

Tracking Your Rights: Work

The *Universal Declaration of Human Rights* states:

Everyone has the right to work, the right to equal pay for equal work and the right to decent income and working conditions. Everyone also has the right to form and join trade unions. (Article 23)

What does the *Anti-Discrimination Act 1991* say about work?

Work includes:

- full-time, part-time, casual, permanent and temporary employment
- apprenticeships and occupational training
- contract work
- work paid on a commission basis
- work experience and vocational placements
- voluntary, unpaid and sheltered workshop work

Looking for a job

When you are looking for a job, the Act says that an employer or a recruitment agency must not discriminate :

- in deciding who should be offered work
- in the terms on which work is offered
- in failing to offer work.
- in having a recruitment process which disadvantages certain applicants

The merit principle should guide decisions about who should get a job. The merit principle means selecting people on the basis of their demonstrated ability, and not using irrelevant considerations, such as their race, age, gender and whether they have family responsibilities.

When you have a job

When you are in employment, the employer must not discriminate by:

- varying your terms of work
- denying you opportunities for promotion, transfer or training
- dismissing you
- denying you access to a guidance program, an apprenticeship training program or other occupational training or retraining program
- treating you unfavourably in connection with your work

The workplace environment should be free from discrimination and sexual harassment.

Employers are responsible for the behaviour of

their workers and should have Codes of Conduct as well as anti-discrimination policies in place.

What is discrimination?

Direct discrimination happens when you are treated worse than someone else because of your: race, age, family responsibilities, parental status, relationship status, pregnancy, breastfeeding, impairment (a disability), religious belief or activity, sex (male/female), gender identity, sexuality, lawful sexual activity (as a sex worker), trade union activity, political belief or activity, or association with, or relation to, a person identified on the basis of any of the above attributes.

Sex discrimination: Carl answers a job advertisement for a receptionist, but is told over the phone that because he's a man, he'd be wasting his time even applying.


Race discrimination: When an Aboriginal youth applies for a labouring job, the boss said he 'won't employ blacks because they're always going walkabout.'

Pregnancy discrimination: When Jodie advises her employer that she's pregnant, she's moved to lower paying job out of the public view, because clients 'don't want to look at people in your condition'.

Age discrimination: Ellen is not considered for a promotion at work. The supervisor says that while she thinks Ellen could do the job, 'you'll be retiring soon, so we're looking for someone young who'll be here for a while'.

What is indirect discrimination?

Sometimes a rule or practice seems to be the same for all people. However if it disadvantages a particular group of people more than others, in a way that is not reasonable, it may be indirect discrimination.



Race discrimination: Walter recently arrived from Saibai and speaks Creole as his first language. He applied for unskilled work in a factory, but is not taken on because the HR person says that he needs to be able to read and write fluent English.

Family responsibilities discrimination: A factory decided to change its hours of operation and all staff are advised that the new starting time is 6am. Ruby, a single parent, cannot find a childcare centre that opens before 6am. She has a three year old child, and has no extended family near by to help her out.

What is vilification?

Vilification is publicly inciting others to hate, have serious contempt for, or severely ridicule people because of their race, religion, sexuality or gender identity. Vilification is unlawful.

Racial vilification: A road gang is digging up a footpath in a busy area. One of the workers (an Aboriginal man) accidentally hits a water pipe while digging. The supervisor runs down hurling abuse at him and saying things like: 'You stupid coon. Look what you've done. You Abos are as dumb as they come. Not only lazy but dumb too. Come on boys now you'll have to fix up the mess this dumb coon has got us into. Can't trust an Abo to do a simple job...'

If the incitement involves threats of physical harm to people or their property, it is a criminal offence.

Sexual Harassment

Sexual harassment is unwelcome sexual behaviour directed at you, which makes you feel offended, humiliated or intimidated, and in the circumstances, it is reasonable to feel that way. Both men and women can sexually harass and be harassed. It has nothing to do with mutual attraction and friendship between people.

