

Guidelines for employers



**preventing
discrimination
against
applicants and
employees**

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A guide for employers to help avoid some common pitfalls and comply with the *Equal Opportunity Act 1984* in the selection and employment of staff

Discrimination is unlawful on the following grounds:

- Race
- Religious or political conviction
- Impairment
- Age
- Sex
- Pregnancy
- Breastfeeding
- Marital status
- Gender history
- Sexual orientation
- Family responsibility
- Family status
- Publication of details on the fines enforcement register website

Sexual harassment and racial harassment are also unlawful in the area of employment.

Other unlawful acts

Victimisation

Victimisation includes threatening, harassing or punishing a person in any way because they have made a complaint to the EOC or intend to make a complaint, and anyone giving evidence about an EOC complaint on behalf of another person. It also applies to anyone who objects about the discriminatory manner in which they or somebody else has been treated.

Advertisements

It is unlawful to publish or display an advertisement that shows an intention to unlawfully discriminate. This includes

television, newspaper and radio advertisements as well as circulars, catalogues and price lists.

Spent Convictions Act 1988

The Commissioner for Equal Opportunity can investigate complaints of spent conviction discrimination in employment however certain employers and offences are exempt.

Public Interest Disclosure Act 2003

The Commissioner for Equal Opportunity can also investigate complaints of victimisation from people who have made a disclosure under the *Public Interest Disclosure Act 2003*.

Direct discrimination

Direct discrimination takes place when a person is treated less favourably than another person, in the same or similar circumstances, on one or more of the grounds and in one of the areas of public life covered by the Act. Employment is an area.

Indirect discrimination

Indirect discrimination occurs when an apparently neutral rule has a negative or adverse effect on considerably more people with a particular attribute or characteristic and the rule is unreasonable in the circumstances.

For example a requirement to wear a cap as part of a uniform could be indirect discrimination on the ground of religious conviction against any group who were not able to comply, such as Sikhs or some Muslim women.

Indirect impairment discrimination could occur where all employees are required to work night shift, but people with a particular disability are not able to comply.

Exceptions

There are some instances where it is not unlawful to discriminate against a person when it is a

- measure intended to achieve equality
- a genuine occupational qualification

There can be other exceptions for example:

Age

- payment of junior wages when prescribed by an award or industrial agreement
- offering voluntary retirement to someone of a particular age
- superannuation and insurance if based on reasonable data and statistical evidence.

Impairment

- where the provision of special services and/or facilities would impose an unjustifiable hardship on the employer
- employment can be refused to an applicant if their impairment renders them unable to perform the duties of the position.

Race

Where Australian citizenship is required (this applies to public bodies only).

Sex

The duties of the position need to be performed by a person of the relevant sex to preserve privacy because they involve the fitting of clothing for persons of that sex, for example.

If an individual or organisation relies upon an exception under the Act and a complaint is made against them, it is up to them to prove the defence applies to their circumstances.

Case examples of discrimination

Race

A qualified engineer was refused a job for which he was the best applicant because the employer thought customers would not like dealing with an Asian person.

Impairment

An employee of a travel agency refused to accept a booking made on behalf of a person with a disability. She did this without asking the nature or extent of the disability.

Age

An employer refused to consider job applications from people over the age of 40 because "... they can't learn new skills".

Breastfeeding

A breastfeeding woman needed to bring her baby into her office to breastfeed; however she was prevented in doing this because the baby was considered a 'visitor' and the office had a policy of not allowing visitors into the office during set hours, which included the times she needed to breastfeed.

Family responsibility

An employee with a child was required to work at times that were incompatible with her child care arrangements, although her employer could have been flexible without there being a detriment to the business.

After being employed by the same company for ten years, an employee's wife was diagnosed with an illness that required intermittent hospitalisation and he took time off work to care for her. During an interview for an internal promotion, his wife's illness was raised and he did not receive the promotion.

Pregnancy

A pregnant woman was not told about internal positions coming available because her immediate supervisor assumed 'she would be leaving soon and not returning anyway'.

A casual employee's contract was not renewed when her employer became aware she was pregnant.

Sex

A female parking inspector was subjected to gender-based comments by her colleagues and supervisor, and her employer took no steps to resolve the issue.

A woman applied for a position at a factory but was told that staff in the factory were all males and all facilities were for males only. She was told it would be useless for her to apply for the job because she was a female.

Racial harassment

An employee resigned after arriving at work to find a note written on her desk pad stating 'Golly Wog leaves work early' and 'Black bitch'.

Sexual harassment

A male clerk became uncomfortable with the behaviour of a new female supervisor. She would rub his back and neck, press herself against him and pinch him on the backside. The man eventually made it clear to the supervisor that her attentions were unwelcome. She became difficult to work with and started making unfavourable reports about his work performance.

A young female employee was asked by her employer for sexual favours, was harassed on her mobile phone and subjected to degrading sexual comments.

Making a complaint

A person who believes they have been discriminated against or harassed can lodge a complaint with the Commissioner. A complaint must be based on a ground and relevant area of the Act. It is up to the complainant to show that discrimination has occurred.

The incident or incidents you are including in your complaint must have occurred within the 12 months previous to the date you lodge your Complaint Form.

In some circumstances the Commissioner may rule there is good reason, or good cause, to include incidents that occurred more than 12 months before the Complaint Form is lodged.

The Equal Opportunity Commission

- provides information about the Act, discrimination and harassment. Enquiries are from 9.00 to 4.00 week days.
- investigates and conciliates complaints
- provides community education and training
- provides customised training for your organisation and
- develops programs to promote equal opportunity

Contact us

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An Interpreter can be arranged on request

Disclaimer

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September 2014