supporting health industry businesses to navigate the complex employment framework in Australia.

Our Services

Our team is focused on providing tailored employment advice, industry specific contract and document templates to assist you in navigating your Practice's employment needs.

HR in Health

We are the leading HR advisors for the health sector in Australia and support hundreds of members each year, reducing the risk of fair work claims to their business.

The information in this presentation is basic, general information only. It is not a detailed explanation of the law and it should not be relied on as legal advice

Topics in Focus

- Brief background & unpacking the law & recent changes to Sexual Harassment
- Types of obligations now imposed on boards, owners, managers & employees
- What do these changes means for your Practice?
ie. Getting positive duty ready
- HR Planning for 2024 – Achieving your HR Goals
- Top 3 HR Challenges practices faced in 2023



Content Disclaimer | Trigger Warning for Sexual Harassment

This content contains examples of sexual harassment that may be distressing or triggering for some individuals. We acknowledge the sensitive nature of this topic and understand that it may evoke strong emotional responses. If you find that this content is causing discomfort or distress, we encourage you to prioritize your well-being and consider stepping away from the material.

Your mental and emotional health is important to us, and we respect your decision to engage with content that feels safe and comfortable for you.

If you need support or someone to talk to, please reach out to a trusted friend, family member, or a mental health professional.

Workplace sexual harassment statistics



Positive duties under work health and safety laws require persons conducting a business or undertaking to do all they reasonably can to prevent sexual harassment.

Is sexual harassment occurring in your workplace?

Talk to workers and any health and safety representatives about how and when sexual harassment might happen, and how to prevent it.

One in three people

(33%) said they experienced sexual harassment at work in the last five years.



Almost **2 in 5 women**
(39%)

just over **1 in 4 men**
(26%)

Of those in the workforce in the past 5 years:



One in two people

have been **exposed to sexual harassment**, either as a victim themselves, or as a bystander.



Two in five people

(41%) said that they **were aware that others in their workplace** had experienced the same form of sexual harassment as them.



For more than half of people

(56%) who had repeated experiences, the harassment had **been ongoing for more than six months**.

Prevalence rate:

Workplace sexual harassment was notably higher than the national prevalence rate (33%) in the following industries:



81%
Information, media and telecommunications



49%
Arts and recreation services



47%
Electricity, gas, water and waste services



42%
Retail trade



40%
Mining

Source: Australian Human Rights Commission
2018 National Survey

Safe Work Australia resources to assist persons conducting a business or undertaking can be [found online](#)

The Sydney Morning Herald

Politics Federal Workplace

This was published 1 year ago

Employers to be named for flouting new sexual harassment laws



Angus Thompson

November 6, 2022 – 5:00am

Save Share A A A

Employers who fail to protect their workers from sexual harassment can be named under a new power given to Australia's human rights watchdog.

Attorney-General Mark Dreyfus said there must be ways of ensuring there were consequences for breaching the new laws. He said the government wanted to proactively prevent harassment in the workplace and that the new reform was making its way through federal

Respect @ Work | Recent Changes

1. Burden has shifted significantly from an obligation on employers to respond and take remedial action to employers and business being required to take a proactive and preventative approach or be found in breach of positive duty
2. Unlawful workplace behaviour is now more than just sexual harassment, expanded coverage and new offences
3. Expanded coverage to “workers” which is defined as an individual who performs work in any capacity at a workplace eg. employee, contractor, sub-contractor, trainee, work experience, volunteer
4. Significant risks to reputation and bottom line
5. Effective 12 December 2023

**Sex Discrimination Laws
Federal & State**

Sexual harassment
Sex Discrimination
Sex based harassment
Creating a hostile work
environment

