

FACT SHEET:

Breastfeeding discrimination

The *Anti-Discrimination Act 1991* makes it unlawful to discriminate against a person because they are breastfeeding.

What is breastfeeding discrimination?

As well as breastfeeding itself, the law also protects things closely related to breastfeeding, such as expressing milk.

Breastfeeding discrimination can be direct or indirect. Direct discrimination is treating a person who is breastfeeding less favourably than someone who is not breastfeeding in similar circumstances, because the person is breastfeeding.

For example, a woman being asked to leave a café after she starts to breastfeed.

Indirect discrimination 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) would have difficulty complying with, compared to others without that attribute.

For example, an employer might ban all employees from taking any breaks for set periods during the day under any circumstances. This might particularly disadvantage women who need to express milk, so could be indirect discrimination.

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 breastfeeding - such as a friend, family member or co-worker.

In the café example above, if the woman's friend who was with her in the café was also asked to leave, she would have been discriminated against on the basis of her association with her breastfeeding friend.

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 under the Act (see the exemptions below).

When and where is breastfeeding discrimination unlawful?

Discrimination on the basis of breastfeeding 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),
- accessing government or other services.

Breastfeeding in public is legal. This includes in shopping centres, restaurants, hotels and public transport.

Examples of breastfeeding discrimination

Your employer won't let you use a space at work to express milk in, even though there is a small unoccupied room which isn't being used for anything else.

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.

In terms of breastfeeding, an employer may be able to refuse to allow an employee to breastfeed their baby at work, if there is a workplace health and safety issue to be considered – for example, the workplace is a construction site, factory, or other environment unsuitable for babies.