



Discrimination in the workplace

employment law

YOUR RIGHTS

All employees have the right to work in a workplace that is free from unlawful discrimination. Employers must take reasonable and proportionate steps to eliminate unlawful discrimination from the workplace.

WHAT IS UNLAWFUL WORKPLACE DISCRIMINATION

Protected attributes

An employer must not discriminate against a person on the basis of certain protected attributes such as:

- race
- colour
- sex
- sexual orientation
- breastfeeding
- gender identity
- intersex status
- age
- physical or mental disability
- marital or relationship status
- family or carer's responsibilities
- pregnancy
- religion
- political opinion, belief or activity
- trade union activity
- lawful sexual activity
- parental status

- national extraction (e.g. a person's heritage, citizenship, or where they or their parents were born)
- social origin (e.g. a person's social class or group, language and customs)
- subjection to family and domestic violence
- association with, or relation to, a person who has any of these attributes.

How discrimination may occur

Discrimination occurs directly if an employer treats, or proposes to treat, a person less favourably because of the person's protected attribute, having regard to whether the same treatment would have occurred to another person without the protected attribute. It is unlikely to be discrimination if a person without the attribute would have been treated in the same way. The employer's motive and whether they consider the treatment to be less favourable is irrelevant.

Discrimination can also occur indirectly if an employer imposes, or proposes to impose, an unreasonable term including a condition, requirement or practice that a person with a protected attribute cannot comply with and with which a higher proportion of people without that attribute can comply. Whether a term is reasonable depends on various



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factors such as the consequences for failing to comply with the term, the cost of other options and the financial circumstances of the employer.

It is unlawful under the Fair Work Act 2009 (Cth) for an employer to take adverse action against an employee on the basis of a protected attribute. Adverse action can include dismissing an employee, altering an employee's position to their prejudice, injuring an employee in their employment or discriminating against an employee. This also extends to refusing to employ a prospective employee or discriminating against a prospective employee in the terms and conditions of an offer of employment.

Examples of unlawful discrimination

Unlawful workplace discrimination on the basis of a protected attribute can include:

- deciding not to hire an older worker because of an assumption they will retire soon
- refusing to provide training and development opportunities to an employee because they are pregnant
- offering a person employment on a lower salary because of their gender
- refusing to make reasonable adjustments for an employee with a disability
- dismissing an employee because they are a union member.

What is not considered unlawful discrimination

Not all differential treatment will be unlawful discrimination. Discrimination will be lawful where the actions taken:

- comply with anti-discrimination laws or other laws
- are taken because of the inherent requirements of a position

- are taken in good faith within the practices of a religious institution to uphold religious beliefs
- are intended to benefit a group of people with a protected attribute or promote equal opportunity (i.e. an employer having quotas to increase female or First Nations participation in the workplace)
- are necessary to protect the health and safety of people in the workplace or public health.

WHAT TO DO IF YOU EXPERIENCE UNLAWFUL DISCRIMINATION

If you feel that you, or another worker, has been subjected to unlawful discrimination in the workplace, you should not ignore it.

There are a number of things a person can do if they have experienced unlawful discrimination at work:

- Speak with your manager or supervisor if you feel comfortable to do so. If it is your manager or supervisor who is discriminating against you, speak to their manager or the Human Resources team at your workplace. It is not necessary to do this if you want to make an external complaint.
- Check if your workplace has a policy or complaints procedure for dealing with complaints or grievances in relation to discrimination.
- Keep written records of what has happened and when, including text messages or emails that may be relevant.
- Make a complaint to an external body, such as the Australian Human Rights Commission, Queensland Human Rights



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Commission, the Queensland Industrial Relations Commission or the Fair Work Commission.

MAKING AN EXTERNAL COMPLAINT

External complaints about discrimination can be made in writing to the Fair Work Commission, the Queensland Industrial Relations Commission, the Queensland Human Rights Commission or the Australian Human Rights Commission.

A written complaint should include:

- details of the particular discriminatory conduct that has occurred
- dates (or approximate dates) of when the conduct occurred
- details of the person or organisation the complaint is about.

The body you submit your complaint to may contact you, in writing or via phone call, for further information to assist them in dealing with your complaint.

You cannot make multiple complaints about the discrimination to different bodies, you must choose one of the following ways to make a complaint. A workers compensation claim can, however, still be lodged separately.

Fair Work Commission or Queensland Industrial Relations Commission

The Queensland Industrial Relations Commission can deal with general protections applications from state system employees (employees in Queensland who are employed by state or local government).

If your employer, or a prospective employer, has taken adverse action against you because of a protected attribute you have, you can make a general protections application to the

Fair Work Commission. A general protections application can be made if you have been terminated from your employment or if you remain employed but have experienced unlawful discrimination.

If your application relates to your dismissal from your employment, you must lodge your form with the Fair Work Commission within 21 calendar days from the date your employment is terminated. If your application does not relate to dismissal, you must lodge your form with the Fair Work Commission within six years from the date of the action you are complaining about.

