

Workplace discrimination

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 in this fact sheet 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) .

Read our fact sheet on workplace discrimination.

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Download the fact sheet:

- [Workplace discrimination \(PDF 90.8KB\) \(www.fairwork.gov.au/ArticleDocuments/723/Workplace-discrimination.pdf.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/723/Workplace-discrimination.pdf.aspx)

What is unlawful workplace discrimination?

Unlawful workplace discrimination occurs when an employer takes adverse action against a person who is an employee or prospective employee because of the following attributes of the person:

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

Where an investigation finds that the employer has (or had) discriminatory practices that are linked to adverse actions for employees or prospective employees, the Fair Work Ombudsman may take enforcement action.

What is adverse action?

Adverse action can include action that is unlawful if it is taken for a discriminatory reason. The Fair Work Act 2009 (FW Act) describes a number of adverse actions.

Adverse action taken by an employer includes doing, threatening or organising any of the following:

- dismissing an employee
- injuring an employee in their employment
- altering an employee's position to their detriment
- discriminating between one employee and other employees
- refusing to employ a prospective employee
- discriminating against a prospective employee on the terms and conditions in the offer of employment.

Example

Sally is employed at an advertising firm. Recently, Sally applied for a promotion for a vacant Account Manager position. During the interview, Sally mentions to the Manager that she is pregnant and plans on taking her entitlement to parental leave. Although Sally is highly qualified for the job, her Manager tells her that she did not receive the promotion because she would be taking her parental leave. Denying Sally this position because she is pregnant is prohibited under the FW Act.

For more information on adverse action and other rights protected from certain unlawful action, please see our [Protections at work fact sheet \(www.fairwork.gov.au/tools-and-resources/fact-sheets/rights-and-obligations/protections-at-work\)](http://www.fairwork.gov.au/tools-and-resources/fact-sheets/rights-and-obligations/protections-at-work) .

Who is covered by these protections?

It is unlawful for an employer to discriminate against an employee. This includes full time, part time and casual employees, probationary employees, apprentices and trainees, and individuals employed for fixed periods of time or tasks.

It is also unlawful to refuse to hire a prospective employee based on one of the attributes listed above.

What is not considered unlawful discrimination?

Treating someone differently is not necessarily unlawful discrimination. Some different treatment such as general performance management may not be an unlawful discrimination issue. In terms of the FW Act, an action is only considered adverse action if it occurs due to one or more of the above attributes (race, sex, age, disability, etc). If this is not the basis of the action, it may not be considered an act of unlawful discrimination.

Example

Paul is a marketing employee who made several errors on his last project. To try and address this, Paul has been placed on a performance management plan to develop his skills. However Paul continued to make errors while on the plan. As such, Paul's daily duties have been changed while he was undergoing further training. In this example, it is not unlawful to alter Paul's employment because the reason was not based on his personal attributes (i.e. race, sex, age, disability, etc).

The FW Act also provides that in some circumstances, an action may not be considered discrimination.

This includes where the action:

- is permissible under state or territory anti-discrimination laws
- is based on the inherent requirements of the particular position concerned
- is taken against a staff member of an institution run in accordance with religious beliefs, and the action is taken in good faith and to avoid injury to those religious beliefs.

A concern for some employees in the workplace is the issue of bullying or harassment. Bullying or harassment does not necessarily constitute unlawful discrimination unless the behaviour can be shown to be adverse action linked to one of the attributes listed above. However, forms of bullying or harassment which do not fall within the jurisdiction of the FWO may be considered unlawful under occupational health and safety laws. People experiencing bullying or harassment are encouraged to seek advice and assistance from their local occupational health and safety body.

What do I do if I think I've been discriminated against in my employment?

The FWO is committed to ensuring that employees and prospective employees are protected from unlawful workplace discrimination and any other adverse actions by an employer.

If you believe that you and/or other employees have been unlawfully discriminated against in your employment, and the action occurred

or continued to occur after 1 July 2009, you can request assistance from the FWO. You can do this by submitting an [online enquiry](http://www.fairwork.gov.au/contact-us/online-enquiries/feedback) (www.fairwork.gov.au/contact-us/online-enquiries/feedback) or calling us on 13 13 94.

The FWO investigates allegations of unlawful workplace discrimination and may initiate litigation against a national system employer for contravening the FW Act.

You may also be able to lodge an application with the [Fair Work Commission \(FWC\)](https://www.fwc.gov.au/) [☞](https://www.fwc.gov.au/) (<https://www.fwc.gov.au/>). If you have not been dismissed but allege that there has been a contravention of the unlawful discrimination protection provisions of the FW Act, you may make an application to the Fair Work Commission to deal with the dispute.

What do I do if I've been dismissed due to discriminatory grounds?

If you have been dismissed and you believe that it is because of one of the attributes listed above (e.g. race, sex, age, disability, etc) you should make an application to the FWC in the first instance.

The timeframe for lodging an application to the FWC for either unfair dismissal or unlawful termination is 21 days. To find out more about matters involving termination, contact the FWC on 1300 799 675.

What are the remedies or penalties for unlawful discrimination?

Under the FW Act, there are a number of remedies and penalties for adverse action on discriminatory grounds.

The maximum penalty for contravention of the unlawful discrimination protections is \$66,600 per contravention for a corporation, and \$13,320 per contravention for an individual.

Where the Federal Court or Federal Circuit Court of Australia determines that a person has contravened the unlawful discrimination protections under the FW Act, the court may make any order that it considers appropriate, including orders for injunctions, reinstatement and/or compensation.

Other ways of getting help

The FWO does not have jurisdiction to deal with all unlawful discrimination complaints. Where a complaint or enquiry is outside our jurisdiction, you will be referred to the appropriate organisation. For example, if an employee is being bullied or harassed by colleagues, they will need to seek assistance from the relevant state or territory Occupational Health and Safety Authority.

There are a range of anti-discrimination laws and you may prefer to raise your concerns with the [Australian Human Rights Commission](https://www.humanrights.gov.au/) [☞](https://www.humanrights.gov.au/) (<https://www.humanrights.gov.au/>) on 1300 369 711 or your relevant [state or territory anti-discrimination body](http://www.fairwork.gov.au/website-information/related-sites/related-sites) (www.fairwork.gov.au/website-information/related-sites/related-sites). If you are a member of a trade union or employee association, they may also be able to help you.

Contact us

Fair Work Online: 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 and speech assistance

Call through the National Relay Service (NRS):

- For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94
- Speak and Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.