

FACT SHEET: DISCRIMINATION



What is Discrimination?

Discrimination occurs when a person or a group of people are treated less favourably on the basis of such things as race, age, pregnancy or sex (to name a few). Legislation defines discrimination as unlawful if the less favourable treatment occurs on the basis of specified attributes in certain areas of public life and in all workplaces.

Discrimination at work can cause difficulties, stress and disadvantage for people when they do or don't belong to particular groups. There are a number of things that workers can do if they believe they have experienced discrimination in their employment. This may range from asking for assistance at work to stop the discrimination to making a complaint that could lead to legal action. Anti-discrimination laws in Queensland and federally, as well as industrial relations laws in both the state and federal jurisdictions are designed to protect people against discrimination in their employment.

What 'attributes' do anti-discrimination laws protect?

The Anti-Discrimination Act (Qld) makes it unlawful to treat someone less favourably than others because of:

- race
- gender
- age
- impairment
- religious belief or activity
- trade union activity
- parental status
- pregnancy
- lawful sexual activity
- family responsibilities
- relationship status
- breast feeding
- political belief or activity;
- association with a person with these attributes

Various federal anti-discrimination laws have similar protections. Seek advice on whether state or federal laws apply to you.

Sexual Harassment

Sexual harassment is defined as unwelcome sexual attention, remarks, physical intimacy or other unwelcome conduct of a sexual nature, that a person sees as (and a reasonable person would see as) offensive, humiliating or intimidating. The conduct must either be done with the intention of causing such offence, OR must be done in circumstances where a reasonable person would see that offence would be caused.

SEXUAL HARASSMENT
is unlawful everywhere

Where and when is DISCRIMINATION unlawful?

Discrimination is only unlawful in certain situations and certain places. WORK is one such situation. Other situations include: using accommodation, using goods and services and using education services.

At WORK, discrimination may be unlawful no matter who performs the less favourable treatment. A work colleague, your boss, or even the company as a whole may do things that are discriminatory. Discrimination can occur in circumstances such as:

- When you apply for a job
- When you go for an interview
- If you are asked to do certain tasks your particular attribute stops you from doing and your employer fails to make reasonable adjustments for this

- When you apply for promotions
- When you seek training, and
- Other day-to-day aspects of work.

TYPES OF DISCRIMINATION

Direct Discrimination

Direct discrimination occurs when a person treats, or proposes to treat, a person with an attribute less favourably than another person without that attribute.

The circumstances of that other, comparable person without the attribute, must be the same or not materially different than the person with the attribute. Direct discrimination is identified by an actual event, decision, or act (or failure to act).

For example: An employer consistently refuses to give a promotion to an employee who has young children, but promotes other employees without children, who are no more skilled or experienced than the employee who is a parent.

Indirect Discrimination

Indirect discrimination occurs when a person (often an employer) imposes a term or requirement with which those with a particular attribute cannot comply, and with which those without that attribute can much easier comply. To be discriminatory, the term also has to be unreasonable.

Unnecessary Questions

Sometimes your employer may ask questions or request information that has no bearing on your ability to do the job, or is in other ways unnecessary. These questions **may** be unlawful as they may lead to discrimination by your employer.

➤ Questions about your medical history

You do not need to answer questions about your medical history UNLESS you have a condition or impairment that may restrict your ability to do particular tasks related to the job.

➤ Questions about your criminal history

If you have a criminal conviction that relates to the job you are applying for (e.g. you have a conviction

for theft and the job requires you to handle money), then an employer **may** have the right to ask this question.

➤ Requests for a photo

Employers should not request that you send in a photo with your application unless it is a genuine requirement for the job (eg: modelling). This may amount to the same thing as asking about your age or race.

➤ Questions about your personal life

An employer may not ask for information relating to any of the attributes listed on page one UNLESS it relates to a genuine occupational requirement.