Tort / Contract Laws

Victimisation Laws

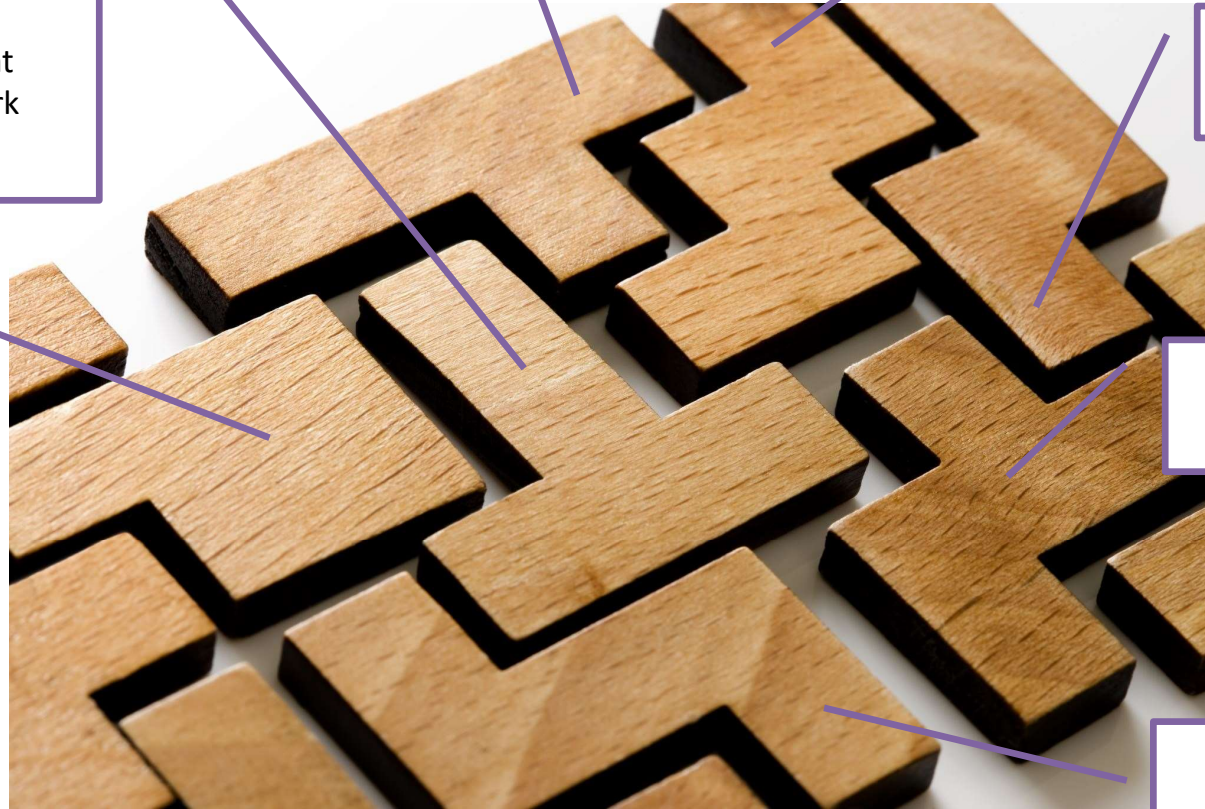
**Work Health & Safety
Laws**

**Fair Work Act
Protections**

Stop SH orders
Stop Bullying orders
Bullying
General protections
Unfair dismissal
Sexual harassment in
connection with work

**Workers' Compensation
Schemes**

Criminal Laws



Respect @ Work | New Positive Duty



Requires all employers to take **reasonable and proportionate** steps to **eliminate** sexual harassment, sex discrimination, sex based harassment, conduct that creates a hostile workplace environment and victimisation **as far as reasonably possible**