The Fair Work Commission has a specific application form available on their website for general protections applications, and helpful resources that guide you on how to prepare your application form and lodge it with the commission.

There is a fee to lodge an application with the Fair Work Commission, which is \$83.30 for the 2023-2024 financial year. Fee waivers are possible for those facing financial hardship.

The application form you submit will be shared with your employer for their response, and a conciliation conference will then be arranged to assist you and your employer (or former employer) to agree to a resolution. If the issue cannot be resolved by conciliation, you may need to have a hearing before the Fair Work Commission and receive a binding decision.

Queensland Human Rights Commission

Complaints about discrimination in the workplace can be made to the Queensland Human Rights Commission (QHRC) if the discrimination is covered by the Anti-Discrimination Act 1991 (Qld) (Anti-



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Discrimination Act) and the actions complained of occurred within the last one year.

You must put your complaint in writing, by sending a letter or email, or filling out the [online complaint form](#) provided on the QHRC website. Your written complaint must include your contact details and the details of what happened, including who was responsible, and when and where it occurred.

If the QHRC does not accept your complaint, for instance because you have not alleged unlawful discrimination under the Anti-Discrimination Act or the discrimination occurred more than one year ago, the QHRC will write to you explaining the reasons for rejecting your complaint.

If the QHRC accepts your complaint, a copy of your complaint and any attachments will be sent to your employer or the person you complain about, to allow them to provide a response. A conciliation will then be arranged for you to talk about your complaint with the employer and attempt to resolve the issue. If the complaint is not resolved at conciliation, you can ask the QHRC to refer your complaint to the [Queensland Industrial Relations Commission](#) for a hearing and binding decision.

Australian Human Rights Commission

Complaints about discrimination in the workplace can also be made to the [Australian Human Rights Commission](#) (AHRC) if the discrimination is covered by the:

- [Sex Discrimination Act 1984 \(Cth\)](#)
- [Age Discrimination Act 2004 \(Cth\)](#)
- [Racial Discrimination Act 1975 \(Cth\)](#)
- [Disability Discrimination Act 1992 \(Cth\)](#)

You must submit your complaint of discrimination in writing using [the complaint form](#) available on the AHRC website. You can complete the form online or print it out and email, fax or post it to the AHRC. You must include your name and contact details, as well as information about the complaint, including what happened, when, and who was involved.

You should submit any supporting documentation that might be relevant to your complaint, such as refusal or dismissal letters, or copies of relevant emails, with your online complaint form.

You must submit the complaint yourself if you have experienced the discrimination personally. If another person submits the complaint on your behalf, an [‘Authority to Act’ form](#) must also be submitted.

The AHRC will share your complaint (without your contact details) with your employer or the person you have made the complaint against. The AHRC may request specific details or a response to your complaint from the respondent.

The AHRC will arrange a conciliation for you to talk about your complaint with the employer and attempt to resolve the issue. If the complaint is not resolved at conciliation, you can apply to the Federal Circuit and Family Court of Australia or the Federal Court of Australia for a hearing in relation to your complaint.

WorkCover Queensland

Discrimination in the workplace has the potential to impact your health and safety. If you have been diagnosed by a doctor as suffering from a medical condition because of discrimination at work, you may be able to



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make an application to [WorkCover Queensland](#) for workers compensation. You will need to provide details of the discrimination that occurred and medical information regarding your condition.

For further information please see our [factsheet 'Have You Been Injured at Work?'](#)

OTHER AVAILABLE SUPPORT

Discrimination can impact many other areas of life outside of the workplace. Some employers have an employee assistance program that provides a free and confidential counselling service. Alternatively, legal advice should be sought especially where there are potential criminal or personal injury matters.

CONTACT POINTS

Caxton Community Legal Centre

Turbot Place
Level 23, 179 Turbot Street
Brisbane Qld 4000
P (07) 3214 6333

E caxton@caxton.org.au

W caxton.org.au

Fair Work Commission

Level 14, Central Plaza 2
66 Eagle Street
Brisbane Qld 4000
P 1300 799 675

W fwc.gov.au

Fair Work Ombudsman

P 13 13 94

W fwo.gov.au

Workplace Health and Safety Queensland

GPO Box 69
Brisbane Qld 4001
P 1300 362 128

W worksafe.qld.gov.au

Queensland Human Rights Commission

Level 20, 53 Albert Street
Brisbane Qld 4000
P 1300 130 670
E enquiries@qhrc.qld.gov.au
W qhrc.qld.gov.au

Australian Human Rights Commission

GPO Box 5218
Sydney NSW 2001
P 1300 656 419
W humanrights.gov.au



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CAXTON COMMUNITY LEGAL CENTRE

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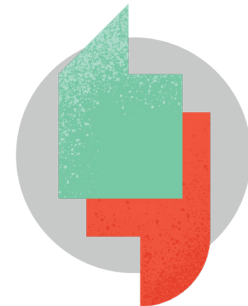
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This information is current at April 2024.



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