



# ANSWERS TO 20 QUESTIONS

Ensure your small business is an equal opportunity employer



The text in this publication has been adapted from the United Kingdom's Equality and Human Rights Commission publication *Straightforward answers to... 50 difficult questions on equality and good employment practice* available from the EHRC website at:<http://www.equalityhumanrights.com/publication/straightforward-answers-50-difficult-questions>

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## Our message to employers

We believe the overwhelming majority of employers want to do the best by their employees. We want to be useful and relevant in helping you do so.

Meeting the differing needs of employees is a careful balancing act for smaller business owners. In dealing with employment issues you need to be fair to the individual concerned, keep your other employees happy and comply with the law — while at the same time making sure your business can prosper.

Doing the right thing by your employees and finding solutions to everyday issues can be difficult and time-consuming, especially if you are a smaller business owner without in-house HR advice.

This guide answers 20 questions that represent many of the issues smaller business owners face .

We have aimed to set out as simply as possible how you can protect yourself and your business from claims of discrimination, while running a business that is inclusive and treats everybody fairly.

This booklet is provided to assist you, but is a guide only. No two cases are the same. The facts of each situation will establish whether discrimination or sexual harassment has occurred. The information contained here is current at the time of printing and refers to the *Queensland Anti-Discrimination Act 1991*.



## Working hours and leave

### Question 1

**My employees work in shifts. How do I organise the roster so that everyone is treated fairly?**

One of the best ways of making sure everyone is treated fairly is to give your team the responsibility for devising (or at least helping to devise) their own roster.

Tell your employees why you are asking them to help and explain how the roster system affects the business. Give them some idea about how you would like the system to work and what the business will gain from it.

You should have the final say on the roster but the chances are that your team will be able to agree among themselves a way of working that suits you and them. For example, some employees may prefer to work late shifts to fit in with their partners' working arrangements and childcare needs; some may prefer to work early shifts to free up the rest of the day for other interests, and others may wish to work fixed shifts.

Once the roster has been agreed, remember to check back with your team every so often to make sure it is still working for them and for the business.

This process will give your team some involvement with the business and their own way of working, and in return you'll earn their loyalty and commitment to making the scheme work.



## Working hours and leave

### Question 2

**One of my employees has asked to take four weeks' consecutive leave as she is getting married. As a small business, I've made it known that I don't allow people to take such a large amount of time off all in one block. Would it be fair on the rest of my team to make an exception for this one employee?**

You should consider each request on a case-by-case basis, rather than having a blanket ban. During a quiet time, it might suit your business to allow the request — providing there is adequate cover. Explain to your employees that the underlying rationale is determined by the needs of the business, which could mean during a busy period it may not be possible to grant a request.



## Working hours and leave

### Question 3

**At the moment we have urgent work that means we need people to work on Sundays. Some of my employees say they need to attend church on Sundays . Am I allowed to make them come to work?**

If you demand that your employees come into work when there could be another way around the problem, you could face a religious discrimination claim. Whatever decision you make, be open and transparent, and show your employees that you have done your best to accommodate their situation.

Before you decide, you should explore the following options:

- See if the work could be done on a different day of the week.
- Explain the situation to your employees. They may agree to work for a limited number of hours on Sunday before or after attending church, or they might agree to working on Sundays for a set number of weeks.
- Negotiate with other employees – could any other members of staff cover on Sundays?



## Working hours and leave

### Question 4

**Business is slow and I need to reduce the number of hours my employees work. How do I choose whose hours to reduce?**

However you go about choosing whose hours to cut, it's important to be open and honest with your employees so they understand why you need to reduce their hours and how it will affect them.

Firstly, talk to your staff. Teams will often willingly share out a reduction in hours if it means that people can keep their jobs in difficult times.

Ask for volunteers. Some employees may be willing to have their hours reduced or take a pay cut instead of redundancy or the business closing. This is an approach many businesses have taken in a downturn.

Try to give your employees an idea of how long it will be before things return to normal.

It may be unlawful discrimination if you base your decision on the sex or age of the employee, because they have children, or whether they have a partner.