Sexual harassment

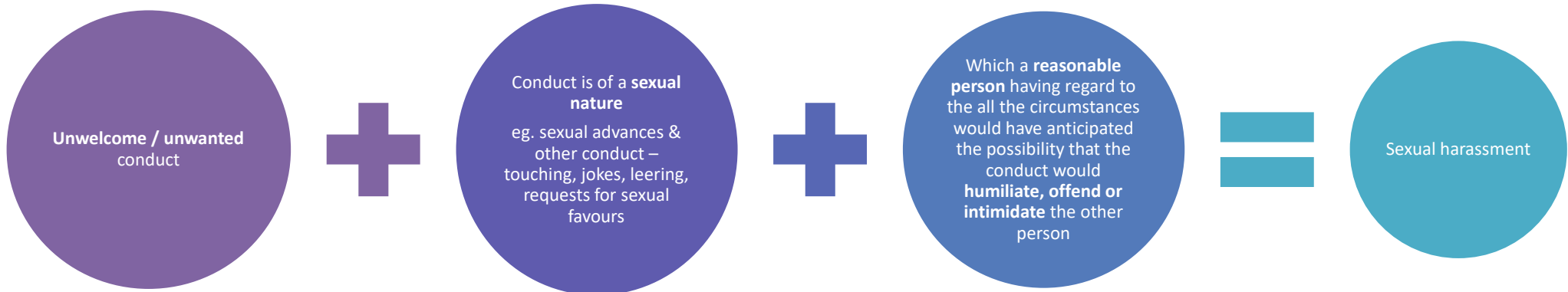
Sex discrimination

Sex based harassment

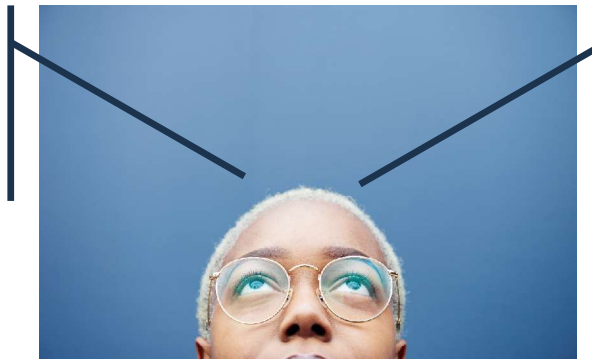
Conduct that creates a hostile work environment

Victimisation

1. Sexual Harassment



A single incident can be enough to constitute sexual harassment – it does not need to be repeated or persistent



The alleged harasser's motivation or intention is irrelevant



unwelcome touching, hugging, cornering or kissing



inappropriate physical contact



sexual gestures, indecent exposure or inappropriate display of the body



intrusive questions about a person's private life or physical appearance



sharing or threatening to share intimate images or film without consent



repeated or inappropriate invitations to go out on dates



sexually suggestive comments or jokes that offend



requests or pressure for sex or other sexual acts



sexually explicit pictures, posters or gifts



actual or attempted rape or sexual assault



being followed, watched or someone loitering



sexually explicit comments made in person or in writing i.e. in emails, SMS messages or on social media, including the use of emojis with sexual connotations



indecent texts, messages or phone calls—including someone sending a sexually explicit message



unwelcome conduct of a sexual nature that occurred online or via some form of technology—including on virtual meetings



repeated or inappropriate advances on email or other online social technologies

Under the new laws, when is sexual harassment unlawful at work?



Where a working relationship exists between the two people

Where such a relationship exists, the physical location & time of the sexual harassment is irrelevant



Where there is no working relationship between two people but the behaviour occurs in connection with another person performing their work / function related to work

Ensuring that people are not exposed to sexual harassment by reason of engaging in activities connected to their work eg. from patients, clients, suppliers & workers do not use their position to engage in sexual harassment

2. Sex Discrimination @ Work

- Sex Discrimination Act 1984 (SDA) makes it unlawful to discriminate against a person because of their sex
- Sex discrimination occurs when someone (eg. employee & potential employee, patient) is treated less favourably, or not given the same opportunities as a person of a different sex, because of their sex.
- It also occurs when a rule or policy applies to everyone but disadvantages a person based on his or her sex and the policy is not reasonable.

Examples of sex discrimination could include:

- not hiring a male because the employer thinks he won't fit into a 'traditionally' female workplace
- not paying a woman the same salary as a man for doing the same work, or not providing the same opportunities for training, mentoring or promotion
- allocating work tasks based on a person's sex



3. Sex Based Harassment aka Sexist Behaviour

Sex-based harassment is where someone:

- subjects another person to unwelcome conduct of a demeaning nature; and
- does so because of the person's sex or a characteristic that is generally imputed to persons of that sex

Sexual-based harassment occurs in circumstances where a reasonable person would anticipate that the person harassed would have been offended, humiliated or intimidated by the unwelcome conduct

Being called "sweetheart" "love" "darl"

She is a mum and ONLY works part-time

He has man flu // OMG I had to mansplain it

What a drama queen / Harden up princess

She isn't doing anything on maternity leave



4. Hostile Workplace Environment

- It is unlawful for an employer to subject another person to a workplace environment that is hostile on the grounds of sex
- A hostile workplace environment is a workplace where I work at is subject to conduct which can reasonably be considered to be offensive, intimidating or humiliating to a person on the basis of their sex (or a characteristic of their sex) occurs.

