Circle Green Community Legal

Stop workplace bullying application in the Western Australian Industrial Relations Commission (for state system employees)

A Circle Green Community Legal claim guide

Introduction

This claim guide is for state system employees in Western Australia who wish to make a stop bullying application to the Western Australian Industrial Relations Commission.

There are two systems of employment law in Western Australia: a state system and a national system. For more information, please see our publication "Q&A: State or National System for WA Employees" from the workplace resources section of our website.

The information below has been written to assist you with the practical process of making a bullying claim. If you are not yet ready to make a claim and you are seeking more general information, you may wish to view our Q&A publications on our workplace resources page first. If you need legal advice before making a claim, 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

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.

Contents

Introduction 1

Overview 3

Bullying claims to the WAIRC 3

Eligibility 3

Time limits 4

Outcomes 4

Costs 4

Representation 5

Interpreters and other requirements 5

Claim process 5

Starting a claim 5

Response 6

Conciliation 6

Arbitration 7

Discontinuing your claim 7

Enforcing an order 7

Appeals 8

Forms 8

Related resources 8

Overview

Bullying claims to the WAIRC

Bullying can mean different things, depending on where it takes place and who is involved. Under the law, there is a particular definition of what bullying is when it occurs in a workplace.

A bullying claim to the Western Australian Industrial Relations Commission (**WAIRC**) is appropriate to make if:

- you are a state system employee;
- the bullying behaviour occurred "at work";
- a person or group is behaving unreasonably towards you (or a group you are in);
- the behaviour is repeated;
- the behaviour creates a risk to your health and safety;
- the behaviour is not reasonable management action that is carried out in a reasonable manner; and
- there is a risk that you will continue to be bullied at work by the person or group.

This guide covers the process of making a claim. If you aren't sure whether or not you are being bullied at work, or you aren't sure whether to make a claim, you might want to first read our other publication "Q&A: Bullying against WA employees".

Eligibility

You can make a claim to the WAIRC if you are a "worker", and you work for a state system employer.

A "worker" is a broad term, and includes:

- an employee;
- a contractor or subcontractor;
- an employee of a contractor or subcontractor;
- an employee of a labour hire company;
- an outworker;
- an apprentice or trainee;
- a work experience student; and
- a volunteer, except for volunteers at a volunteer association which has no employees.

To find out whether you work for a state system employer, you can call Wageline. You can also read Circle Green's "Q&A: State or national system for WA employees".

Time limits

There is no time limit to make a stop bullying application. However, the application process is focused solely on stopping bullying from continuing. So if there is no risk that the bullying will continue, the WAIRC is unlikely to proceed with the application. For example, if you have left the workplace, or the person who was bullying you has left the workplace, there is unlikely to be any risk of ongoing bullying.

Outcomes

The WAIRC will ask you what outcomes you are seeking. Each person's situation will be different. You should think about your specific circumstances and your workplace when asking for orders. The WAIRC is not limited to making the orders you ask for, but it will likely consider them.

The WAIRC can make any order it considers appropriate to prevent you from being bullied. However, it cannot make an order that you be paid money. It also cannot order reinstatement (ie getting your job back). The WAIRC's focus is on sorting out the issues and allowing you to return to work as normal.

In making an order, the WAIRC must consider (if it is aware of them):

- any outcomes of an investigation into the alleged bullying carried out by someone else;
    - For example, the outcomes of an investigation into bullying done by a workplace health and safety regulator, like WorkSafe.
- any procedures available to you to sort out the issues, and any outcomes from using those procedures; and
    - For example, the WAIRC will consider if your employer has a workplace bullying policy and any outcomes of using these policies to try and sort out your issues.
- any other matters that the WAIRC thinks are relevant.

Some possible orders include:

- requiring the person or group to stop bullying you;
- the employer having to regularly monitor the person or group;
- preventing unsupervised contact between you and the person or group at work;
- making sure people are following the employer's anti-bullying policy;
- requiring information and additional support and training to be given to workers; and
- a review of the employer's workplace bullying policy.

