



Human Capital Management
& Payroll Software/Services

How to take positive steps for Positive Duty

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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.

Here is a practical checklist that a business not yet compliant with Positive Duty Laws could use to meet the major tenets of the laws:

Task	Description	Done
1. Understand the Laws	Familiarise yourself with the Positive Duty requirements under the Sex Discrimination Act 1984 (Cth) and the “Guidelines for Complying with the Positive Duty” published by the Australian Human Rights Commission.	
2. Consult with your employees	Talk to your workers about what they need for a safe and respectful workplace.	
3. Identify risk areas	Identify areas of risk in your workplace where discrimination, harassment, or victimisation may occur. This could include reviewing your policies, procedures, and practices, as well as conducting surveys or focus groups with your employees.	
4. Develop action plans	Develop an action plan that outlines the steps you will take to eliminate or minimise the risks identified in step 3 above. Ensure that your action plan is tailored to your workplace and reflects the Guiding Principles and Standards set out by the Australian Human Rights Commission.	
5. Implement action plans	Implement your action plan and monitor its effectiveness. Ensure that you have allocated sufficient resources to implement your plan and that you have the support of your leadership team.	

6. Train all employees	Provide training to your workers on their rights and responsibilities under the Sex Discrimination Act 1984 (Cth), as well as on your policies and procedures for preventing discrimination, harassment, and victimisation.	
7. Review and evaluate	Regularly review and evaluate your policies, procedures, and practices to ensure that they remain effective and up-to-date. This could include conducting regular surveys or focus groups with your employees.	

Additional Resources

Whilst this checklist will get you off to a great start and help make sure you are compliant with the Positive Duty laws, it is not an exhaustive list. If you're looking for more information about Positive Duty laws, check out the following resources:

1. [Guidelines for Complying with the Positive Duty](#): This is the most comprehensive legal resource on the positive duty published by the Australian Human Rights Commission. It provides detailed information about what the positive duty is, who must meet the positive duty, what it means to take 'reasonable and proportionate measures', how the positive duty will be enforced, and related legal obligations. The Guidelines also provide examples of practical actions that organisations and businesses can take to help them satisfy the positive duty.
2. [Information Guide on the Positive Duty](#): This is a companion to the Guidelines for Complying with the Positive Duty, designed to educate organisations and businesses about the relevant unlawful conduct covered by the positive duty. It provides information about drivers, risk factors, and impacts of relevant unlawful conduct.
3. [Steps to meet the Positive Duty Factsheet](#): This factsheet provides a brief overview of the steps that organisations and businesses need to take to satisfy the positive duty. It includes information about identifying areas of risk, developing an action plan, implementing the plan, training workers, and reviewing and evaluating policies and practices.
4. [A Quick Guide for Complying with the Positive Duty](#): This guide provides a summary of the Information Guide on the Positive Duty. It is designed to provide a quick reference for organisations and businesses that are looking to comply with the positive duty.

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Michael Howard, Founder