Important

- The conduct does not need to have been directed towards any particular person; AND
- The conduct does not need to have actually resulted in an individual being offended, intimidated or humiliated.

5. Victimisation

The law prohibits victimisation of anyone connected to a complaint. Being found to have victimised someone is both a civil and criminal offence

Victimisation means **treating or threatening to treat someone badly** (ie. subjecting them to a detriment) because they have:

Made a complaint of sexual harassment or is believed they might make a complaint

Helped make someone else make it complaint

Refused to do something. As it would be sexual harassment or discrimination or victimisation.



Making a Legal Complaint

Australian Human Rights Commission – Federal & State

Fair Work Commission

Federal Courts

Work Health & Safety Regulators – Federal & State

Applications can be made as an individual, jointly as multiple complainants or by unions on behalf of an employee(s)

Obligations imposed on Boards, Managers & Employees

Personal Liability

- A person is liable for their own unlawful conduct.

Accessorial Liability

- Employers and individuals (eg. PMs) who cause, instruct, induce, aid, or permit sexual harassment in the workplace.
- This also includes failing to take action to stop the harassment

Vicarious Liability

- Where the sexual harassment conduct occurs in connection with an employee's employment, an employer is liable unless they can show that they have taken all reasonable steps to prevent the sexual harassment.

Positive Duty * NEW *

- Employers may be liable. If they are found to have not taken reasonable and proportionate measures to eliminate unlawful conduct as far as possible.



Positive Duty Changes Everything

- Under the new positive duty laws, an employer (and stakeholders) can be in breach:
 - Without a complaint
 - Without an incident
 - Without ‘a problem’

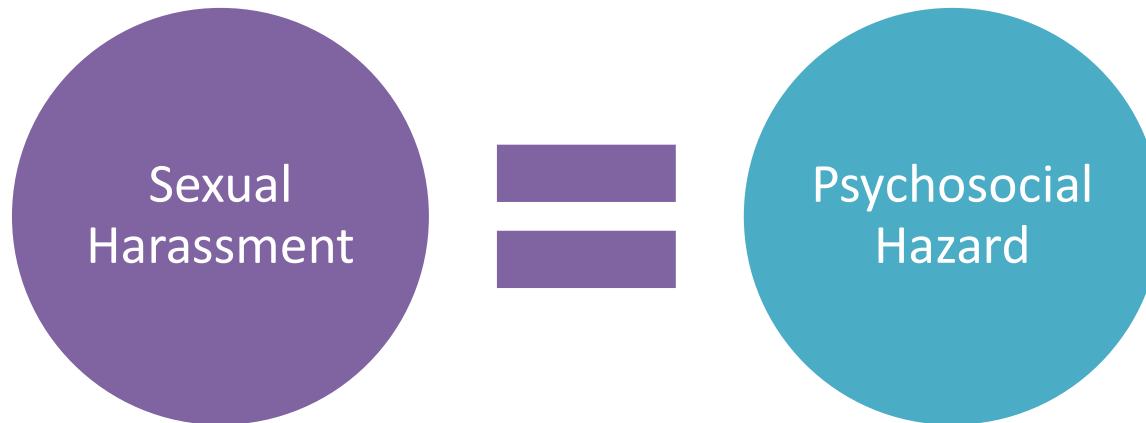
Think about this through a WHS lens...

What could be a sexual harassment near miss?

Work parties, functions, work trips, work travel, conferences, isolated work, communication platforms, social spaces, dress codes

WHS Changes

- New psychosocial code and practice = positive duty to manage psychosocial health under WHS laws
ie. a cross over with risk management & positive duty obligations



- Psychosocial hazards can come from:
 - The design or management of work
 - A work environment
 - Plant and equipment at a workplace
 - Workplace interactions or behaviours.

Incidents in the ACT

Since 9 June 2023, Mandatory obligation on employers once they become aware of an incident. Or suspect or actual sexual assault that occurs in their workplace to notify work safe ACT.



What do these changes mean for your Practice?

How can you get positive duty compliant?

