

Fact Sheet 3

Unlawful Workplace Discrimination

All people working in Australia are entitled to basic rights and protections in the workplace. This includes foreign workers and people who are not Australian citizens or permanent residents (which include people seeking asylum).

What is unlawful workplace discrimination?

Employers are not allowed to discriminate against you because of your colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer's responsibility, if you are pregnant, because of your religion, political opinion, or national or social background. If an employer discriminates against you for any of these reasons, it is unlawful discrimination.

The protection against unlawful discrimination applies if you are a full-time, part-time, or casual employee, a probationary employee, or an apprentice or trainee.

It also applies when an employer is hiring staff: it is unlawful for an employer to refuse to employ you because of your race, colour, sex, disability etc.

What are some ways in which employers unlawfully discriminate against employees?

Common ways in which an employer might unlawfully discriminate against you include refusing to hire you, offering you worse conditions for a job, changing your working conditions so that you are in a worse position, or firing you because of your race, colour, sex, age etc.

Sometimes an employer will discriminate against you because he or she thinks that because of your race, colour, sex, age or any of the other characteristics mentioned before that you cannot do the job. For example, an employer might refuse to hire you or to promote you because of your religion. This is called direct discrimination.

And there are other forms of unlawful discrimination. Sometimes an employer will put in place a rule or policy that has a harmful effect on members of certain groups, without clearly naming or targeting them. For example, if an employer requires that all employees start work at 7am, this may disadvantage all women who care for young children. This is called indirect discrimination because it discriminates against all women who care for young children and not just a particular woman.

Both direct and indirect discrimination are unlawful.

Can an employer ask you discriminatory questions?

Employers cannot ask you questions about your race, colour, mental or physical disability, sex, religion etc. They cannot ask these questions after you are employed and even in a job interview.

For example, imagine that an employer asks you at a job interview whether you have any disability. If you think there is no link between any disability that you have and your ability to do the job, you don't have to tell the employer about your disability. If you do tell the employer and you don't get the job because of this, the employer will have unlawfully discriminated against you because they have treated you differently (less fairly) because of your disability.

What is NOT unlawful discrimination?

Not all forms of discrimination are unlawful. For example, treating you differently because of the way you perform at work may NOT necessarily be unlawful discrimination.

Example of workplace discrimination

My name is Faiza Ataee, and I am 24 years old. I am originally from Afghanistan. I have been living in Australia since 2010. Currently, I am in the third year of a Bachelor of Business (Accountancy) degree at RMIT. I am also working at a small company on a part-time basis where I manage their accounts and do other administrative work.

I work two days a week, and another student (Preethi) works there the rest of the week. She is originally from India. One day my manager told me that we had a meeting with a client, and I had to be present at the meeting to take notes and manage other tasks; I agreed. The next day, my manager told me that Preethi was going to take the notes of the meeting, so I did not have to attend. I was shocked because I knew that Preethi had a class at university on that day. When I asked my manager the reason, he said that our client may not like people from Afghanistan, therefore, I was replaced with Preethi.

Is bullying the same as unlawful discrimination?

Bullying is when a person or a group of persons repeatedly behaves unreasonably towards you at work AND that behaviour creates a risk to your health and safety. Bullying is wrong, but not all bullying is unlawful discrimination. Bullying is also unlawful discrimination when you are bullied because of your race, colour, sex, age, religious or political views etc.

What should you do if you have been unlawfully discriminated against at work?

If you have been discriminated against at work and you believe that it is because of your sex, age, race, etc. You can make a complaint to the Fair Work Ombudsman. You must make the complaint within 21 days from the day you were discriminated against. You can call the Fair Work Ombudsman at **1300 799 675** for more information.

What can happen when an employer unlawfully discriminates against you?

When your employer has unlawfully discriminated against you, a Court may order your employer to give you your job back, to no longer discriminate against you, or to pay you compensation.

What can you do if you have been unfairly discriminated against by your employer?

The following steps can be helpful if you think you have been discriminated against at your workplace:

Step 1: Problems at workplaces often occur because employers and employees do not know what their rights and obligations are. Try to find out what the law says and follow it.

Step 2: If you know your rights and think that you have been discriminated against by your employer, you can talk to your supervisor or employer. Many issues in the workplace can be fixed just by talking. But only do this if you feel safe.

Step 3: If you have not fixed the problem in your workplace, and you believe that you have been unlawfully discriminated against by your employer, you can seek help from the Fair Work Ombudsman. You can call them on **13 13 94**, or you can submit your enquiry online: fairwork.gov.au/my-account/fwosignin.aspx.

What should I do if I need immediate emotional or mental help?

Being unfairly discriminated against can cause you to feel sad, angry or anxious. If you need immediate emotional help or support, you should contact the following organizations:

Lifeline

Lifeline is a national charity providing 24-hour mental health support and emotional assistance. Call **13 11 14**.

Beyond Blue

Beyond Blue provides free information and mental health support. Call **1300 22 4636**.

Other organisations that can provide assistance:

Victoria Legal Aid (VLA)

Victoria Legal Aid helps people with their legal problems by providing free information and support. Contact VLA at **1300 792 387**.

Deakin CREATE

Deakin CREATE supports people from refugee backgrounds to rebuild their careers through obtaining employment and accessing vocational training and education.

Visit: deakincreate.org.au

Note: The contents of this publication are for reference purposes only. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

Remember: It is unlawful for an employer to discriminate against you because of your:

- race
- colour
- sex
- sexual orientation
- age
- physical disability
- mental disability
- marital status
- family or carer's responsibility
- pregnancy
- religious views
- political opinions
- national background
- social background

Unlawful discrimination includes not giving you a job because of any of these reasons.



CREATE

Centre for Refugee Employment, Advocacy, Training and Education

deakincreate.org.au

Deakin University CRICOS Provider Code: 00113B