Workplace Discrimination

ERLS Employment Rights Legal Service

All workers in Australia (even people applying for a job) are protected from discrimination in the workplace.

What is workplace discrimination?

Discrimination is treatment that harms a person and is taken (or not taken) because of their 'protected attribute(s)'.

There needs to be a link between the harm caused and the person's 'protected attribute'.

What is a protected attribute?

State and Federal laws prohibit discrimination because of 'protected attributes', such as:

- age;
- disability – which includes permanent, temporary, physical, and mental illnesses and injuries;
- sex, gender identity, and intersex status;
- sexual orientation and relationship status
- pregnancy and breastfeeding;
- family or carer's responsibilities; and
- race, colour, descent, ethnicity, or national origin.

What conduct can be discriminatory?

Discrimination can be direct and/or indirect.

Direct discrimination happens when a person is treated less favourably than a person without their protected attribute would be in the same situation.

Direct discrimination example: *Deshan shows up to work in a pink t-shirt. Deshan's colleague laughs at him and says, "that's so gay".*

Indirect discrimination happens when a person is required to comply with a requirement or condition that would disadvantage them because of their protected attribute.

Indirect discrimination example: *Diana uses a wheelchair. Her employer implements a new rule requiring staff to attend meetings in person in a building which is not wheelchair accessible.*

Common forms of discrimination include (but are not limited to):

- Dismissal or demotion;
- Offensive remarks or bullying;
- Double standards;
- Sexual harassment;
- Not making 'reasonable adjustments';
- Enforcing workplace policies that disadvantage particular people.

Are there exceptions?

Sometimes it is lawful for an employer to treat employees less favourably because of a particular protected attribute, or to enforce workplace policies that disproportionately disadvantage people with a particular protected attribute.

For example, an employer who runs a security guard business would likely be able to prohibit its employees from working from home, because it is an inherent requirement of the role of a security guard to provide security in person.

Figuring out whether your employer has an exception to discriminate against you can be difficult. If you have been discriminated against and your employer tells you they are allowed to, we recommend you seek legal advice.

Is everything bad at work discrimination?

Not everything negative at work is discrimination. Possessing a protected attribute and being subjected to unconnected unfavourable treatment is not discrimination.

For example, it is not unlawful to:

- fire a pregnant employee because they are violent at work; or
- implement a performance improvement plan for a young employee who has consistently failed to meet deadlines.

What can I do if I think I have been discriminated against?

Speak to your employer
Speaking to your boss or a trusted colleague may resolve the issue. A good boss will listen to your concerns and take appropriate action.

Get legal advice
Contact your local legal centre for free and confidential legal advice. Certain eligibility criteria will apply.

Lodge a claim at the Fair Work Commission ('FWC')
If you are dismissed for a discriminatory reason, you only have 21 days from the dismissal to bring a 'General Protections Involving Dismissal Claim'. If you do not have time to get legal advice before the 21-days is up, you should lodge a claim and then get legal advice. If you have experienced discrimination that is not a dismissal, you have 6 years from when you experienced the discrimination to bring a 'General Protections Not Involving Dismissal Claim'.

Anti Discrimination NSW ('AD NSW')
AD NSW gives information and tries to resolve complaints relating to discrimination. If the complaint does not resolve, you can refer it to the NSW Civil and Administrative Tribunal. You have 12 months from the date of the discrimination to lodge a complaint.

You can find a handy resource of the different discrimination complaint avenues at this link.

What can I do if I think I have been discriminated against?

Australian Human Rights Commission ('AHRC')

The AHRC investigates and tries to resolve complaints about discrimination. If the complaint does not resolve, you can refer it to a federal court. You have 24 months from the date of the discrimination to lodge a claim.

*This factsheet was last updated on **14 May 2026.** It was produced by the Employment Rights Legal Service. This factsheet provides general information about the law. It is not a substitute for legal advice.*