## Pay and terms of employment

### Question 5

**Are my casual workers entitled to the same benefits as my permanent staff?**

All workers including casual workers are protected against discrimination.

That includes workers who are:

- full-time
- permanent
- contract
- voluntary
- apprenticed
- vocational placements
- part-time
- temporary
- work experience
- commission-based
- casual

Minimum maternity and parental leave provisions for all workers are set by industrial relations laws, awards and agreements.

Some businesses may be subject to the federal *Fair Work Act* which sets out the right to take parental leave as one of the National Employment Standards .

More information on federal maternity and parental leave provisions is available from the Fair Work Ombudsman's website at <http://www.fairwork.gov.au/leave/maternity-and-parental-leave>.



## Recruitment and promotion

### Question 6

**I have two employees up for promotion who look the same on paper. However, one is a recently married younger woman and I assume she will want to start a family soon. How can I give the other person the job without looking like I'm discriminating?**

You can't. Basing your decision on your assumptions about a candidate's personal circumstances in this way could lead to discrimination based on sex, age, relationship status or pregnancy.

You should advertise the promotion internally and appoint the best candidate for the job. To avoid a discrimination claim, you should use objective criteria to assess each candidate's skills, qualifications and experience.

If a young female employee decides to start a family it doesn't need to be a problem for either her or your business. Successfully managing an employee who becomes pregnant is an essential part of being a good employer and can lead to better morale and a more productive workforce.



## Recruitment and promotion

### Question 7

**I have two employees at the same level, one of whom has a disability, and I want to promote one of them. How do I promote the employee without a disability, who I feel is better suited to the job, without it looking as though I am discriminating against the one who has the disability?**

Make sure your appointments are fair and transparent, ideally by advertising the position within your business. Write a position description outlining the key responsibilities and duties of the job. Then assess each candidate against this. You should appoint the most suitable person for the promotion.

Make sure the position description does not disadvantage anyone because of their disability.

Where you can, make 'reasonable adjustments' to the job to overcome any barriers due to disability.

By making sure that an employee with a disability has the reasonable adjustments necessary to enable them to do the role as well as any other employee, it should be clear that you have not discriminated if you choose to promote another employee.



## Interviews

### Question 8

**I like to get to know applicants during the interview process so I generally ask some questions about their families, home life and hobbies. Is that OK?**

You have the right to choose the best person for the job but you do not have the right to ask questions about personal matters that have nothing to do with the capacity of the applicant to do the job.

Legislation specifically makes it against the law to ask for unnecessary information that may result in discrimination. Questions about personal matters may give applicants the expectation that if they don't answer them they will risk being seen as uncooperative and therefore an unsuitable candidate. So it is best not to ask them.

Ask comparable questions of all applicants that give each person the opportunity to outline their professional interests, previous work experience, work style, career plans, and the skills that they can bring to your organisation.



## Application forms

### Question 9

**I have a standard application form that I get all job applicants to fill out. It asks for their date of birth and medical history. I also request a photo of the applicant to be attached. Is that legal?**

If you have a standard application form, make sure that it only asks for information required to assess the person's suitability as a candidate for the available position.

In general, a person's date of birth, race or ethnic background and sex (gender) are not relevant considerations for assessing their capacity to do a job. Asking an applicant to supply a photograph may be cause for a discrimination complaint.

On the form you may ask an applicant to disclose any pre-existing injury or medical condition that might be aggravated by performing the duties of the job. If you ask this, you must include a notice setting out the duties of the job and a warning that the person will not be entitled to workers' compensation if they knowingly make a false or misleading disclosure.

You can also ask an applicant to consent to you obtaining a copy of their claims history from the Workers' Compensation Regulator.

Information obtained from a claims history or the disclosure of an injury or medical condition must not be used to automatically rule out an applicant. You may use it to consider whether the applicant is able to do the genuine occupational requirements of the job, if adjustments can reasonably be made to accommodate their disability, and if there are any workplace, health and safety issues.

