

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.

What is adverse action?

Adverse action 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.

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. 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. Under the FW Act, an action is only considered adverse action if it occurs due to one or more of the protected 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 (for example race, sex, age, 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](#) (FWC) deals with applications to stop bullying at work under the FW Act.

Bullying can also be unlawful under occupational health and safety laws. People experiencing bullying can seek advice and help from their local occupational health and safety body.

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 who is harassed
- other unwelcome conduct of a sexual nature in relation to the person who is 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.

See [Sexual harassment in the workplace](#) at fairwork.gov.au/sexual-harassment for more information.

The [Fair Work Commission](#) (FWC) can deal with disputes about workplace sexual harassment under the FW Act. Visit fwc.gov.au for more information.

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

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. 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.

If you believe that you and/or other employees have been unlawfully discriminated against in your employment, you can request assistance from the FWO. You can do this by submitting an [online enquiry](#) at fairwork.gov.au/register 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. 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) 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 (for either unfair dismissal or unlawful termination) is 21 days. To find out more about matters involving termination, [contact the FWC](https://www.fwc.gov.au/contact-the-fwc) at [fwc.gov.au](https://www.fwc.gov.au)

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.

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](https://www.fairwork.gov.au/litigation) at [fairwork.gov.au/litigation](https://www.fairwork.gov.au/litigation)

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](https://www.humanrights.gov.au) at [humanrights.gov.au](https://www.humanrights.gov.au) or on 1300 369 711.

You can also contact your relevant state or territory anti-discrimination body. You can find [contact details for these organisations](https://www.fairwork.gov.au/links) at [fairwork.gov.au/links](https://www.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: 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 & 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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