

## Protection from discrimination at work

Respect@Work: New sexual harassment protections

On 10 September 2021, the Fair Work Act 2009 was updated with new provisions to address sexual harassment at work. The changes aim to make sure that workers are protected and empowered to address sexual harassment at work.

We're reviewing the information on this page in light of these changes. We encourage you to keep checking back here for updates.

Find out more at [New sexual harassment protections take effect \(www.fairwork.gov.au/about-us/news-and-media-releases/web-site-news/new-sexual-harassment-protections-take-effect\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/web-site-news/new-sexual-harassment-protections-take-effect) .

Discrimination occurs in the workplace when an employer takes adverse action against an employee or prospective employee because of a protected attribute.

### On this page:

- [What are the protected attributes?](#)
- [What is adverse action?](#)
- [When can discrimination occur?](#)
- [What isn't discrimination?](#)
- [Need help resolving discrimination issues?](#)
- [Related information](#)

### What are the protected attributes?

Protected attributes under the Fair Work Act include:

- race
- colour
- sex
- sexual orientation
- age
- physical or mental disability
- marital status
- family or carer's responsibilities
- pregnancy
- religion
- political opinion
- national extraction
- social origin.

[Back to top](#)

### What is adverse action?

Adverse action includes doing, threatening or organising any of the following:

- firing an employee
- injuring the employee in their employment, for example, not giving an employee legal entitlements such as pay or leave
- changing an employee's job to their disadvantage
- treating an employee differently than others
- not hiring someone
- offering a potential employee different and unfair terms and conditions for the job compared to other employees.

[Back to top](#)

## When can discrimination occur?

Discrimination can happen:

- to someone applying for a job as an employee
- to a new employee who hasn't started work
- to an employee at any time during employment.

### Example 1: Older workers and discrimination at work

Dimitri is an experienced barista with excellent references. He applies for a vacancy at a local coffee shop. During the job interview the manager asks him how old he is. Dimitri tells the manager he is 57 years old.

The next day the manager calls Dimitri to tell him that he didn't get the job because the coffee shop wants a 'younger, fresher look' for their baristas. They have hired a 17 year old who is less qualified for the job.

This is discrimination. Dimitri is treated differently to other job applicants because of his age.

To learn about the impact of age discrimination watch the Australian Human Rights Commission's short video about the [Power of oldness](http://www.powerofoldness.com) (http://www.powerofoldness.com) .

### Example 2: Pregnancy and discrimination at work

Sally is employed as an account manager at an advertising firm. The manager at the firm tells all the account managers that they can attend a training course. Sally is pregnant and tells her colleagues and the manager the good news. The manager asks Sally to come to a meeting to discuss the training. At the meeting he tells her that he has changed his mind and that she can't attend the training because she is pregnant.

This is discrimination. Sally is treated differently to her colleagues because she is pregnant.

[Back to top](#)

## What isn't discrimination?

Adverse action isn't always discrimination, even though it might seem to be. There can be lawful reasons that have nothing to do with someone's personal characteristics.

It's not discrimination if the actions:

- are allowed under state or federal anti-discrimination law
- are taken against an employee of a religious institution to avoid harming the organisation's religious beliefs
- do not relate to one of the protected attributes (visit our [Bullying and harassment \(www.fairwork.gov.au/employee-entitlements/bullying-harassment-discrimination-in-the-workplace/bullying-and-harassment\)](http://www.fairwork.gov.au/employee-entitlements/bullying-harassment-discrimination-in-the-workplace/bullying-and-harassment) page for more information) or
- relate to the necessary requirements of the job.

### Example 1: When an adverse action isn't discrimination

Peter has a physical disability and relies on a wheelchair. He works as a marketing employee. On his last project, he made some mistakes. Peter's manager tells him that he'll need to do some training to develop his skills. Peter continues to make mistakes after he has done the training. As a result, Peter's employer changes his duties to more general administration tasks while he does more training.

In this example, Peter hasn't been discriminated against. His job has been changed because of his poor performance and not because of his physical disability.

If the changes to Peter's job happened because of his disability it would most likely be discrimination.

### Example 2: Necessary requirements of the job

Lisa is 17 years old and recently applied for a job working in a bar serving alcohol. However, the state's liquor legislation doesn't allow people under 18 years to serve alcohol.

Being able to legally serve alcohol is a necessary requirement of the job.