### Question 10

**One of my employees tends to make their medical and dental appointments during working hours. Another employee has complained about this as they themselves always make their appointments in their own time. How should I manage this issue?**

You are not required by law to allow your employees to go to medical appointments in work time. However, many employers allow employees to take time off if appointments are at the beginning or end of the working day, and they make up the time. This minimises disruption to work and inconvenience for other staff. You could consider making such a policy, and making it known to staff.

If an employee needs to attend frequent medical appointments during the standard working day, make a plan with them about how to cover the work in their absence, while being considerate of the impact on other employees, and how they will make up the time they have had off.

In the case of a medical emergency or unplanned medical event involving an employee or their family, it would usually be unreasonable if you refused them leave to attend to the situation.



## Health and disability

### Question 11

**I do not currently employ anyone with a disability. Do I need to make my workplace comply with disability access laws?**

If your business is open to the public, you always need to consider accessibility issues.

Some accessibility facilities are relatively inexpensive, such as: fitting an intercom by your reception door for people with mobility impairments; providing hearing loops for people who are deaf; installing a ramp or removing a step. Consider whether your business website is accessible to people with disabilities, and what you can do cater for these customers.

A customer who cannot access the goods and services that your business offers can make a disability discrimination complaint. You will need to show that the expense of making your premises assessable is not a reasonable expense, given the size of your business.

Even if your business does not deal with members of the public, excellent potential employees might be discouraged from seeking employment with your business if your premises are not accessible.

Providing accessibility options gives you the best chance of reaching the most customers and attracting the best workers.



## Redundancy

### Question 12

**I have to make some redundancies but a few of my staff are single parents and I know that this would be particularly hard on them and their families. Can I take into account the home situation of employees when making redundancies?**

Even with the best of intentions, such an approach would be unfair on your other employees and potentially open you up to legal difficulties. It's best to use objective selection criteria which make sure the remaining workforce has the balance of skills and experience needed for your future requirements.





## Parental leave

### Question 13

#### **Am I allowed to contact someone while they're on maternity leave?**

In general, it's always a good idea to keep in touch with your employees on maternity leave and encourage them to stay in contact with you. You should keep them informed of issues which may affect them. For example, you should keep them informed of any relevant promotion opportunities or job vacancies that arise during their maternity leave.

It can also help you both to prepare for your employee's return to work. Your conversations should be regular but not excessive or intrusive; it is a good idea to agree on scheduled catch-ups with your employee before she goes on leave.

## Question 14

**One of my employees frequently uses racist language in the office. While this is not targeted at anyone in particular, should I speak to them about their language?**

It is your responsibility by law to make sure your employees are not subject to racist language that they may believe offensive or inappropriate (even if the language is not targeted directly at anyone).

You should make it clear to all your employees that such language is not tolerated in the workplace and could lead to disciplinary action.

Consider developing a code of conduct that bans racist behaviour and identifies it as gross misconduct. By having a code of conduct that you can enforce, you can help protect yourself from allegations of race discrimination.



## Things people say and do

### Question 15

**One of my staff often calls me 'love'. I find this uncomfortable. What can I do to get them to stop?**

For many people, terms of endearment, such as 'dear', 'love', 'honey', 'sweetie', and 'darling', are seen as inappropriate in professional relationships regardless of who is using them.

Rather than asking your employee not to call you 'love', which could be considered discriminatory if you don't object to other employees using this or similar terms, you should tell all your employees that you don't consider terms of endearment to be professional language for the workplace.

Depending on the circumstances (which includes the relationship between the people involved) using terms of 'endearment' such as those mentioned could be sexual harassment.



## Workplace culture

### Question 16

**One of my employees often turns up to work late because they care for their elderly mother. As much as I sympathise with their situation, I worry that this encourages others to turn up late . Would I be discriminating if I were to give them a formal warning?**

Employees caring for elderly relatives can request flexible working arrangements. This could include such things as changing start or finish times, or working reduced or compressed hours.

Although you have the right to say no to an employee's request, you should consider whether the business can reasonably accommodate their family responsibilities. Give a sound business reason for saying no, if you cannot agree to the request.