Costs

The WAIRC cannot make a costs order for legal fees. This means that you cannot be ordered to pay the lawyer or agent fees of the other party, even if you lose the matter. In the same way, you

can't ask for the other party to pay your legal fees, even if you are successful. All parties are responsible for their own legal fees.

The WAIRC can sometimes make an order for other costs, like the travel costs for witnesses to attend a hearing. However, these are not normally significant.

Representation

Conciliations and hearings at the WAIRC are designed to be navigated by an ordinary person without a lawyer or other representation. However, a person can choose to be represented by a lawyer or an agent in proceedings. This is different from having a support person attend a conference or hearing to provide emotional support. Being represented by a lawyer or agent means that they speak and act on your behalf at the proceedings.

If you have a representative, you will include their name in the application form and the WAIRC will generally send correspondence to them after that point (unless you ask for it to be sent to you). If you want to be represented after your matter has commenced, then you should fill out a Form 11 – Notification of Representative Commencing or Ceasing to Act.

Interpreters and other requirements

The WAIRC can arrange for an interpreter to assist you at your mediation, conference, or hearing. You do not have to pay for the interpreter. However, you must tell the WAIRC as soon as possible that you will need an interpreter, and the language you require.

You can also request other things from the WAIRC if you require something to be able to participate (eg a hearing loop). The WAIRC will try to make arrangements for you.

If you need an interpreter, or have other requirements, then you can include these things in your application form. You can also contact the WAIRC Registry after you lodge your claim. The details of the WAIRC Registry are at the end of this Claim Guide.

Claim process

The length of this process will depend on how busy the WAIRC is, and how urgently your matter needs to be dealt with.

Starting a claim

To make a claim you must complete a Form 21 – Application for a Stop Bullying Order.

You will need to lodge the form with the WAIRC and pay the filing fee. Information about fees can be found here: https://www.wairc.wa.gov.au/about-us/fees/.

You can lodge your form online, by post, by email, or in person at the WAIRC Registry. See the end of this Claim Guide for the WAIRC's details.

If paying the filing fee will cause you serious financial hardship, you can contact the WAIRC registry and ask about a fee waiver application.

Response

The WAIRC must start dealing with your claim within 14 days after it is lodged. The WAIRC may do this by asking the parties questions or asking parties for further information. The WAIRC does not conduct investigations into allegations of workplace bullying.

After gathering information about the claim from all parties, the WAIRC will decide how to deal with your claim. The WAIRC may dismiss your claim if it thinks that your claim has no merit.

Sometimes, the WAIRC can also refer matters to WorkSafe, the work health and safety regulator. In Western Australia.

Otherwise, the WAIRC can decide to deal with your claim by conciliation, arbitration, or take other appropriate action. If this happens, the WAIRC will send you a written notice telling you the date and time of the meeting – this is called a Notice of Listing.

If you can't be there on the date or at the time stated in the Notice of Listing, you can ask for your matter to be adjourned (postponed). As soon as you know that you won't be able to be there, you should ask the WAIRC to adjourn the meeting and explain the reason why you can't be there. The WAIRC will only adjourn the meeting if you have a good reason.

Conciliation

Conciliation is an informal meeting, which aims to sort out your issues. There will be an independent person (a conciliator), who will guide the conversation. The conciliator is usually a WAIRC member, who will not take sides.

The WAIRC will try conciliation first. The other option is arbitration, which is more formal (further information below).

Conciliations are on a "without prejudice" basis. This means that things you say during conciliation generally cannot be used in an arbitration hearing.

Conciliations also happen "off the record", meaning that there will be no transcript or record of the conversations that take place. There may a written record taken of the outcome of the conciliation.

At the start of the conciliation, the conciliator will usually explain their role and how the conciliation will be run. After that, the conciliator:

- will allow each party to briefly outline their position, including what happened, and want they want;
- may allow or ask questions;
- may talk to each party on their own to come up with possible solutions; and
- will try and help the parties to reach an outcome.
    - For example, the conciliator might find common ground, or suggest possible solutions.

Conciliation conferences are usually held in person at the WAIRC offices. This means that it is likely that you will have to see the person who has bullied you.

