

Discrimination

DISCRIMINATION

WHAT IS DISCRIMINATION?

Discrimination can be described as treating a particular person, because of a particular characteristic or circumstance of that person, less favourably than a person who does not have that particular characteristic or is not in the same circumstance.

You have protections against discrimination when you are applying for a job, while you are working and if you lose your job.

WHAT CHARACTERISTICS OR CIRCUMSTANCES?

Under both state and federal legislation, it is unlawful to discriminate against another person because of specified characteristics or circumstances of that other person. Depending on the claim you are making, this can include the other person's:

- Race;
- Colour;
- Sex;
- Sexual preference;
- Gender identity/history;
- Age;
- Physical or mental disability;
- Marital status;
- Family or carer's responsibilities (including family violence related matters);
- Pregnancy (including potential pregnancy and/or breastfeeding);
- Religion (including lack or absence of religious conviction);
- Political opinion;
- Ethnicity;
- National extraction;
- Social origin'
- Gender identity;*

- Intersex status;* or
- Breastfeeding.*

(*Only applicable as protected characteristics from 7 December 2022).

In some circumstances, an employer must also not discriminate against someone on the basis of a person's criminal conviction or spent conviction.

It is also unlawful for a person to sexually harass an employee or a person seeking work. Certain actions or conduct can be both discrimination and sexual harassment. For more information on sexual harassment, please see Circle Green's Fact Sheet – "[Sexual harassment](#)".

WHAT ARE SOME OF THE DIFFERENT TYPES OF DISCRIMINATION?

DIRECT DISCRIMINATION

Direct discrimination is where a person is treated less favourably on the basis of one of the above characteristics than a person who does not have that characteristic. This can take many forms, including:

- Making offensive "jokes" or comments about another worker's racial or ethnic background, sex, sexual preference, gender identity, age or disability;
- Expressing negative stereotypes of a particular group (e.g. "married women shouldn't be working");
- Judging a person on characteristics such as political or religious beliefs, cultural practices, sex, gender identity, age, and similar factors rather than work performance;
- Denying a person access to premises because that person is accompanied by a guide dog;
- Denying leave entitlements or flexible working arrangements to employees wishing to attend to family violence related matters;
- Displaying pictures, calendars, posters etc which are offensive and/or derogatory;
- Not hiring an applicant for a position because of the applicant's race, gender, age or other characteristic where that characteristic does not affect the applicant's ability to fulfil the inherent requirements of the position;
- Firing a person or forcing a person to quit their job because of a particular characteristic; and
- Generally making a person feel uncomfortable or unwelcome in the workplace on the basis of a particular characteristic.

INDIRECT DISCRIMINATION

Indirect discrimination occurs when a rule or practice is implemented which, on the face of it, appears neutral but with which a high proportion of persons of a particular race, sex or other group cannot comply.

Examples of indirect discrimination include:

- A company decision to make all workers who commenced employment after a certain date redundant could be indirect discrimination if a disproportionate number of women

commenced work after this date and are therefore adversely affected by this policy;

- An office that is ill-equipped or unsafe for employees with disabilities; and
- A company policy that no staff are allowed to work part-time may be indirectly discriminate against women who have families and are therefore unable to work full-time.

WHAT IS NOT DISCRIMINATION?

Enforcing a company policy or rule because of the inherent requirements of a position is not discrimination. For example:

- Not hiring a person who is severely hearing impaired and therefore cannot answer phone calls in a position where the job description clearly states that the successful applicant must be able to handle a high volume of phone calls on a daily basis; and
- Giving a woman with family responsibilities who has asked for flexible working arrangements fewer hours than a woman without family responsibilities who wishes to work full-time hours.

WHAT TO DO IF YOU ARE BEING DISCRIMINATED AGAINST AT WORK

If you feel that you are being discriminated against at work, you can take a number of steps to rectify the situation.

STEP ONE: DIARISE ALL INCIDENTS OF WORKPLACE DISCRIMINATION SO YOU CAN EASILY REPORT IT TO YOUR EMPLOYER

If you do want to report the discrimination at some stage, it will be necessary to report the specific incidents of offensive behaviour. Having a record of the time, place, date, person and behaviour involved will be very important.

STEP TWO: VERBALLY NOTIFY THE PERSON ABOUT THEIR INAPPROPRIATE CONDUCT

If you feel comfortable doing so, you could approach the person who is discriminating against you directly. Inform the person that the conduct is inappropriate, and that you want it to stop. If the person is unaware that their conduct is hurtful or upsetting, this may rectify the problem.

STEP THREE: NOTIFY YOUR EMPLOYER IN WRITING ABOUT THE INCIDENTS OF DISCRIMINATION

If speaking to the perpetrator directly does not rectify the situation, you can take your complaint to your employer. Write a letter to your employer outlining the incidents of discrimination, along with the reasons why you find this conduct offensive or upsetting, and what action you would like the employer to take.

STEP FOUR: RETAIN COPIES OF ALL CORRESPONDENCE SENT AND RECEIVED

It is important for you to keep dated copies of all correspondence. If the dispute cannot be resolved by negotiation, the correspondence will provide a succinct summary of the events. It also demonstrates your initiatives to resolve the problem and will assist you if you decide to pursue

further action against the person discriminating against you and/or your employer.

STEP FIVE: CONTACT THE EQUAL OPPORTUNITY COMMISSION (EOC) OR AUSTRALIAN HUMAN RIGHTS COMMISSION (AHRC)

If you do not feel comfortable reporting the incidents to your employer, or you believe that the issue has not been handled effectively by your employer, you can report the discrimination to either the [EOC](#) or [AHRC](#).

The EOC and AHRC specialise in handling discrimination claims. They should be able to assist you in making a complaint or attempting to rectify the situation with your employer. You can find the details of both of these organisations at the end of this Fact Sheet.