Indirect discrimination example

XYZ Pty Ltd employs an administration assistant who has two children. The normal hours of work for the job are 9-5 pm. The employee advises XYZ that she can no longer finish work at 5pm as she now has to pick up her children from daycare at 4.30pm. XYZ refuses to let her do this, insisting that she work a full day until 5 pm. XYZ does not attempt to accommodate the employee's needs in any way. This may be indirect discrimination on the basis of family responsibilities. To avoid this type of discrimination XYZ could have consulted with the employee to arrange a flexible roster (for example, starting half an hour earlier), or could have made other reasonable adjustments to staff rosters.

Making an internal complaint

In many cases, complaints of less favourable treatment on the basis of an attribute can be resolved within the workplace. Your workplace may have policies and procedures in this area and you may consider the following options:

- talking to or make a complaint to a supervisor, team manager, HR Manager or your boss outlining your concerns
- follow your workplace's policies or guidelines to handle the matter

- contacting your Union or an employee representative for advice to better understand your rights.

If the matter is not resolved through an internal complaints procedure, you can lodge a complaint to the ADCQ or the Australian Human Rights Commission (if your employer is a Commonwealth Government body, or if the company operates in more than one state). If the discrimination occurred after 1 July 2009 you may also make a complaint to the Fair Work Ombudsman.

Exceptions and Defences:

There are certain circumstances where actions that may seem discriminatory are in fact lawful:

➤ Unjustifiable hardship:

Where adapting the workplace to accommodate the employment of the person with the particular attribute of an impairment would be too expensive, or cause excessive hardship to the employer, they may be able to argue this as a defence to a claim of discrimination.

➤ Genuine occupational requirement:

If there is an essential component (an 'inherent requirement') of a job that must be done and people with a certain attribute cannot perform that component, the employer may not be discriminating if they refuse to hire a person with that attribute. Some specific exemptions are listed in the Act: call QWWS for more information.

➤ Occupational Health and Safety (OHS)

OHS concerns may be a defence used by an employer - for example, a factory where the layout of the workplace may have particularly risks for those with physical disabilities may have a defence for not hiring a person who has a physical impairment.

Exemptions:

Certain types of jobs may require persons from a certain gender or cultural/ethnic background to perform that job. For example, a female sexual assault service will be lawfully allowed to only employ female workers so that victims of sexual assault may feel comfortable. In this circumstance, an employer will be required to prove that the exclusion should apply to them.

Making a complaint: External bodies.

The Queensland Anti Discrimination Commission, the Australian Human Rights Commission, the

Fair Work Ombudsman and Fair Work Australia are government bodies that may be able to help resolve complaints in these areas. These agencies can provide employers and employees the opportunity to talk about the issues through a process of conciliation and may assist them in coming to agreement about the complaint.

Discrimination examples:

- A retail outlet selling clothing has a policy of asking all female applicants to provide a photo with their application forms. This could constitute discrimination on the basis of sex (because male employees do not have to provide a photo), it could also result in an age, disability, religion or race complaint.
- A large restaurant chain interviews an applicant (for a payroll position) who uses a wheelchair. The applicant is told he will not get the job because there is no wheelchair access to the building. This may be discriminatory because installing a wheelchair ramp or lift would not cause *unjustifiable hardship* to such a large company.

- If you want to make a complaint to the ADCQ or AHRC that you have been discriminated against, you must make that complaint within **one year** of the discrimination having occurred. You should make the complaint in writing on the form provided by the relevant body.
- If the discrimination happened on or after 1 July 2009 you may also make a complaint to the FWO – this may be made in writing on the form provided by the FWO.
- Your complaint should be as specific as possible. Include dates, names and places. After lodging your complaint form with the ADCQ, you will be notified about when your conciliation conference will occur, or if you need to provide more details.

Discrimination and Dismissal

Sometimes employees may be dismissed for a discriminatory reason. It may, however, be difficult to prove that the dismissal was discriminatory, particularly when you are told that you have been fired for a different or lawful reason such as problems with your work performance.

If you are a national system employee* you may be able to lodge a complaint to Fair Work Australia on the ground that your dismissal was a breach of your General Protections (this is called a 'Application for FWA to deal with General Protections Dispute').

