



Australian
Human Rights
Commission

Sex Discrimination

KNOW YOUR RIGHTS



What is sex discrimination?

Sex discrimination is when a person is treated less favourably than a person of the opposite sex would be treated in the same or similar circumstances.

For example, it would be 'direct sex discrimination' if male and female employees are doing exactly the same work, but male employees are being paid more.

It is also sex discrimination when there is a rule or policy that is the same for everyone but has an unfair effect on people of a particular sex. This is called 'indirect discrimination'.

For example, it may be indirect sex discrimination if a policy says that managers must work full-time, as this might disadvantage women because they are more likely to work part-time because of caring responsibilities.

How am I protected from sex discrimination?

The Sex Discrimination Act makes it against the law to treat you unfairly because of your:

- sex
- marital status
- family responsibilities
- because you are pregnant or might become pregnant
- because you are breastfeeding.

The Sex Discrimination Act also makes sexual harassment against the law.

What is sexual harassment?

Sexual harassment is any unwelcome sexual behaviour which is likely to offend, humiliate or intimidate. It has nothing to do with mutual attraction or friendship.

Examples include:

- unwelcome physical touching
- staring or leering
- suggestive comments or jokes
- unwanted requests to go out on dates
- requests for sex
- emailing pornography or rude jokes
- sending sexually explicit texts
- intrusive questions about your private life or body
- displaying posters, magazines or screen savers of a sexual nature.

Everyone has the right to be safe and free from harassment while at work.

The Sex Discrimination Act also covers you if you are sexually harassed when you are purchasing or providing a good or a service or when you are studying at a school, college or university.



What is pregnancy discrimination?

Direct pregnancy discrimination happens when a woman is treated less favourably than another person because she is pregnant or because she may become pregnant.

For example, it would be direct pregnancy discrimination if an employer refused to employ a woman because she was pregnant or because she may become pregnant.

Indirect pregnancy discrimination occurs when there is a requirement or practice that is the same for everyone but has an unfair effect on pregnant women.

For example, it may be indirect discrimination if a policy says that all employees must wear a particular uniform if it is difficult for a pregnant employee to wear that uniform.



Eileen found out she was pregnant and informed the recruitment agency and her future employer of this.

She said the company then withdrew their offer of employment and the recruitment agency did not contact her about other employment opportunities.

She claimed that she was discriminated against because of her pregnancy.

The company advised that it was a small organisation and the decision to withdraw the employment offer was based on business reasons.

The complaint was resolved through conciliation, with the company and agency providing financial compensation to Eileen.

The company also provided a written apology and developed an Equal Employment Opportunity policy for the workplace.

What is discrimination on the ground of breastfeeding?

Direct breastfeeding discrimination happens when a woman is treated less favourably because she is breastfeeding or needs to breastfeed over a period of time.

For example, it would be direct discrimination if a cafe refused to serve a woman because she is breastfeeding.

Indirect breastfeeding discrimination occurs when there is a requirement or practice that is the same for everyone but disadvantages women who are breastfeeding.

For example, it may be indirect discrimination if an employer does not allow staff to take short breaks at particular times during the day.

This may disadvantage women who are breastfeeding as they may need to take breaks to express milk.

What is family responsibilities discrimination?

Family responsibilities discrimination occurs when a person is treated less favourably than another person because they have family responsibilities.

Under the Sex Discrimination Act, family responsibilities include responsibilities to care for or support a dependent child or a member of your immediate family.

For example, it may be discrimination for an employer to refuse to employ a person, demote a person or reduce a person's hours of work because they need to care for a member of their family.



Priya was employed on a contract basis with a community based organisation. She said she took leave from work because she was depressed and also to care for her child who had scoliosis. She claimed that when she sought to return to work, she was told that no work was available, even though she was aware that the organisation had recently advertised a position in the newspaper.

The organisation denied discrimination and said Priya had not clearly indicated the reasons for her leave.

The complaint was resolved at a conciliation conference with an agreement that the organisation would provide Priya with an apology and \$16,000 compensation.

What does the Sex Discrimination Act do?

The Sex Discrimination Act aims to ensure that women and men are treated equally and have the same opportunities.

The Act protects you against discrimination in many areas of public life, including:

- **employment** – getting a job, terms and conditions of a job, training, promotion, being dismissed
- **education** – enrolling or studying in a course at a private or public school, college or university
- **accommodation** – renting or buying a house or unit
- **getting or using services** – such as banking and insurance services, services provided by government departments, transport or telecommunication services, professional services like those provided by lawyers, doctors or tradespeople, services provided by restaurants, shops or entertainment venues.

What about discrimination and harassment at work?

The Sex Discrimination Act covers situations where you have been sexually harassed at work or where you feel that, you have been:

- refused employment
- dismissed
- denied a promotion, transfer or other employment-related benefits
- given less favourable terms or conditions of employment
- denied equal access to training opportunities.



Women who are pregnant or returning from maternity leave, and workers with family responsibilities, have rights under the Sex Discrimination Act.

Women who are pregnant should be able to continue to work in the same way and under the same conditions as other employees, unless there are valid medical or safety reasons.

It is against the law to dismiss a woman because she is pregnant.

Most workers who have children born or adopted after 1 January 2011 are eligible for paid parental leave, which is fully funded by the Australian Government.

Paid Parental Leave is available to working parents who meet the eligibility criteria.