The Positive Duty on Employers

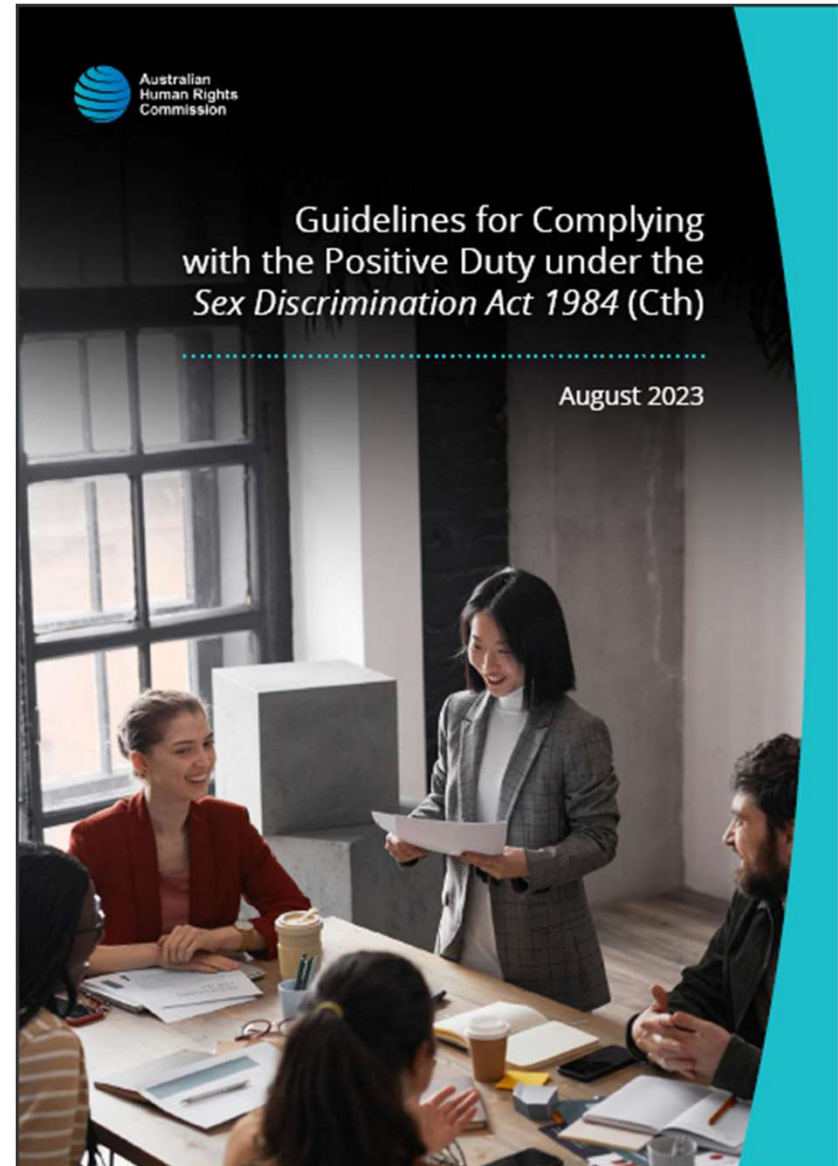
AHRC will assess employers against

- 7 standards
- 4 Guiding Principles

Overarching Requirements

- Consultation
- Transparency – internally & publicly
- Person centred & trauma informed

<https://humanrights.gov.au/sites/default/files/2023-08/Guidelines%20for%20Complying%20with%20the%20Positive%20Duty%20%282023%29.pdf>



AHRC 7 Guiding Principles

What can your Practice do practically?

Leadership & Knowledge

Culture

Policy

Risk Assessment

Communication & Training

Complaint Handling ie. Support, Reporting & Response

Prevention Plan + Monitor & Evaluate

Policy

- Key to preventing sexual harassment is to make it abundantly clear to every worker (ie. employee & contractor / service provider) that it is unacceptable, strictly prohibited and will not be tolerated. One important way of doing this is by having a sexual harassment policy.

Do a sexual harassment policy health check...

- Do you have a policy?
- Is it up to date? Does it include sex based harassment and a hostile work environment?
- Is it a standalone or incorporated into a broader policy?
- Do practice workers understand and receive communication and training around the policy?
- Do all practice workers know where they can access the policy?
- Is your policy enforced?

