



Human Capital Management  
& Payroll Software/Services

## Positive steps for Positive Duty

February | 2024

Positive Duty regulations took effect in December 2022 as a revision of the Sex Discrimination Act 1984 (Cth), marking a pivotal moment in tackling workplace discrimination. These regulations demand that employers take steps to prevent unfair treatment within the workplace or in any work-related settings. This encompasses discriminatory practices based on sex, including sexual harassment, sex-based harassment, creating a hostile work environment on the grounds of sex, and related acts of victimisation.

The scope of Positive Duty regulations extends to all organisations and businesses in Australia governed by the Sex Discrimination Act, covering a wide spectrum from sole traders and the self-employed to small, medium, and large businesses, as well as government entities.

Employers must take reasonable and proportionate measures to prevent and minimise illegal activities. The specific actions required from each business vary depending on factors such as the organisation's size, nature, and available resources.

To aid organisations in navigating these legal obligations, the Australian Human Rights Commission has produced practical guidance materials. The [Guidelines for Complying with the Positive Duty \(2023\)](#) gives detailed insights into positive duty, delineating who must adhere to it, the concept of 'reasonable and proportionate measures', enforcement protocols, and associated legal obligations. These guidelines also offer tangible examples of actions that organisations and businesses can undertake to comply with the laws.

On December 12, 2023, the Commission gained additional powers to investigate and enforce compliance with Positive Duty laws, heightening the imperative for every organisation to be prepared and compliant.



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## Guiding Principles and Standards

The guidelines provide four Guiding Principles and seven Standards that the Commission expects all relevant organisations and businesses to uphold:

### 1. Be Consultative

Engage in dialogue with your workforce to discern their requirements for a safe and respectful workplace.

### 2. Aim to achieve Gender Equality

Strive for equal rights, rewards, opportunities, and resources irrespective of gender.

### 3. Recognising Diversity

Consider the diverse identities of your workforce that may influence their experience of discrimination and harassment, such as gender diversity, age, racial background, or disability.

### 4. Adopting an Evidence-Based Approach

Analyse and use data to comprehend the nature and extent of discriminatory practices in your workplace.

The Standards encompass areas such as leadership and commitment, governance and accountability, risk management, communication and training, support and reporting, monitoring and evaluation, and continuous improvement.

## Creating a Culture of Respect

Positive Duty isn't just a box to tick – it's about fostering an environment where everyone feels valued and respected, and it applies at every level of your organisation.



### Senior Executives

As leaders, senior executives play a crucial role in setting the tone. They need to show unwavering commitment to stamping out any form of discrimination. It's about building a positive culture that champions equality and ensuring the resources are in place to meet obligations.

### Human Resources Professionals

HR professionals are the backbone of your organisation's policies and procedures. They need to establish robust governance structures that support the prevention of discrimination. This means making sure everyone understands your policies and procedures and feels empowered to speak up if they witness or experience any misconduct.

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### Managers and Supervisors

Managers and supervisors are on the front lines and responsible for day-to-day operations. They need to identify, assess, and manage risks to prevent discrimination. This involves ensuring their teams are well-trained and aware of the risks associated with discrimination, and the mechanism to report incidents.

### Employees

At the heart of creating a culture of respect are the employees. They need to foster open communication and educate each other about discrimination and how to prevent it. If anyone experiences or witnesses' discrimination, they must feel safe to report it immediately.

## Putting Principles into Practice

So, how do we translate these principles into action?

### Consultation

Engage with employees through surveys, focus groups, and one-on-one meetings. This will provide understanding regarding their needs and concerns and enable the development of tailored solutions.

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### Gender Equality

Conduct a thorough gender pay gap analysis and review recruitment and promotion policies, this will ensure everyone has equal access to opportunities and resources.

### Inclusion

Diversity and inclusion training, flexible work arrangements, and inclusive policies are key to fostering a culture of respect and inclusivity.

### Leadership

Leaders *must* lead by example, set clear expectations, and hold themselves and others accountable for creating a discrimination-free workplace.

### Prevention

Conduct risk assessments, develop comprehensive training programs, and implement measures to prevent discrimination from occurring. If you don't have the resources to do so, seek external assistance.

### Reporting and Support

Establish clear and confidential reporting mechanisms and provide support to those affected by discrimination, including counselling services.

### Training and Education

Ensure every employee has access to ongoing training and education on discrimination prevention, bystander intervention, and unconscious bias.

### Monitoring and Evaluation

Regularly monitor and evaluate the effectiveness of your policies and procedures and use data to inform decision-making. Continuously review and improve practices seeking feedback from employees and implementing changes as needed.

In conclusion, Positive Duty is not just a legal obligation – it's a moral imperative.

By taking proactive steps to prevent discrimination, business can create safe, respectful, and inclusive workplaces that benefit everyone. What is your organisation doing?



**“Commitment to customer service is our number one priority.”**

**Michael Howard, Founder**

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