Eligible working parents can get 18 weeks of government funded Parental Leave Pay at the rate of the National Minimum Wage.

Full-time, part-time, casual, seasonal, contract and self-employed workers may be eligible for the scheme.

A woman who returns to work after maternity leave has the right to return to the same job she had before going on leave.

If the position no longer exists – for instance, because of a genuine restructure – she has the right to another job that is as close as possible in pay and responsibilities to the one she held before.

It is against the law for employers to discriminate against a person because of their family responsibilities by terminating their employment. This includes caring for a spouse or de-facto, child, grandchild, brother, sister, parent, or grandparent.

Employers should make reasonable adjustments to assist employees with family responsibilities to do their job. This could include changing the hours they work or their starting or finishing times.

Zampella claimed that she was sexually harassed by her manager while working as a cashier at a retail store. She said the manager touched her inappropriately tried to kiss her and followed her home one evening. Because of this, Zampella resigned from her job.

The company said that Zampella had not complained about sexual harassment during her employment and advised that it was a small employer and did not have asexual harassment policy.

The complaint was resolved through conciliation with the employer providing a statement of service, financial compensation and agreeing to develop a sexual harassment policy and provide anti-discrimination training to staff.

What can I do if I experience discrimination or sexual harassment?

You may want to deal with the situation yourself by raising it directly with the person or people involved or with a supervisor, manager or discrimination/harassment contact officer.

Making a complaint to the Commission

If this does not resolve the situation, or you do not feel comfortable doing this, you can make a complaint to the Australian Human Rights Commission. You can also have someone, such as a solicitor, advocate or trade union representative make a complaint on your behalf.

It does not cost anything to make a complaint to the Commission.

Your complaint needs to be put in writing.

The Commission has a complaint form that you can fill in and post or fax to us. Or you can lodge a complaint online at our website. If you are not able to put your complaint in writing, we can help you with this.

The complaint should say what happened, when and where it happened and who was involved.

A complaint can be made in any language. If you need a translator or interpreter, the Commission can arrange this for you.





What will happen with my complaint?

When the Commission receives a complaint about something that is covered by the Sex Discrimination Act, the President of the Commission can investigate the complaint and try to resolve it by conciliation.

The Commission is not a court and cannot determine that discrimination has happened. The Commission's role is to get both sides of the story and help those involved resolve the complaint.

Commission staff may contact you to get further information about your complaint.

Generally, the Commission will tell the person or organisation the complaint is against (the respondent) about your complaint and give them a copy of the complaint. The Commission may ask the respondent for specific information or a detailed response to your complaint.

Where appropriate, the Commission will invite you to participate in conciliation. Conciliation is an informal process that allows you and the respondent to talk about the issues and try to find a way to resolve the complaint.

If your complaint is not resolved, or it is discontinued for another reason, you can take your complaint to the Federal Court of Australia or the Federal Magistrates Court.

Con, who was employed as a grocery packer with a retail store, alleged he was discriminated against on the basis of his sex.

He claimed that only male staff were required to sign a contract stating that they won't wear earrings.

Con said he was given less shifts because he wore earrings and was told to take his earrings out or leave the workplace. He said he was forced to resign.

On being informed of the complaint, the retail store agreed to try to resolve the matter through conciliation.

The complaint was resolved with an agreement that the store would pay Con the sum of \$1,500, which was equivalent to 6 weeks salary.



What can I do to prevent discrimination?

Everyone has a role to play to help build greater equality between women and men in Australia.

The Commission undertakes a wide range of activities to raise awareness about the rights and responsibilities of individuals and organisations under the Sex Discrimination Act, especially in the workplace.

We've produced guidelines and reports on preventing sexual harassment, supporting pregnant workers, flexible work arrangements and equal pay.

You can find out more about what we're doing by visiting: www.humanrights.gov.au/sex_discrimination

What can employers do to prevent sexual harassment?

Sexual harassment continues to be a serious issue in workplaces across Australia. Young women can be especially vulnerable to sexual harassment from their older, male managers or co-workers.

There are a number of simple steps that employers should take to prevent and respond to sexual harassment, such as:

- having a workplace policy on sexual harassment
- putting in place a process for dealing with complaints
- training employees to identify and deal with sexual harassment.

For more information on practical steps to prevent sexual harassment see: www.humanrights.gov.au/sexualharassment/

Where can I get more information?

The Australian Human Rights Commission's contact details are:

Postal Address

Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2001

Street Address

Level 3, 175 Pitt Street
Sydney NSW 2000

Phone: (02) 9284 9600 or 1300 369 711

TTY: 1800 620 241 (toll free)

Fax: (02) 9284 9611

Email: communications@humanrights.gov.au

Website: www.humanrights.gov.au

Complaints

Complaint Info line: 1300 656 419 (local call)

Email: complaintsinfo@humanrights.gov.au

Online: You can make a complaint online by going to www.humanrights.gov.au/complaints_information/online_form/index.html.

If you need an Auslan interpreter, the Commission can arrange this for you.

If you are blind or have a vision impairment, the Commission can provide information in alternative formats on request.

If you are thinking about making a complaint, you might also want to consider getting legal advice or contacting your trade union.

There are community legal services that can provide free advice about discrimination and harassment. Contact details for your closest community legal centre can be found at www.nacalc.org.au/directory.

Disclaimer

The information in this brochure is only intended as a guide. It is not a substitute for legal advice.

Australian Human Rights Commission
www.humanrights.gov.au

© 2012