If you believe your dismissal involves discrimination and you are a state system employee* you may be entitled to lodge a complaint in the Queensland Industrial Relations Commission on the grounds that you were dismissed for an invalid reason.

If a complaint is accepted by these bodies, a conciliation conference may be held to try and resolve the complaint. However, some rules apply:

- If you fall under the State industrial relations system*, a complaint of invalid dismissal for a discriminatory reason must be lodged within 21 days of the dismissal.
- If you fall under the national industrial relations system*, your complaint must be lodged **within 60 days of the dismissal**.
- There are fees involved in lodging complaints (contact the Queensland Industrial Relations Commission or Fair Work Australia for fee information)
- If you cannot resolve your complaint in these forums you may still have the right to lodge a complaint in the ADCQ or AHRC afterwards.

**To determine whether you are national system or a state system employee, read our 'Basic Rights at Work' or 'Termination of Employment' fact sheets, or call QWWS or the Fair Work Infoline.*

Victimisation

Victimisation occurs when a person who has already made a complaint about discrimination is subsequently treated less favourably, or punished. Victimisation is unlawful under Queensland and federal anti-discrimination laws, and you can make a complaint about it to a body such as the ADCQ or AHRC.

You may also make a complaint to the Fair Work Ombudsman if you believe you have been treated badly as a result of making a complaint about discrimination (or any other issue) to your boss, supervisor, or to an outside body such as a government agency.

Workplace Harassment

Workplace harassment (also known as workplace bullying) is often confused with discrimination. Bullying or harassment is not discriminatory unless it is in relation to a ground mentioned on the first page. There is currently no legislation specifically outlawing workplace bullying that is not based on a discriminatory ground or does not breach another law. In Queensland, all workers are covered by a Code of Practice on Workplace Harassment. The Code of Practice provides the following definition:

"Repeated less favourable treatment that is designed to offend, humiliate or intimidate".

Employers may also have specific policies and procedures that relate to Harassment or Bullying. QWWS has further information available about this.

Vilification

Vilification is a public act of hatred, severe ridicule or serious contempt. This type of behaviour is unlawful and may result in criminal charges. Vilification may be verbal or written and the behaviour must:

- Happen in a public place; and
- Incite others to hatred, severe ridicule or serious contempt, because of a person's Sexuality, Race; Religion; or Gender Identity.

FOR MORE INFORMATION & ADVICE:

Queensland Working Women's Service Inc:

1800 621 458

(07) 3211 1440

www.qwws.org.au



The Queensland Working Women's Service is a free and confidential information, advice and advocacy service for working women on all work-related matters. QWWS is funded by the Queensland and Federal governments. This information has been provided as a guide only, and is subject to change without notice. Queensland Working Women's Service (QWWS) disclaim all responsibility and all liability to any person for loss, damage, cost, injury, expenses or compensation of any kind arising either indirectly or directly out of or in connection with any act or omission on the part of QWW in relation to this information.

OTHER SERVICES:

Young Workers Advisory Service (advice and information for workers ages 25 and under):

Ph: 1800 232 000

Web: www.ywas.org

Queensland Council of Unions (for information about joining a union):

Ph: 3846 2468

www.qcu.asn.au

Wageline:

(For wage and conditions enquiries/complaints for state system employees)

Ph: 1300 369 945

www.wageline.qld.gov.au

Fair Work Australia/Fair Work Ombudsman: (For federal system employees with wages, dismissal, employment conditions and discrimination complaints)

Ph: 13 13 94

www.fairwork.gov.au or www.fwo.gov.au

Queensland Workplace Rights Ombudsman:

(May investigate complaints about unfair practices in Queensland workplaces)

Ph: 1300 737 841

www.qwro.qld.gov.au

Anti-Discrimination Commission Queensland:

Ph: 1300 130 670

www.adcq.qld.gov.au

Australian Human Rights Commission

Ph: 1300 656 419

www.hreoc.gov.au

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