Lorinda is a shop assistant in a delicatessen. Her boss always stares at her breasts and that makes her feel uncomfortable. When she goes into the cold room, he follows her in to 'help'. He brushes against her breasts and once she felt him press his body against hers from behind. She is now scared to go into the cold room and worried about being alone in the shop with the boss, but needs the work.

Sexual harassment includes the following behaviour:

- unwelcome touching, staring or leering, unnecessary familiarity such as deliberately brushing up against you
- suggestive comments or jokes; sexually explicit pictures or posters
- unwanted invitations to go out on dates or requests for sex
- intrusive questions about your private life or body
- insults or taunts based on your sex
- sexually explicit emails and text messages

Marie is a first year apprentice mechanic. The other staff are older and mostly men. Marie has a boyfriend and her co-workers make rude and vulgar comments to her about her relationship. A cartoon depicting her and her boyfriend having sex was put on the notice board, and she saw the word 'slut' chalked on a piece of equipment which she uses.

Victimisation

Workers have the right to work free from discrimination and harassment and the right to make a complaint if it does happen. Complaints can be made through the workplace's grievance process or to the ADCQ. Victimisation is being treated badly because you are:


- making a discrimination / sexual harassment complaint OR
- intending to make a complaint OR
- involved in someone else's complaint OR
- refusing to discriminate against someone

A complaint of victimisation may be made to the ADCQ, separate from, and in addition to, any discrimination complaint.

Lisa works at a hotel in a country town. She is sick of the manager coming on to her all the time. He pressures her to go out with him, to stay back after work for drinks, says crude things and asks her for sex. She can't afford to quit her job, so decides to complain to the ADCQ. When the manager hears about the complaint he sacks her and says that if she doesn't drop the complaint, he'll make sure that she never gets a job in the town again.

Discrimination on the grounds of trade union activity or political belief/activity

The right of workers to belong to a trade union and participate in union activities, is protected by the Act. Trade union activity includes such



things as being a union delegate, attending union meetings in your own time, participating in a Labour Day march.

Trade union activity discrimination: Cecil is a senior hand in a meat works where he has worked for 27 years, all of which as a union member and currently as a union rep. Cecil feels that practices implemented by a new manager compromise workplace health and safety. He voiced his concerns to the manager many times with little effect. Now Cecil is encouraging workers to join the union with a view to taking industrial action. The new manager has written an adverse report about Cecil's work performance which Cecil believes is untrue. He feels the manager is trying to get rid of him because of his trade union activity.

Political belief discrimination relates to discrimination because of beliefs that a person holds about government (Commonwealth, State or Local). You are entitled to hold a personal political belief, and this should not be held against you at work. However, your employer has the right to expect you to perform your work. If you have a conflict of interest because of your political belief, you may not be able to continue in that job.

Political belief discrimination: Holly works at a dental surgery and is considered by all to be a good worker. In a recent election, she handed out how to vote cards for a local candidate. Her boss saw her at the polling booth. The following week he told Holly that she should look for another job as he didn't want 'a Greenie' in the office.

Other important/useful information

The Act allows exemptions in some situations which could otherwise be discrimination. Here are some that apply at work.

Genuine occupational requirements for a job

A person may impose genuine occupational requirements for a position. The requirement must be **genuine** and **necessary** to do the job.

- A correctional centre may advertise for 'men only' for a position involving body searches of men.
- A rape crisis centre for women who have experienced sexual assault may advertise for 'women only' counsellors.

- For reasons of authenticity, a film company may advertise for a person of Aboriginal descent to play the leading role in a film about Cathy Freeman.

Youth wages

It is not unlawful to pay a worker under 21 years of age a rate according to their age.

Special services or facilities required for a worker with an impairment

An employer may discriminate against a worker with an impairment if **both** of the following conditions are met.

