

## Protections at work

### Overview

All people working in Australia under the Fair Work system are entitled to general workplace protections. The Fair Work Act (FW Act) protects certain rights, including:

- workplace rights
- the right to engage in industrial activities
- the right to be free from unlawful discrimination
- the right to be free from undue influence or pressure in negotiating individual arrangements.

These rights are protected from certain unlawful actions. This includes (but is not limited to):

- adverse action
- coercion
- misrepresentation
- undue influence or pressure in relation to:
  - individual flexibility arrangements under modern awards and enterprise agreements
  - guarantees of annual earnings
  - deductions from wages.

### What rights are protected under general protections?

#### Workplace rights

The term 'workplace right' is broadly defined under the FW Act, and exists where a person:

- is entitled to a benefit or has a role or responsibility under a workplace law, workplace instrument (such as an award or agreement) or an order made by an industrial body
- is able to initiate or participate in a process or proceedings under a workplace law or workplace instrument
- has the capacity under a workplace law to make a complaint or inquiry:
  - to a person or body to seek compliance with that workplace law or workplace instrument
  - if the person is an employee, in relation to their employment.

Workplace rights also include the right for employees to talk about, or not talk about, their current or past pay. This includes the terms and conditions that would be needed to work out their pay, such as hours of work. Employees can ask each other questions about their pay, but they don't have to share this information if they don't want to.

For more information about these rights, including when they started applying and who they apply to, see Pay secrecy at [fairwork.gov.au/pay-secrecy](https://fairwork.gov.au/pay-secrecy)

#### Industrial activities

All employers, employees and independent contractors are free to become, or not to become, members of an industrial association, such as a trade union or employer association. In addition, all employers, employees and independent contractors are entitled to engage or not engage in what are called 'industrial activities'.

These activities are defined in the FW Act. They include various forms of lawful participation in an industrial association (such as a trade union) and its activities, including organising or promoting lawful activities for or on its behalf, representing its views, and seeking to be represented. Further, it covers a person being victimised for refusing to be involved in unlawful activity organised or promoted by an industrial association or industrial action.

For more information on industrial action, including what is protected industrial action, please see our Industrial action fact sheet at [fairwork.gov.au/factsheets](https://fairwork.gov.au/factsheets)

#### Discrimination

Under the FW Act, it is unlawful for an employer to take adverse action against a person who is an employee, former employee or prospective employee because of the person's race, colour, sex, sexual orientation, breastfeeding, gender identity, intersex status, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction, social origin, or because they are (or have been) experiencing family and domestic violence.

For more information on unlawful workplace discrimination, as well as bullying and sexual harassment protections, please see our Workplace discrimination fact sheet at [fairwork.gov.au/factsheets](https://fairwork.gov.au/factsheets)

## What am I protected from?

### Adverse action

Adverse action is action that is unlawful if it is taken for particular reasons. The FW Act defines a number of actions as adverse actions.

Adverse action taken by a person includes doing, threatening, or organising any of the following:

- an employer dismissing an employee, injuring them in their employment, altering their position to their detriment, or discriminating between them and other employees
- an employer refusing to employ a prospective employee or discriminating against them in the terms and conditions the employer offers
- a principal terminating a contract with an independent contractor, injuring them or altering their position to their detriment, refusing to use their services or to supply goods and services to them, or discriminating against them in the terms and conditions the principal offers to engage them on
- an employee or independent contractor taking industrial action against their employer or principal
- an industrial association, or an officer or member of an industrial association, organising or taking industrial action against a person, or taking action that is detrimental to an employee or independent contractor
- an industrial association imposing a penalty of any kind on a member.

The FW Act prohibits a person from taking adverse action against another person because that person:

- has a workplace right
- has or has not used a workplace right
- proposes to, or proposes not to, use a workplace right
- does or does not belong to a trade union
- engages or does not engage in industrial activity (as set out previously).

Adverse action does not include:

- action that is authorised by or under the FW Act or any other Commonwealth law
- an employer standing down an employee who is engaged in protected industrial action
- an employer standing down an employee who is employed under a contract of employment that provides for the employer to stand down the employee in the circumstances.

### Coercion

It is unlawful for a person to organise or take action (or threaten to) with the intent to coerce another person or third party to:

- use or not use a workplace right, or use it in a particular way
- take part in industrial activity
- employ or not employ a particular person
- engage or not engage a particular independent contractor
- allocate or not allocate certain duties or responsibilities to a particular employee or independent contractor
- give a particular employee or independent contractor certain duties and responsibilities.

