

On 24 December 2021, *THDL* [2021] FWC 6692 became the first decision handed down by the Fair Work Commission (FWC) utilising the powers it has been granted to hear applications for “stop sexual harassment orders”. Those new powers arise by virtue of amendments made to the Fair Work Act 2009 (Cth) (FW Act) following recommendations made in the Respect@Work Report.

As a result of the amendments, workers who reasonably believe they have been sexually harassed may apply to the FWC seeking orders to prevent them from being sexually harassed at work. The FWC may make any order it considers appropriate if it is satisfied that:

- The worker has been sexually harassed at work by one or more individuals
- There is a risk that the worker will continue to be sexually harassed at work by the individual or individuals

In the case of *THDL* (a pseudonym given to the applicant worker), an application for an order to stop bullying and sexual harassment was filed in respect of two employees of a neighbouring business, located within the same warehouse complex in which *THDL* worked.

The two individuals objected to the order, arguing:

- *THDL* did not meet the definition of “worker”
- *THDL* was not at work when the alleged contact occurred (although the reasons for these arguments were not articulated in the judgment)
- They had an intervention order in place against *THDL*, meaning they no longer had contact with *THDL*
- *THDL*’s business had moved out of the complex, so *THDL* and the individuals would not cross paths again while at work

The final two points noted above were relevant to the FWC’s decision to dismiss the application. This was because, in order to make a stop sexual harassment order, the FWC must be satisfied that there is an ongoing risk of sexual harassment to the worker. There was held to be no ongoing risk in this case given an intervention order had been put in place and *THDL* no longer worked at the same location as the two named respondents.

Implications for Employers

While *THDL* was unsuccessful in obtaining an order, the fact of the application acts as a reminder to employers to ensure that their sexual harassment policies contain appropriate measures and procedures for responding to, reporting or assisting with sexual harassment complaints.

Dealing with complaints of sexual harassment early may also dispose of the need for a worker to apply to the FWC for a stop sexual harassment order.

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