- they need special services or facilities AND
- to supply these services or facilities would cause unjustifiable hardship to the employer

John works as a sales rep for a small business. He drives around the suburbs in the work van topping up stock. He recently had a stroke and has been off work. Although making a good recovery, he is not able to drive the work van. His employer has explored the option of having the van modified so that John can drive it, but the quote came in at \$25,000. The employer may be able to argue that to provide the special facilities to allow John to drive would impose unjustifiable hardship on the business.

Welfare measures

A person may provide a special service, benefit or facility to assist or advance a group of people for whose benefit the Act was intended.

A subsidy paid by the employer, towards gym membership for workers with serious weight issues, diabetes or other medical conditions that would be assisted by regular exercise.

Equal opportunity measures

An employer may do an act to promote equal opportunity for a disadvantaged group of people with a particular attribute (such as race, age, sex, impairment). This gives such people a chance they might not otherwise get.

- A law firm may invite Aboriginal or Torres Strait Islander students to apply for a placement with their firm.
- A company may decide to recruit for the position of administrative assistant only from an agency which specialises in finding work for people with impairments.



Public health

An employer may do an act that is reasonably necessary to protect public health

A woman who teaches young children to swim at a local pool contracted conjunctivitis, a highly contagious eye infection. Her employer prohibited her from working at the pool with children until her eye condition cleared up.

Workplace health and safety

An employer may do an act that is reasonably necessary to protect the health and safety of people at a place of work.

An animal refuge said it could no longer employ a female worker. This was because she became pregnant and was not immune to a disease carried by cats which can effect a developing baby.

Workplace harassment (bullying)

Workplace harassment means behaviour that is unwelcome and offends, humiliates or intimidates the other person. It includes:

- verbal abuse
- threats of dismissal
- ridicule and put downs
- leaving offensive messages,
- persistent unjustified criticism
- humiliating a person through sarcasm and gestures
- spreading gossip or rumours.

Employers should have a Code of Conduct which prohibits workplace harassment.

If harassment occurs because of an attribute listed above (such as race, age, sex, impairment, religion etc) then it is a form of discrimination at work and a complaint may be made to the ADCQ.

If the harassment does not relate to any of these attributes the Anti-Discrimination Commission cannot deal with it. The grievance process available in the workplace can be used, or contact the Department of Employment and Industrial Relations for more information.
<http://www.deir.qld.gov.au/workplace/subjects/harassment/>

Contact the ADCQ for more information

- phone on 1300 130 670 (or TTY 1300 130 680) from anywhere in Queensland and your call will be taken by the closest office
- ADCQ has Aboriginal and Torres Strait Islander staff and you can ask to speak with one of these officers.
- send an email to info@adcq.qld.gov.au
- visit the website www.adcq.qld.gov.au

ADCQ offices are located at:

Brisbane – level 17, 53 Albert St, Brisbane City.

Rockhampton – level 1 James Larcombe Place, 209 Bolsover Street

Townsville – 155 to 157 Denham Street

Cairns – McLeod Chambers, 78 Spence Street

Other agencies

Queensland Workplace Rights Ombudsman
www.workplacerrights.qld.gov.au
1300 737 841

Dept Employment & Industrial Relations
<http://www.deir.qld.gov.au/workplace/index.htm>
1300 737 841

Young Workers Advisory
Service <http://www.ywas.org/>
(07) 3211 1447 or 1800 232 000

Old Working Women's Service
www.qwws.org.au
(07) 3211 1440
1800 621 458

Legal Aid Queensland
www.legalaid.qld.gov.au
1300 651 188 (General)
1300 650 143 (Indigenous Hotline)

Welfare Rights Centre
<http://www.wrcqld.org.au/index.htm>
(07) 3847 5532 (General)
Disability Discrimination Legal Advocacy Service
1800 358 511

Aboriginal & Torres Strait Islander Legal Service
Old Ltd) <http://atsils.com.au/default.asp>
1800 012 255
See *Contact us* page for contacts outside metropolitan area

Aboriginal & Torres Strait Islander Women's
Legal & Advocacy Service (ATSIWLAS)
(07) 3844 2450 or 1800 442 450