### Misrepresentation

A person must not knowingly or recklessly make a false or misleading representation about:

- the workplace rights of another person
- the use, or the effect of the use, of a workplace right by another person
- another person's obligation to take part in industrial activity
- another person's obligation to tell anyone whether they, or a third person:
  - is or is not, or was or was not, an officer or member of an industrial association
  - is or is not taking, or has or has not taken part in industrial activity.

### Undue influence or pressure

Undue influence or pressure is when an employer exerts significant or inappropriate pressure on an employee to modify or alter their conditions of employment.

It is unlawful for an employer to force or try to force an employee to:

- make or not make an agreement or arrangement under the National Employment Standards
- make or not make an agreement or arrangement under a term of a modern award or enterprise agreement that is permitted to be included in the award or agreement
- agree to or terminate an individual flexibility arrangement under an enterprise agreement or modern award
- accept a guarantee of annual earnings
- agree or not agree to a deduction from amounts payable to the employee in relation to the performance of work.

The undue influence or pressure or coercive behaviour can be unlawful even if it does not succeed in making the person take or not take the action.

### **Sexual harassment**

Everyone has the right to a workplace that is safe and free from sexual harassment. Sexual harassment is:

- an unwelcome sexual advance or request for sexual favours to the person being harassed
- other unwelcome sexual conduct towards the person being harassed.

The FW Act prohibits sexual harassment connected to work, including in the workplace. This means workers, future workers and people conducting a business or undertaking (such as self-employed people or sole traders) are protected from sexual harassment. A person or company may be liable for sexual harassment committed by an employee or agent in connection with work, including if they were involved in the employer's contravention. This applies unless they can prove that they took all reasonable steps to prevent the sexual harassment.

Under the Sex Discrimination Act, organisations also have a positive duty to eliminate, as far as possible, the following unlawful behaviour from occurring:

- discrimination on the ground of sex in a work context
- sexual harassment in connection with work
- sex-based harassment in connection with work
- conduct creating a workplace environment that is hostile on the ground of sex
- related acts of victimisation.

The Australian Human Rights Commission have a range of practical information and resources to help organisations meet their positive duty obligations. Visit their website at [humanrights.gov.au](http://humanrights.gov.au)

The Fair Work Commission (the Commission) can deal with disputes about workplace sexual harassment under the FW Act. For more information visit [fwc.gov.au/sexual-harassment](http://fwc.gov.au/sexual-harassment)

The Fair Work Ombudsman (FWO) can also assist with some issues around sexual harassment at work. For more information visit [fairwork.gov.au/sexual-harassment](http://fairwork.gov.au/sexual-harassment)

The Respect@Work website provides comprehensive resources to help businesses and individuals understand, prevent, and respond to workplace sexual harassment. Visit [respectatwork.gov.au](http://respectatwork.gov.au)

## **How can I seek help for a general protections contravention?**

There are several ways to seek help.

A person who believes they have been subject to a general protections contravention can request assistance from the FWO by:

- submitting an online enquiry at [fairwork.gov.au/register](http://fairwork.gov.au/register)
- calling us on 13 13 94.

The FWO can investigate allegations of contraventions of the general protections provisions.

The maximum penalty a court can impose for most general protections contraventions is:

- \$19,800 per breach for an individual
- \$99,000 per breach for a company.

Penalty amounts increase regularly. You can find more information about current maximum amounts at [fairwork.gov.au/litigation](https://www.fairwork.gov.au/litigation)

The Commission can also deal with alleged contraventions of the general protections provisions.

There are 2 main types of applications:

- disputes — if a person hasn't been dismissed, but alleges that there has been some other contravention of the general protections provisions, they may make an application to the Commission to deal with the dispute
- dismissals — if a person believes they have been dismissed and alleges that their dismissal was in contravention of the general protections provisions, they should make an application to the Commission to deal with the dismissal in the first instance. A general protections dismissal application must be lodged within 21 days of the dismissal taking effect.

## Contact us

Fair Work online: [fairwork.gov.au](https://www.fairwork.gov.au)

Fair Work Infoline: **13 13 94**

### Need language help?

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

### Help for people who are deaf or have hearing or speech difficulties

You can contact us through the National Relay Service (NRS).

Select your [preferred access option](#) and give our phone number: **13 13 94**

The Fair Work Ombudsman is committed to providing you with advice that you can rely on. The information contained in this fact sheet 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 a workplace relations professional.

Last updated: April 2025  
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