

Workplace discrimination

What is unlawful workplace discrimination?

Unlawful workplace discrimination under the general protections in the Fair Work Act (FW Act) occurs when an employer takes adverse action against an employee or prospective employee because of one or more of the following attributes:

- 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
- experiencing (or having experienced) family and domestic violence.

What is adverse action?

Adverse action is unlawful if it is taken for a discriminatory reason. The FW Act describes several 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.

For more information on adverse action and other rights protected from certain unlawful action, please see our Protections at work fact sheet at fairwork.gov.au/factsheets

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.

Who is covered by these protections?

Employees and prospective employees in the Fair Work system are 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 a set period of time or season. 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.

Under the FW Act, an action is only considered adverse action if it occurs due to one or more of the protected attributes, as listed above in [What is unlawful workplace discrimination?](https://fairwork.gov.au/factsheets) 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 has continued to make errors while on the plan. As such, Paul's daily duties have been changed while he undergoes further training.

In this example, it is not unlawful to alter Paul's employment because the reason is not based on his personal attributes, for example race, sex, age or disability.

The FW Act also provides that in some circumstances, an action may not be considered discrimination. This includes where the action:

- is permissible under Commonwealth, 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.

What about bullying?

Everyone has the right to a workplace free from bullying. Bullying at work happens when:

- a person or group of people repeatedly behave unreasonably towards another worker or group of workers
- the behaviour creates a risk to health and safety.

The Fair Work Commission (the Commission) deals with applications to stop bullying at work under the FW Act. For more information visit fwc.gov.au

Bullying can also be unlawful under work health and safety laws. People experiencing bullying can seek advice and help from their local work health and safety body. You can find contact details for these organisations at fairwork.gov.au/links

What about 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 other people conducting a business or undertaking (such as self-employed people or sole traders) are protected from sexual harassment in connection to work.

The Commission can deal with disputes about workplace sexual harassment under the FW Act. For more information visit fwc.gov.au/sexual-harassment

The Fair Work Ombudsman (us) can also assist with some issues around sexual harassment at work. For more information visit 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

Positive duty under the Sex Discrimination Act

Under the Sex Discrimination Act, organisations 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 has a range of practical information and resources to help organisations meet their positive duty obligations. Visit their website at humanrights.gov.au

What do I do if I've experienced discrimination at work?

We are committed to ensuring that employees and prospective employees are protected from unlawful workplace discrimination and any other adverse actions by an employer. Where an investigation finds that the employer has, or had, discriminatory practices that are linked to adverse actions for employees or prospective employees, we may take enforcement action.

If you believe that you and/or other employees have been unlawfully discriminated against in your employment, you can request assistance from us. You can do this by calling us on 13 13 94 or submitting an online enquiry at fairwork.gov.au/register

We investigate 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 Commission. If you have not been dismissed but allege that there has been a contravention of the discrimination protection provisions of the FW Act, you may make an application to the Commission to deal with the dispute.

What do I do if I've been dismissed for a discriminatory reason?

If you have been dismissed and you believe that it is because of one of the attributes listed above, for example, your race, sex, age, disability, you should make an application to the Commission in the first instance.

The timeframe for lodging an application to the Commission in relation to general protections, for either unfair dismissal or unlawful termination, is 21 days. To find out more about matters involving termination, contact the Commission at fwc.gov.au

What are the remedies or penalties for unlawful discrimination?

Under the general protections in the FW Act, there are various remedies and penalties for adverse action on discriminatory grounds.

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

A court can also impose penalties for these contraventions. You can check the current maximum penalty amounts at fairwork.gov.au/litigation

Other ways of getting help

We do not have jurisdiction to deal with all unlawful discrimination complaints. If you contact us about a complaint or enquiry that is outside our jurisdiction, we will refer you to the appropriate organisation.

For example, if we receive an enquiry from an employee being bullied or harassed by a colleague at work, we will need to refer the employee to their relevant state or territory workplace health and safety authority for help.

There are a range of anti-discrimination laws and bodies that might be able to help you depending on the enquiry you have. You can find contact details for these organisations at fairwork.gov.au/links

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: 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.

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