

Equal Opportunity Commission for WA Employees

A Circle Green Community Legal claim guide

Introduction

This claim guide is for employees in Western Australia who wish to make a complaint to the Equal Opportunity Commission.

The information below has been written to assist you with the practical process of making a complaint to the Equal Opportunity Commission. If you are not yet ready to make a complaint and you are seeking more general information, you may wish to view our Q&A resources first. If you need legal advice before making a complaint, you can [submit an application for advice to us here](#) or see our [private solicitors list here](#).

This claim guide is provided as general information only and is not intended to be a substitute for legal advice. By using the information on this page, you agree to our full [disclaimer](#).

Key terms used

This information resource uses a number of key terms. You can click on our glossary in a new window and read what the key term means. See our glossary here: <https://circlegreen.org.au/resource/glossary-workplace-law/>

We encourage you to read this claim guide from start to finish. If you are looking for a specific piece of information, you can click on any heading below to skip to that section.

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Overview

This claim guide is a complaint process guide for persons who wish to make a discrimination claim at the Equal Opportunity Commission (**EOC**).

It is unlawful to discriminate against another person because of specified characteristics or circumstances of that other person. Discrimination is when someone is treated less favourably because of a particular characteristic or circumstance, than someone who does not have that characteristic or circumstance.

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

These characteristics and circumstances include your:

race	age (or association to someone's age)	religion (including lack or absence of religious conviction)
colour	marital status	political opinion
gender identity / history	family or carer's responsibilities (including family violence related matters)	ethnicity
physical or mental disability (includes mental health conditions, association to someone with a disability, use of an assistance animal or disability aid, or for having a carer)	pregnancy (including potential pregnancy and / or breastfeeding)	national extraction or immigration status
	sex	social origin sexual orientation

Sometimes you can make a complaint if your employer discriminates against you for having personal details on the Fines Enforcement Registrar's website. For more information on this type of complaint, you may wish to visit the website of the Equal Opportunity Commission.

For general information about discrimination and alternative discrimination-based claims, please see Circle Green's publication, ["Q&A: Workplace discrimination for WA employees"](#).

This claim guide is aimed at persons who are ready to make a claim or actively considering making a claim – if you are seeking more general information about what can constitute discrimination and other claims that may be available, consult the Q&A first.

You can make a complaint to the Equal Opportunity Commission (**EOC**) if you feel you have treated less favourably because of a characteristic or circumstance that is covered under the *Equal Opportunity Act 1984*. Discrimination can be direct or indirect.

Time limits

You generally have one year from the date of the discrimination to make a complaint to the EOC.

In some circumstances the EOC might consider accepting complaints about incidents that occurred more than 12 months ago.

If you are seeking to make a complaint outside of the time limitation you should consider seeking legal advice as soon as possible.

Outcomes

The EOC can assist you to come to a resolution with your employer and may schedule a conciliation to facilitate this.

You can request things in negotiations with your employer during conciliation. If you and your employer come to an agreement during conciliation, a binding settlement agreement can be drawn up.

You can ask for compensation as well, keeping in mind the maximum amount that can be awarded by the State Administrative Tribunal (if the EOC cannot resolve your complaint) is \$40,000. The EOC does not have the power to award compensation to you.

Other things you can request include an apology from your employer or other respondents, a reference from your employer, non-disparagement agreements, etc.

Costs

There is no filing fee to make a complaint to the EOC.

If your complaint is not resolved within the EOC, your matter may be referred to the State Administrative Tribunal (**SAT**) to decide. There is no fee for your complaint to be referred to SAT if it cannot be resolved in the EOC.

Representation

You can contact the EOC to make a complaint and it will be able to assist you in making the complaint and starting the process.

You do not need a lawyer to make a complaint or respond to a complaint, however, you may want to organise one to assist with the complaint and response.

The complaint can also be lodged on behalf of one or more other people aggrieved by the alleged unlawful discrimination.

Later in the proceedings, you need the consent of the person presiding over a conference to be represented by another person who is not a lawyer.

You need to ask the Commissioner's permission to be represented by a lawyer at conciliation.

Complaint process

You would generally think about going to the EOC if you do not feel comfortable reporting incidents of discrimination to your employer, or if you have reported the incidents of discrimination to your employer and you believe they have not handled your report correctly.

You can report the discrimination to the EOC, who may be able to assist you in making a complaint or attempting to resolve the situation with your employer.

The EOC specialises in handling discrimination complaints.

Starting a complaint

A complaint to the EOC needs to be made in writing. You can do this in the format best suited to your circumstances:

- a hard copy complaint form; or
- a complaint form submitted online.

It's quite common to submit a typed statement addressing the details of the complaint along with the EOC complaint form.

