

Workplace Discrimination

What is unlawful workplace discrimination?

Unlawful workplace discrimination under the general protections in the Fair Work Act 2009 (FW Act) occurs when an employer takes adverse action against a person who is an employee or prospective employee because of one or more 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 FWO 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 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](#) at fairwork.gov.au/tools-and-resources

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 has 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 was not unlawful to alter Paul's employment because the reason was not based on his personal attributes (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 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 and harassment?

Bullying and harassment – including sexual harassment – are serious concerns for any workplace.

If the bullying or harassment is linked to one of the attributes listed above (for example, race, sex or religion), then it may be unlawful discrimination. The Fair Work Ombudsman has the power to deal with discrimination complaints.

Sexual harassment at work can be a form of serious misconduct and can also be a valid reason for dismissal under the FW Act. The [Fair Work Commission](#) (FWC) also has the power to issue orders to stop sexual harassment or bullying in the workplace. Go to fwc.gov.au for more information.

Bullying and harassment can be unlawful under occupational health and safety laws. People experiencing bullying or harassment should seek advice and help 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](#) at fairwork.gov.au/contact-us 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 FWC at fwc.gov.au. 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 FWC 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 (for example, based on your 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 in relation to general protections (or 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 general protections in the FW Act, there are a number of remedies and penalties for adverse action on discriminatory grounds.

The maximum penalty for a 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 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.

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 Workplace 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](#) on **1300 369 711** or your relevant state or territory anti-discrimination body.

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**

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**

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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