The company wrote to Lisa saying that because she was under 18 and couldn't legally serve alcohol she didn't meet the requirements of the job and wouldn't be asked for an interview.

It's unlikely that the company has unlawfully discriminated against Lisa because of her age. The reason why it refused to employ her was that she wasn't able to legally serve alcohol and this is an inherent requirement of this job.

Source reference: [Fair Work Act 2009 s.351](https://www.legislation.gov.au/Series/C2009A00028) (https://www.legislation.gov.au/Series/C2009A00028)

[Back to top](#)

## Need help resolving discrimination issues?

### For employees:

If you've lost your job, contact the Fair Work Commission (the Commission) first if you think you were sacked because of:

- discrimination
- a reason that is harsh, unjust or unreasonable
- another protected right.

You have 21 days starting from the day after you were dismissed to lodge an application with the Commission. Check the information at the Commission website to find out if you can apply for:

- [unfair dismissal](https://www.fwc.gov.au/termination-of-employment/unfair-dismissal) (https://www.fwc.gov.au/termination-of-employment/unfair-dismissal) (not available if you lost your job because of a genuine [Redundancy](http://www.fairwork.gov.au/ending-employment/redundancy/default) (www.fairwork.gov.au/ending-employment/redundancy/default) )
- [a general protections dismissal](https://www.fwc.gov.au/termination-employment/general-protections-dismissal) (https://www.fwc.gov.au/termination-employment/general-protections-dismissal)
- [unlawful termination](https://www.fwc.gov.au/termination-employment/unlawful-termination) (https://www.fwc.gov.au/termination-employment/unlawful-termination) .

For other discrimination issues:

- consider whether the actions taken were unlawful discrimination
- see our [Fixing a workplace problem](http://www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem/default) (www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem/default) section for practical advice on:
  - talking to your employer about fixing the problem
  - getting help from us if you can't resolve it
- contact your [state or territory anti-discrimination body](http://www.fairwork.gov.au/website-information/related-sites#anti-discrimination) (www.fairwork.gov.au/website-information/related-sites#anti-discrimination) , which can consider and investigate breaches of state or territory anti-discrimination laws in workplaces
- contact the [Australian Human Rights Commission](https://www.humanrights.gov.au/) (https://www.humanrights.gov.au/) which accepts complaints of workplace discrimination based on a person's race, sex, age, sexual orientation, religion or disability under federal anti-discrimination laws. The Australian Human Rights Commission uses conciliation between parties to reach a resolution.

### For employers:

Take discrimination issues seriously. Know what discrimination is and take steps to prevent it in your workplace.

We have resources to help you:

- Take our free [Diversity and discrimination online course](http://www.fairwork.gov.au/tools-and-resources/online-learning-centre/diversity-and-discrimination) (www.fairwork.gov.au/tools-and-resources/online-learning-centre/diversity-and-discrimination) to learn how to promote diversity, prevent discrimination and handle complaints.
- Download our [Managing underperformance best practice guide](http://www.fairwork.gov.au/tools-and-resources/best-practice-guides/managing-underperformance) (www.fairwork.gov.au/tools-and-resources/best-practice-guides/managing-underperformance) for information about how to take reasonable management action to make sure employees are doing their job properly. Disciplinary action carried out by a manager in a reasonable, lawful way isn't discrimination.

## Related information

- [Workplace discrimination fact sheet](http://www.fairwork.gov.au/tools-and-resources/fact-sheets/rights-and-obligations/workplace-discrimination) (www.fairwork.gov.au/tools-and-resources/fact-sheets/rights-and-obligations/workplace-discrimination)
- [Gender pay equity best practice guide](http://www.fairwork.gov.au/tools-and-resources/best-practice-guides/gender-pay-equity) (www.fairwork.gov.au/tools-and-resources/best-practice-guides/gender-pay-equity)
- [Protections at work](http://www.fairwork.gov.au/employee-entitlements/protections-at-work/default) (www.fairwork.gov.au/employee-entitlements/protections-at-work/default)
- [Bullying and harassment](http://www.fairwork.gov.au/employee-entitlements/bullying-harassment-discrimination-in-the-workplace/bullying-and-harassment) (www.fairwork.gov.au/employee-entitlements/bullying-harassment-discrimination-in-the-workplace/bullying-and-harassment)

## Contact us

Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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