You can get someone to help you write the complaint if you are not able to do so yourself.

You will need to provide details of what has happened, including dates where possible, and why you think it was discrimination.

You can include copies of documents that support your complaint.

Once you have submitted a complaint, the EOC will use particular language to describe you and your employer or any other people you have named as involved in your complaint.

You will be described as the 'complainant', as the person who is making the complaint. Your employer will be the 'respondent', as will any other companies or people you name as part of your complaint. For example, if you have been harassed at work, you might include the person who harassed you in your complaint. This person will also become a respondent to your complaint.

Onus of proof

The person making the complaint must show that they have an arguable case supported by evidence.

If your employer is attempting to rely on an exception in the Act, the onus of proof moves to them to show that the exception applies in the particular circumstances.

For example, if your employer wants to rely on the discrimination being lawful due to the inherent requirement of your role, which is an exemption under the Act.

Response

Your submission will initially be treated as enquiry while the EOC examines whether the issue you have raised can be addressed by the EOC.

You may be contacted by the EOC to provide some further information or clarification about your complaint. This could be via email, phone, or an in-person meeting.

The EOC will decide if a complaint is accepted. If it is, the Commissioner will delegate to a conciliation officer to investigate and try to resolve the complaint.

The EOC has the power to require a person to provide relevant information or documents about a complaint.

Generally, the EOC will send a copy of your complaint to your employer and any other respondents you have named as part of the complaint.

As part of the attempt to resolve the complaint, the respondents will usually have an opportunity to respond in writing to your complaint and send it to the EOC, who will then forward this on to you.

If the responses received do not resolve the complaint, the EOC will arrange for a conciliation conference between you and the employer (and any other respondent you may have named as part of your complaint). The EOC conciliation officer is a neutral party who will attempt to assist you to come to a resolution.

Conciliation

The purpose of the conciliation is to see if the complaint can be resolved. To facilitate resolution, conciliations are confidential, and any discussions, offers, or admissions made during the conciliation cannot be raised at a later hearing.

Conciliations are a less formal process than hearings or other court proceedings. The conciliator is a neutral party who is not there to take sides, but to assist both parties to come to a resolution.

The conciliation can be face-to-face or over the telephone. The EOC can arrange special assistance such as language or sign language interpreter if required.

Your employer may say things that you do not agree with in the conciliation, or things that are upsetting to hear. You should not interrupt when your employer or the conciliator is speaking, but you may like to take notes so you can address these points when you have a chance to respond.

At certain points, the conciliator may speak to each party alone to assist with the negotiation process.

Conciliation can be a good opportunity to try and resolve the matter outside of the more stressful and formal process of a hearing. It is a good idea to approach the conciliation with an open mind and be prepared to negotiate.

Preparing for conciliation

You may wish to draft detailed notes – even in a script format – to lay out your side of the story. You should organise your notes in chronological order, including sufficient detail but avoiding going into irrelevant matters.

You would have received your employer and any other respondent's reply to your complaint, which may have mentioned defences to their actions. Be prepared to argue against any such defences.

You should consider exactly what you would like to achieve in terms of remedies. This could be compensation, an apology, or other outcomes. If you are seeking compensation, you should think about how much and how you arrived at that figure, keeping in mind the cap of \$40,000.

Resolution at conciliation

You may be able to reach an agreement that is acceptable to both you and your employer at the conciliation. It is possible that a settlement agreement could be drawn up on the spot and become binding when accepted and signed by both parties.

It may be that your employer wants a lawyer to draw up a settlement agreement, which will be sent to you after the conciliation, so even though an agreement has been reached there is not an opportunity to close the matter on the spot.

It's important to clarify if you are making an agreement to settle, whether the agreement is settling just your EOC claim, or all possible claims. It is quite common for employers to want to settle all claims.

Settlement is usually concluded with a deed, which will often include standard clauses like non-disparagement and confidentiality, as well as mutual release from further legal action. Signing a deed will likely mean you are bound by all clauses within the deed.

No resolution at conciliation

It is possible for the EOC to schedule another conciliation if they think that this would be useful to resolve your complaint, even if the complaint was not resolved in the last conciliation. The EOC also may continue to investigate the complaint and correspond with you and your employer after the conciliation without arranging for another conference, with a view assist to resolve your complaint.

If the matter cannot be resolved by conciliation or the nature of a complaint makes it appropriate for referral, the Commissioner may refer a complaint to the State Administrative Tribunal.

Evidence of anything that was said or done during conciliation proceedings is not admissible before SAT.

The Commission is required to provide a complainant with assistance if the Commissioner refers their complaint to SAT (this is not applicable if the EOC has dismissed the complaint).