Allowing an employee to start (and perhaps finish) work later might accommodate their caring responsibilities, while still allowing them to contribute fully as a member of your team. It would also formalise their working hours, take away the risk that others will be encouraged to turn up late, and ensure that other employees realise the person is working as hard as anyone else.



## Workplace culture

### Question 17

**Several of my employees do not speak English as their first language and often talk to each other in their own language. This makes me, and other employees who cannot understand them, feel alienated. Can I ask my employees only speak in English when they are at work?**

In many cases it will be reasonable to ask all your employees to speak a common language in the workplace as this is conducive to productivity, and will avoid misunderstandings in relation to legal, financial, and health and safety issues.

You should be able to present a sound business case so your employees don't feel as though they are being discriminated against. While it is reasonable to ask all employees to speak a common language while on the job, you shouldn't insist this happens during breaks as this could be discriminatory.



## Dress codes and uniforms

### Question 18

**One of my employees is a sloppy dresser. Would it be fair for me to tell them to smarten up?**

Whether or not you have a written dress code, you can expect some minimum standards. It would be best to raise the matter informally before disciplining an employee who consistently turns up to work dressed unacceptably.

To avoid a situation such as this, you may wish to implement a dress code for both yourself and your employees to explain the standards that are expected in the workplace. A dress code can be as prescriptive or as informal as is appropriate for your business – its contents are very much a question of common sense. There are no legal principles that demand the inclusion of any one element. However, a well-crafted dress code will avoid leaving you open to claims of discrimination.

Your dress code should show a professional and favourable image of your business. If you place restrictions/requirements on one sex, then you should place comparable restrictions/requirements for the other sex, although they don't have to be identical.

In terms of religious discrimination problems can occur if your dress code:

- bans the wearing of religious symbols
- bans the wearing of demure clothing such as the hijab, burka, nicquab, shalwar-kameez, and so on, and
- requires the wearing of clothing/symbols likely to be offensive to some religions.

If you allow enough flexibility to wear smart clothing that is consistent with religious requirements you are unlikely to have a problem.



## Flexible working

### Question 19

**Logistically, I can only offer flexible working to a minority of my employees. Is this fair or legal?**

If you offer flexible working to some employees and not others, you must be able to justify this with a sound business reason. You must consider each request separately and fairly. Granting one request does not mean that you will be bound to grant every request. It is also a good idea to keep a written record of all discussions on the issue in case your decision is challenged.

Some businesses may be subject to the federal *Fair Work Act* which provides employees in the national workplace relations system with a legal right to request flexible working arrangements in certain circumstances. Employers must seriously consider a request for flexible working arrangements, but may refuse on reasonable business grounds.

More information on federal flexible working arrangements is available from the Fair Work Ombudsman's website at <http://www.fairwork.gov.au/about-us/policies-and-guides/best-practice-guides/the-right-to-request-flexible-working-arrangements>.

### Question 20

#### **How can I ensure my employees are working if they are not in the office?**

As with any employer–employee relationship, you need to establish an element of trust. It is, however, often the case that employees who have been offered the opportunity to work flexibly become more loyal to their employer and are willing to ‘go the extra mile’ in return.

There are several things you can do to make sure your employees work productively when they are not in the office:

- Measure progress in terms of outputs. Agree to deadlines with your employees so that they know what they need to deliver and when, and ask them to report back to you regularly (for example weekly) with an update on their progress.
- Keep in regular contact with them; they may not be in the office but they should be available to you by phone or email.
- Encourage them to come into the office on a regular basis for important team meetings, training and even social events.

If you suspect someone is abusing their flexible working arrangement then you should deal with the problem immediately and fairly. Flexibility is not an excuse for poor self-discipline and you should expect the same high standards of an employee who is working flexibly as you would for anyone working a traditional 9am to 5pm pattern.



