

FACT SHEET:

Discrimination in employment

The *Anti-Discrimination Act 1991* makes discrimination in employment against the law.

This applies to all aspects of work, including recruitment, terms and conditions on which a job is offered, employment benefits, training, transfers, promotion and dismissal.

It applies to all categories of work, whether it be full-time, part-time, casual, voluntary, contract, temporary, or some other working arrangement.

The Act also prohibits sexual harassment and public acts of vilification.

Discrimination can cost businesses time and money, damage morale, reduce productivity and undermine business reputation, but there are also legal obligations on employers to provide workplaces free from discrimination, sexual harassment, and vilification.

If you have experienced discrimination, harassment or vilification at work, you may be able to lodge a complaint with us at the Commission.

Employee rights and responsibilities

Everyone has the right to be free from discrimination, sexual harassment and vilification in the workplace. If employees believe that this type of behaviour happens to them in the workplace, they may have the right to make a complaint to the Commission and seek a solution through conciliation.

Employees also have a responsibility not to engage in this type of conduct. Workers who behave in a discriminatory fashion, who sexually harass or vilify co-workers or clients can be disciplined by their employer, and may be dismissed in serious cases.

The Act also makes victimisation unlawful in workplaces. Victimisation happens when someone has been treated badly because they:

- refused to do something that would contravene the Act;
- complained, or intend to complain, about something that would contravene the Act;
- is or has been involved in a proceeding under the Act, including as a witness, or supplying information to the Commission or tribunal; or
- are believed to have done or intend to do any of the above things.

Employer rights and responsibilities

All employers have the right to appoint and dismiss workers in accordance with proper procedures and to expect reasonable performance from their employees.

However, employers must not discriminate against existing or potential employees or other workers.

The Act imposes a legal responsibility on employers to provide workplaces free from unlawful discrimination, sexual harassment and vilification.

Vicarious liability

Employers must take reasonable steps to prevent unlawful discrimination, sexual harassment, vilification and victimisation in the workplace. If the employer does not take reasonable steps, the employer will be liable for the conduct of its workers and agents. This means that if you are being discriminated against, harassed or vilified at work, you may be able to lodge a complaint against your employer, as well as the individual worker subjecting you to this behaviour.

When is different treatment okay?

Not all treatment that seems unfair is unlawful. The Act lists some exemptions that allow conduct that would otherwise be discriminatory. Whether or not an exemption applies will depend on individual circumstances. An overview of some of the exemptions which may apply in workplaces are below.

Welfare and equal opportunity measures: Things done to benefit a disadvantaged group or a person with particular needs might not be discrimination. For example, an employment program specifically for people aged over 50 years.

Genuine occupational requirements: There may be a genuine occupational requirement that someone filling a position has or does not have a particular characteristic. For example, hiring an actor for a dramatic performance on the basis of age or race for reasons of authenticity, or employing only women applicants for positions involving body searches of women.

Workplace Health and Safety: Employers must ensure the health and safety of people at a place of work. For example, a person with a chronic back injury may not be suitable for work requiring heavy physical labour.

Youth wages: An employer may advertise for a worker who is under 21 years of age and pay them according to their age.

Supplying special services or facilities: If a worker with an impairment needs special services or facilities to do their work, and supplying the special services or facilities would impose an unjustifiable hardship on the employer, it may be lawful for the employer to discriminate against the worker with the impairment.

Employer or organisation established for religious purposes: Where an employer is under the direction or control of a body established for religious purposes, they may 'reasonably discriminate' (except on the basis of age, race or impairment), against a person who openly acts in a way contrary to the employer's religious beliefs.

Single sex accommodation: If an employer provides accommodation, but not separate sleeping accommodation for men and women, and supplying separate accommodation would impose unjustifiable hardship on the employer, the employer may discriminate on the basis of sex.

Workers to be a couple: An employer may discriminate on the basis of relationship status if a live-in job is to be held by a married, de facto or civil partnership couple.

Work with children: Employers hiring people to care for or instruct children are allowed to discriminate on the basis of gender identity (but not sexuality), lawful sexual activity (which means being a lawful sex worker), if it is reasonably necessary to protect the wellbeing of the children. It is also lawful for the employer to discriminate against people with a conviction for a child sex offence, or people disqualified from working with children under any Act in Australia.

Discrimination on any grounds except race is also allowable when employing someone to perform domestic or childcare services in the person's own home.