Conciliations may also be held over the phone if there is a reason that you or another party cannot go to the conciliation in person (eg if you live in a rural, regional, or remote area).

Preparing for conciliation

Some things you can do to prepare for conciliation include:

- knowing your claim – refresh your memory about what happened. It can be useful to write a short summary of events to help you during the conciliation;
- finding all relevant documents - eg diary notes, letters or emails with your employer about the bullying and any formal written complaints;
- considering bringing along a support person or legal representative (the WAIRC Registry can provide you with a list of lawyers); and
- seeking legal advice if possible (a link to our online Get Help form is at the end of this Claim Guide).

Circle Green and the WAIRC have published a video guide that shows you what to expect from a conciliation at the WAIRC. Click here to see the video.

You can also read the WAIRC's fact sheet on conciliations and Circle Green's publication "Q&A: Conciliation conferences for WA employees".

Reaching an agreement at conciliation

If you reach an agreement, the conciliator can help to record the agreement in writing. They may also make an order that discontinues (i.e. stops) your claim.

If you do not reach an agreement, the claim will usually go to arbitration.

See Circle Green's Q&As "Q&A: Conciliation conferences for WA employees" for more information.

Arbitration

An arbitration is a formal hearing run by the WAIRC. Arbitrations are usually held in public, which means that anyone can go to them. Sometimes the WAIRC will hold arbitrations in private, but there needs to be a good reason for doing this.

The WAIRC will make a decision, which you and the employer must follow. The decision will be recorded in a public document on the WAIRC website.

You can reach an agreement with the employer at any time before the arbitration happens. You should tell the WAIRC if this happens.

Discontinuing your claim

You can discontinue (ie stop) your claim at any time by lodging a Form 1A - *Multipurpose Form* with the WAIRC.

Enforcing an order

If the WAIRC makes an order and it is breached, the person breaching the order can be required to pay a fine. Currently, the fine can be up to $13,000 for people and $65,000 for companies. This fine can be paid to a particular organisation, or a particular person (including you).

If you are looking for a person and/or company to be fined for breaching a WAIRC order, you would need to make a separate claim. You would need to make this separate claim to the Industrial Magistrates Court, not to the WAIRC. You may wish to seek legal advice before making this kind of claim.

Appeals

If you don't agree with a decision made by the WAIRC, you can apply to the WAIRC to appeal it. You must be able to convince the WAIRC that it should grant permission for your appeal because your appeal is in the public interest.

If you want to appeal a decision, you will need to lodge a Form 8 – *Notice of Appeal Against a Decision made by the Commission or the Industrial Magistrates Court* with the WAIRC within 21 days of the date of the decision.

After you do this, the WAIRC will contact you about preparing, lodging, and serving (giving) other documents to the other parties to your appeal. The deadlines for doing these steps can be specific and short. The requirements for these extra documents can be technical and quite formal, so you should consider seeking legal advice before lodging an appeal.

Forms

The following forms can be found here: https://portal.wairc.wa.gov.au/forms

- Form 14 – Application for an Order to Stop Bullying or Sexual Harassment (or Both)
- Form 11 - Notification of Representative Commencing or Ceasing to Act
- Form 1A - Multipurpose Form
- Form 8 – Notice of Appeal Against a Decision made by the Commission or the Industrial Magistrates Court

Related resources

- Q&A: State or National system for WA employees
- Q&A: Bullying against WA workers
- Q&A: Conciliation conferences for WA employees

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 & Commissions	Government departments & other supports
Western Australian Industrial Relations Commission Phone: (08) 9420 4444 or 1800 624 263 Web: https://www.wairc.wa.gov.au/ **Industrial Magistrates Court** Telephone: 08 9420 4467 Web: https://www.imc.wa.gov.au/	**Worksafe WA** Telephone: 1300 307 877 24 hour serious incident and fatality reporting line: 1800 678 198 Web: https://www.commerce.wa.gov.au/worksafe/ **Wageline** Phone: 1300 655 266 Web: https://www.dmirs.wa.gov.au/contactwageline

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/

© Circle Green Community Legal.