SCAN THE QR CODE
TO PURCHASE HIES SEXUAL HARASSMENT
POLICY FOR \$550 (ex gst)

Action Items

- Do a policy health check
- Consider how you are communicating the policy to workers & update process if necessary eg. onboarding & at least annually
- Are you monitoring behaviour / symptoms?



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How can HIES Help

- Sexual Harassment Policy - Review / New
- Review contracts & policies
- Training - For Workers / For Managers
- Ongoing support via Membership - Core, Compliance, HR Outsourced

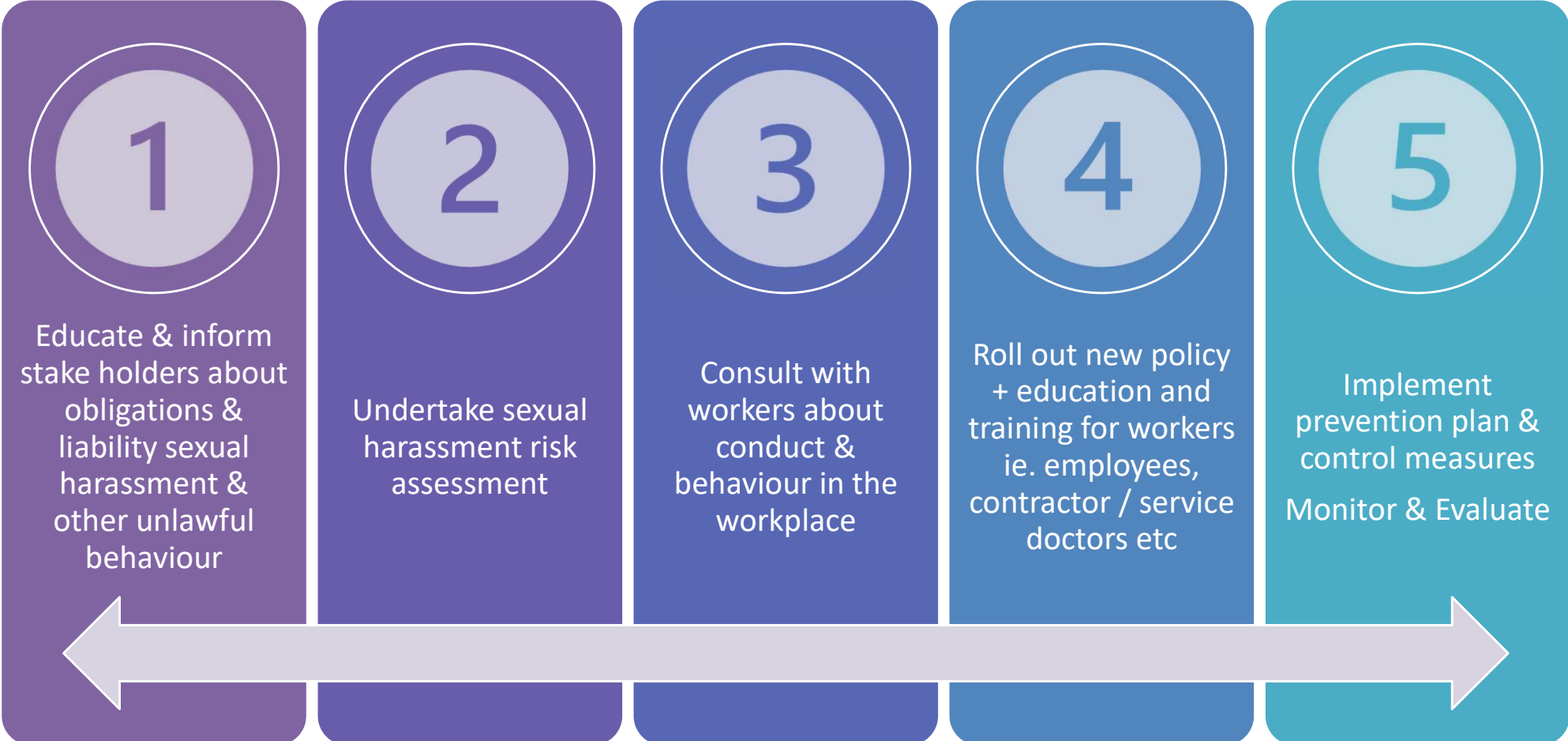
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HIES HR Update Top 5 Tips