You can also discontinue your complaint.

Discontinuing your complaint

If you want to discontinue your complaint, you can withdraw it at any time by notifying the Commissioner in writing.

It is also possible for a complaint to lapse, if you are not responding or engaging with the process and the Commissioner is of the opinion that you are not pursuing or have abandoned your complaint.

The Commissioner will send a warning in writing advising that you have 21 days to confirm you want the EOC to continue investigating your complaint. Otherwise, it will lapse after that 21 day period.

Can the EOC discontinue a complaint?

The Commissioner can also dismiss a complaint at any stage of an investigation, if the Commissioner is satisfied that a complaint is 'frivolous, vexatious, misconceived, lacking in substance or relates to an act that is not unlawful by reason of a provision of this Act'.

This could apply if your complaint is about conduct you have felt is discriminatory but is not protected under the Act, for instance if you have been treated differently than others for being heavily tattooed. It might not be right that you have been treated differently for this reason, but as physical appearance of this kind is not covered by the Act, you can't make a complaint to the EOC on this basis.

What could be considered frivolous or vexatious can vary. Vexatious could be submitting complaints with the intention only of causing inconvenience or harm to the respondent, rather than seeking to address discrimination you feel you have been subject to.

If the Commissioner intends to dismiss a complaint under section 89 of the Act, the Commissioner will advise the complainant in writing, including the reason for dismissing the complaint and the complainant's rights under section 90.

Section 90 allows a complainant to make a request to the Commissioner within 21 days of receiving notice of the complaint being dismissed, to have the complaint heard by SAT. This must be made to the Commissioner in writing.

The Commissioner will then refer the matter to SAT, together with a report prepared by the EOC relating to their investigation into the complaint.

You may wish to seek legal advice if your complaint has been referred to SAT, or your complaint has been dismissed and you wish to ask the EOC to refer your complaint.

Victimisation

It is unlawful for anyone to threaten, harass, or treat you unfairly because you have made a complaint, or intend to make a complaint, to the EOC. This also protects you if you complained about unlawful discrimination to your employer, but have not made a complaint to the EOC.

State Administrative Tribunal

As discussed above, your complaint may come before SAT if it is referred by the EOC or if the EOC dismisses your complaint and you request that the EOC refer the complaint to SAT. SAT is independent of the EOC. SAT deals with a wide range of matters, including complaints that have been referred through the EOC. A complaint must be lodged with the EOC first and be referred to SAT – you cannot lodge a discrimination complaint with SAT directly.

- SAT will make inquiries into every matter referred by the EOC Commissioner unless you as the complainant do not want for an inquiry to be held (noting this could result in your complaint being dismissed by SAT). The Commissioner submits a report on the matter for SAT to consider.
- SAT may resolve the matter by mediation, or by hearing. SAT can dismiss your complaint or find that it is substantiated.

- SAT can also decline to take any further action on the matter.

Unlike the EOC, SAT can make some specific orders and award compensation up to \$40,000. Orders SAT can make include:

- order prohibiting the respondent from continuing or repeating the unlawful conduct;
- order the respondent to redress any loss or damage; and
- make a declaration that an agreement made in contravention of the Act is void.

SAT can also make interim orders in some circumstances, which can be a temporary order to protect your situation, status, or rights whilst SAT investigates your complaint. For example, an interim order stopping your employer from dismissing you from your role while the investigation is being carried out and a determination of outcome has been made. SAT is not a court, and aims to have an informal, flexible, and transparent approach to cases. However, if your complaint has reached the stage of being referred to SAT for determination, it is a good idea to seek legal advice on the next steps.

Related resources

- [Q&A Workplace Discrimination for WA Workers](#)
- [Q&A Protected Complaints and Actions for WA Workers](#)

Further information and assistance

Circle Green Community Legal

WA employees can request free and confidential legal assistance with employment and workplace discrimination issues from Circle Green Community Legal.

Complete an online request: circlegreen.org.au/get-help

Telephone enquiries: 08 6148 3636 (Please note that we do not provide on demand legal advice)

For further information on our Workplace law services, please visit:

circlegreen.org.au/workplace

Courts and Commissions	Government departments & other supports
<p>Equal Opportunities Commission</p> <p>Phone: (08) 9216 3900 or 1800 198 149 Email: eoc@eoc.wa.gov.au Web: https://www.wa.gov.au/organisation/equal-opportunity-commission</p> <p>State Administrative Tribunal</p> <p>Phone: (08) 9219 3111 or 1300 306 017 Web: https://www.sat.justice.wa.gov.au/default.aspx</p>	<p>WorkSafe</p> <p>Phone: 1300 307 877 Web: http://www.dmirs.wa.gov.au/worksafe</p>

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