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Briefing Note

Agency Workers and sexual harassment by clients

Under new rules in the Sex Discrimination Act which came into force in April 2008 labour providers are now duty-bound to protect their staff from sexual harassment by customers and other people they encounter in the course of their work.

This will apply where the employer knows the employee has been subject to harassment on at least two occasions by a third party and the employer has failed to take such steps as would have been reasonably practicable to prevent the third party harassing the employee. Importantly, the three incidents of harassment only need to be to the same employee, not by the same person. Once an employee has been harassed twice, employers now have a duty to positively take all practicable steps (very tough in practice), failing which discrimination will be found.

Labour providers may feel uncomfortable about confronting clients about inappropriate behaviour, but they need to be aware that failing to take action on this could now result in a claim for compensation, including 'injury to feelings', under the Sex Discrimination Act.

In addition the test for sexual harassment has changed. This will become unwanted conduct "related to her sex", instead of "on the grounds of sex". This new definition will cover a wider range of conduct as the harassment is only required to be associated to the victim's gender, not caused by it.