

FACT SHEET:

Discrimination on the basis of family responsibilities

The *Anti-Discrimination Act 1991* makes it unlawful to discriminate against a person because of their family responsibilities.

What is discrimination on the basis of family responsibilities?

Under the *Anti-Discrimination Act 1991*, family responsibilities means someone's responsibility to care for or support a dependent child or other member of their immediate family.

Immediate family of a person means:

- the person's spouse or former spouse; or
- a child of the person or the person's spouse or former spouse, including an exnuptial child, stepchild, adopted child, or past or present foster child of the person or the person's spouse or former spouse; or
- a parent, grandparent, grandchild or sibling of the person or the person's spouse or former spouse.

Spouse of a person means:

- the person's husband or wife; or
- the person's de facto partner, whether of the same or different sex; or
- the person's civil partner under the Civil Partnerships Act 2011.

Discrimination on the basis of family responsibilities can be direct or indirect. Direct discrimination is treating a person less favourably because of their family responsibilities than someone in similar circumstances without those responsibilities.

For example, an employee being refused further training or promotion because he took carer's leave to look after his elderly mother.

Indirect discrimination is may be less obvious. Sometimes a rule or policy seems to treat everyone the same, but in fact, some people end up being treated less favourably. Indirect discrimination happens when there is an unreasonable requirement that people with a certain attribute (or characteristic) have difficulty complying with, compared to others without that attribute.

For example, a student at a high school cares for his father who has a mental health condition. His father had a crisis, resulting in the student being unable to attend school to sit for an exam. The school says it only permits students to sit exams at later dates if they have a valid medical certificate.

It is also unlawful to discriminate against a person because of their association with or relation to a person identified on the basis of their family responsibilities - such as a friend, family member or co-worker.

For example, you are refused holiday accommodation because your friend who will stay with you will have their small child with them.

It doesn't matter if the person doesn't mean to discriminate, or whether they think they are being discriminatory or not. It also doesn't matter if their beliefs or assumptions about the person or people they are discriminating against are correct or not. Under the Act, someone's motive for discriminating is irrelevant.

If you have experienced any of these types of discrimination, you may be able to lodge a complaint with us at the Commission.

However, not all treatment that might seem unfair is unlawful discrimination under the Act (see the exemptions below).

When and where is discrimination on the basis of family responsibilities unlawful?

Discrimination on the basis of family responsibilities is unlawful in all aspects of work, including recruitment, terms and conditions on which a job is offered, employment benefits, training, transfers, promotion and dismissal.

It is also unlawful when a person is:

- a customer in a shop or restaurant,
- a student at school or university (if it is by the educator),
- looking for accommodation,
- applying for credit, insurance or a loan, or
- when dealing with tradespeople, businesses or State or local government.

Examples of discrimination on the basis of family responsibilities

A worker on a 12 month contract took several days carer's leave to care for her young dependent child. The amount of leave taken did not exceed her contractual entitlement. Her manager was unhappy with the concept of carer's leave in general, and gave her a low performance review rating. She was informed that her contract of employment would not be renewed.

A factory supervisor was dismissed when he left work in an emergency to take his sick daughter to hospital.

When and where is different treatment okay?

Not all treatment that might seem unfair is against the law. The Act lists some exemptions that allow conduct that would otherwise be discriminatory. Whether or not an exemption applies will depend on individual circumstances.

Genuine occupational requirement: An employer may impose genuine occupational requirements for a position.

For example, there might be a genuine need for a position to be full-time. Some people with family responsibilities may not be able to work full-time.

Welfare measures: A person may do an act for the benefit of people with an attribute.

For example, a housing complex comprised of apartments designed for vulnerable singles. The property manager may refuse to let an apartment to a person with a dependent child.