You generally have one year from the date of the discrimination to make a complaint to the [EOC](#).

You generally have 2 years to make a complaint to the [AHRC](#). This time limit was introduced on 13 December 2022 and prior to that date, the time limit for most claims was 6 months. If you are unsure how this affects the time limit for a complaint you are considering making, you should call the AHRC for more information.

If you are a national system employee, another option may be to make a general protections claim. For more information, see Circle Green's Fact Sheet – "[General protections for national system employees](#)". If you are not sure whether you are a national system employee call Wageline on 1300 655 266 or see Circle Green's Fact Sheet – "[National or state system employee: which one are you?](#)".

You generally have 6 years to make a general protections claim for discrimination at work. If you have been dismissed from your job, you only have 21 days to make a general protections claim about your dismissal.

DISMISSAL FROM EMPLOYMENT AND CONSTRUCTIVE DISMISSAL

A dismissal occurs where an employee's employment is terminated at the employer's initiative. This is usually called "being fired".

Constructive dismissal may occur where the employee resigns from employment but felt that they were forced to do so because of conduct, or a course of conduct, engaged in by the employer. The employee is said to be constructively dismissed if he or she had no other alternative but to resign.

If you have experienced ongoing discrimination and your employer has not dealt with the issue reasonably, you may feel like you have no choice but to resign. In this circumstance you may be able to successfully argue that you have been constructively dismissed. Constructive dismissal can be difficult to prove, and you need to show that you had no alternative except to resign.

If you have been fired or constructively dismissed for discriminatory reasons, you may be able to make an unfair dismissal, unlawful termination, protection of employee rights claim or general protections claim.

For more information, see Circle Green's Fact Sheet – "[Constructive dismissal: when you are forced to resign](#)".

It's important to remember that time limits for these types of claims can be very short. In some

cases you only have 21 days from the date of a dismissal or constructive dismissal to make your claim.

If you can't make any of these claims because of the time limit or another issue, you may also be eligible to make a claim to the [EOC](#) or the [AHRC](#).

You generally have one year to make a complaint to the [EOC](#).

You generally have 2 years to make a complaint to the [AHRC](#). This time limit was introduced on 13 December 2022 and prior to that date, the time limit for most claims was 6 months. If you are unsure how this affects the time limit for a complaint you are considering making, you should call the AHRC for more information.

NOT BEING GIVEN A JOB

If you were not given a job because of one of the characteristics listed above in the section titled "What characteristics or circumstances?" above, you may be able to make a claim to the EOC or the AHRC. If you are a national system employee, you may also be able to make a general protections claim. For more information on the EOC or the AHRC see their details at the bottom of this fact sheet. For more information on general protections see our fact sheet "[General protections for national system employees](#)".

You generally have one year to make a complaint to the [EOC](#).

You generally have 2 years to make a complaint to the [AHRC](#). This time limit was introduced on 13 December 2022 and prior to that date, the time limit for most claims was 6 months. If you are unsure how this affects the time limit for a complaint you are considering making, you should call the AHRC for more information.

You generally have six years to make a general protections claim where you are alleging that you were not given a job for discriminatory reasons.

If you are unsure whether you are a national or state system employee, call Wageline on 1300 655 266 or see Circle Green's Fact Sheet – "[National or state system employee: which one are you?](#)".

WORKERS' COMPENSATION

Workers' compensation protects injured workers by providing for loss of earning capacity, payment of medical expenses and vocational rehabilitation to assist employees to remain in or return to work.

If a person suffers from an injury or illness at work, the person may consider making an application with WorkCover for workers' compensation. Anxiety or stress as a result of workplace discrimination may be considered an illness or injury for the purposes of workers' compensation claims.

Circle Green does not advise in relation to workers' compensation. You should contact WorkCover for information.

FURTHER INFORMATION

Circle Green Community Legal

Address	Ground Floor 445 Hay Street, Perth WA 6000
Intake Phone Line	08 6148 3636 (for people with literacy or web accessibility issues)
Web	circlegreen.org.au/get-help/

Australian Human Rights Commission

Telephone	02 9284 9888
Complaints Info Line	1300 656 419
TTY (hearing impaired)	1800 620 241
Web	http://www.humanrights.gov.au/
Email	infoservice@humanrights.gov.au

Equal Opportunity Commission

Address	Level 1 Albert Facey House 469 Wellington St, Perth 6000
Telephone	1800 198 149 or 08 9216 3900
TTY (hearing impaired)	08 9216 3936
Web	http://www.eoc.wa.gov.au/

Fair Work Commission

Address	Level 16 111 St Georges Terrace, Perth WA 6000
Telephone	1300 799 675
Web	www.fwc.gov.au
Email	perth@fwc.gov.au

Unions WA

Telephone	08 6313 6000
Web	http://www.unionswa.com.au
Email	admin@unionswa.com.au

Wageline

Telephone	1300 655 266
Web	http://www.dmirs.wa.gov.au/wageline

WorkCover WA

Advisory Service	1300 794 744
TTY (hearing impaired)	08 9388 5537Ss
Web	http://www.workcover.wa.gov.au/

WorkSafe

Telephone

1300 307 877

Web

<http://www.dmirswa.gov.au/worksafe>

This information kit is current as at 12 January 2023.

Disclaimer:

This factsheet only contains general information. This factsheet is not legal advice and should not be relied on as a substitute for legal advice. You may wish to seek advice from a lawyer regarding your own particular circumstances. We are not responsible for any consequences arising from your use of, or reliance on, the information contained in this factsheet.

Further information about our disclaimer and your use of this factsheet can be found here: <https://circlegreen.org.au/disclaimer/>