



FACT SHEET:

Discrimination on the basis of trade union activity

The *Anti-Discrimination Act 1991* makes it unlawful to discriminate against a person because of their trade union activity.

What is discrimination on the basis of trade union activity?

The law protects the rights of workers to belong to a trade union and participate in union activities. Trade union activity includes things like being a union delegate, attending union meetings in a person's own time, and participating in Labour Day marches. It does not include unprotected industrial action. As the term is not defined in the Act, it is unclear whether trade union activity includes not being a member of a trade union and not taking part in trade union activity.

Discrimination on the basis of trade union activity can be direct or indirect. Direct discrimination is treating a person less favourably because of their trade union activity than someone without that trade union activity, in similar circumstances.

For example, a union delegate at a meat works, concerned about new procedures that compromised workplace health and safety, called union meetings and encouraged workers to join the union. The manager wrote an adverse report about the delegate's work performance which had no basis in fact, and the delegate was threatened with dismissal.

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 requires all workers to attend a meeting on a specified date at a specified time, and failure to attend (other than for illness or family emergency) will result in disciplinary action. A union meeting has been scheduled to take place at the same time.

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 trade union activity - such as a friend, family member or co-worker.

For example, a woman is unsuccessful in a job application despite being very well-qualified. The interviewer tells her she scored highly in the recruitment process but the organisation is a conservative one and people there would be uncomfortable with the fact that her brother is a well-known union official.

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 discrimination on the basis of trade union activity unlawful?

Discrimination on the basis of trade union activity 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 trade union activity

A union organiser discovered that some migrant workers were not being paid the award rate. When she assisted the workers to lodge complaints to a national regulator, her employment was terminated.

A union delegate who was a casual worker at a factory arranged a meeting with management over concerns about a mandatory clock-on time for all workers affecting people with children. After the meeting the manager cut the person's hours in half, saying 'You're a trouble maker'.

At a job interview an applicant was asked whether they had been involved in unions in previous workplaces, and they said that they had. The person was refused the job even though he was the best candidate.

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.

Membership of an industrial, professional, trade or business organisation: Discrimination on the basis of trade union activity is allowed in relation to the membership of an industrial, professional, trade, and business organisations if parts of the Industrial Relations Act 2016 apply. The relevant provisions relate to entitlement to be a member, and disqualification of certain people from being a candidate or holding office.