## More help

Contact the Anti-Discrimination Commission Queensland

### **BRISBANE**

*Street Address*

Level 17, 53 Albert Street  
BRISBANE QLD 4000

*Postal Address*

City East Post Shop  
PO Box 15565  
CITY EAST QLD 4002

Telephone: 1300 130 670 (Toll Free) or (07) 3021 9100

TTY: 1300 130 680

Fax (07)3247 0960

### **TOWNSVILLE**

*Street Address*

Ground level, 187-209 Stanley Street  
TOWNSVILLE QLD 4810

*Postal Address*

PO Box 1566  
TOWNSVILLE QLD 4810

Telephone: 1300 130 670 (Toll Free) or (07)4421 4000

TTY: 1300 130 680

Fax: (07)4799 7021

### **CAIRNS**

*Street Address*

McLeod Chambers  
78 Spence Street  
CAIRNS QLD 4870

*Postal Address*

PO Box 4699  
CAIRNS QLD 4870

Telephone: 1300 130 670 (Toll Free) or (07)4037 2100

TTY: 1300 130 680

Fax: (07)4039 8609

### **ROCKHAMPTON**

*Street Address*

1st Floor, State Government Centre  
209 Bolsover Street  
ROCKHAMPTON QLD 4700

*Postal Address*

PO Box 1390  
ROCKHAMPTON QLD 4700

Telephone: 1300 130 670 (Toll Free) or (07)4933 5104

TTY: 1300 130 680

Fax: (07)4938 4459

### **Email - all offices**

General [info@adcq.qld.gov.au](mailto:info@adcq.qld.gov.au)

Privacy [privacy@adcq.qld.gov.au](mailto:privacy@adcq.qld.gov.au)

Training [training@adcq.qld.gov.au](mailto:training@adcq.qld.gov.au)

Right to information [rti@adcq.qld.gov.au](mailto:rti@adcq.qld.gov.au)

ADCQ



## Help for employers

We have listed here a number of organisations and websites that might be helpful to you.

### **Queensland government business and industry portal — small business**

- includes information webinars and workshops
- <https://www.business.qld.gov.au/business/support-tools-grants/support/small-business>
- See also their page of links to industry specific associations:  
<https://www.business.qld.gov.au/business/support-tools-grants/support/business-industry-associations>

### **Fair Work Ombudsman (federal)**

- enforces compliance with the *Fair Work Act*, awards and registered agreements.
- provides advice and education on pay rates, workplace conditions and employee entitlements , including flexibility at work and maternity and parental leave.
- <http://www.fairwork.gov.au/>

### **Chamber of Commerce and Industry Queensland**

- peak association for employers in any industry (not-for-profit)
- provides help for members — including business tools, events and advice
- provides Workers Compensation information service for employers (1300 365 855)
- <https://www.cciq.com.au/>

### **Family Business Australia**

- peak body for family businesses
- provides programs and products are developed to build stronger families and healthier businesses
- <http://www.fambiz.org.au/>

### **Mentally Healthy Workplace Alliance**

- produces Heads Up resources for business to encourage mentally healthy workplaces
- partnered with beyondblue
- <http://www.headsup.org.au/training-and-resources/mentally-healthy-workplace-alliance>



## Help for employees

We have listed here a number of organisations and websites that might be helpful to your employees.

### **Queensland Working Women's Service**

- provides a free, confidential telephone information service to women on work-related matters.
- <http://www.qwws.org.au/>
- Phone 3211 1440 or 1800 621 458 outside Brisbane

### **Legal Aid information line**

- provides legal information, advice and representation in criminal, family and civil law
- <http://www.legalaid.qld.gov.au/>
- Phone 1300 650 143

### **Fair Work information line**

- provides information and advice about workplace rights and obligations
- <http://www.fairwork.gov.au/>
- Phone 13 13 94

### **Workers Compensation Information Service**

- provides information about rights and entitlements under the workers' compensation scheme in Qld
- [http://www.queenslandunions.org.au/workers\\_comp](http://www.queenslandunions.org.au/workers_comp)
- Phone 1800 102 166

### **Mental Health information line**

- provides support, information and referral to mental health related services
- <http://qldvoice.org.au/2013/05/mental-health-information-line-1300-729-686-2/>
- Phone 1300 729 686