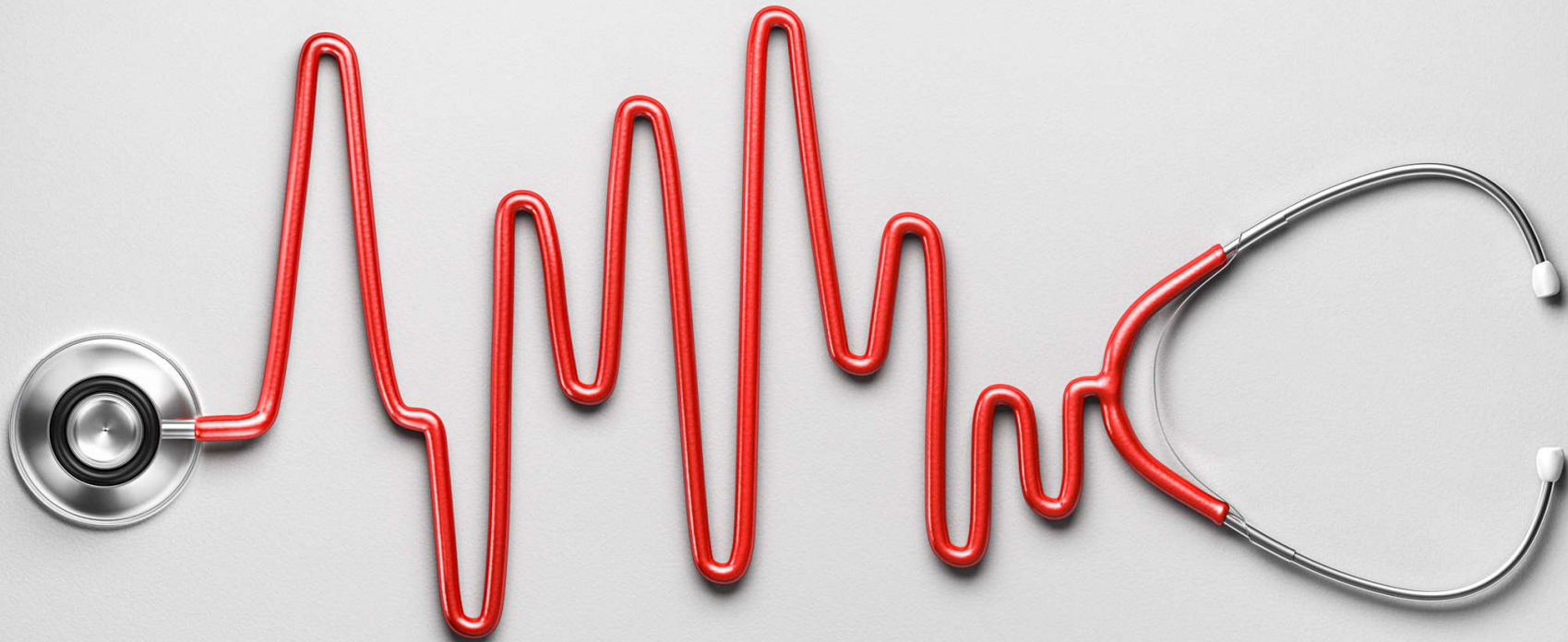
What are your 2024
HR Focus areas?

Wage Review and Reductions

- Assess current cost;
- Do benchmarking;
- Understanding where your wages are going?
- Are you operationally rostered correctly?
- Understand compliance with Modern Awards;
- Review operational and staffing needs (track phones, patient contact, task based time)

- Make appropriate changes based on the analysis





Biggest HR Issues in 2023

A row of wooden figures, resembling a line of people, is shown against a light blue background. The figures are arranged in a slightly curved line, receding into the distance. Most of the figures are a light, natural wood color. In the center of the line, one figure is painted a vibrant red, making it stand out significantly from the others. The figures have a simple, rounded design with a spherical head and a tapered body. The text "Recruitment & Retention" is overlaid in white, centered horizontally and partially overlapping the red figure.

Recruitment & Retention



Behavioral, Conduct & Cultural Issues

Wage & Compliance Issues



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