

What to do if you are being discriminated against or harassed in the workplace

If you believe that you are being discriminated against in the workplace you should do the following:

1. Tell your supervisor about the discriminatory conduct as soon as possible.

If it is your supervisor who is doing the discriminating, then tell another person above or in equal authority to your supervisor.

If there is no one else to tell, contact your union, a solicitor, the Anti-Discrimination Board or the Human Rights and Equal Opportunities Commission for assistance.

2. Keep a diary of the incidents of discrimination or harassment, recording the date, time, place, any witnesses and what was said or done.

3. Get legal advice to find out what the best course of action is for you. There are several options available to you to make a complaint, so you should seek proper advice to help choose the best option.

4. If you are not a member of a union, it is a good idea to contact your union and find out whether you can join. Unions are able to advocate for you and refer you to their solicitors for free legal advice.

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Free and confidential interpreting service call 131 450.

This fact sheet is intended as a guide and should not be used as a substitute for legal advice.

Contact points

Solicitors

Illawarra Legal Centre (02) 4276 1939
(free legal advice)
www.illawarralegalcentre.org.au

Legal Aid Commission (02) 4228 8299
(subject to means test)

Law Society of NSW (02) 9926 0300
(referral to a private solicitor)

Services

Anti-Discrimination Board 1800 670 812
Wollongong (02) 4224 9960
www.lawlink.nsw.gov.au/adb

Human Rights & Equal Opportunities Commission 1300 369 711
www.hreoc.gov.au

Department of Industrial Relations (NSW) (02) 9243 8888
www.dir.nsw.gov.au

State Awards Enquiries 131 628
Service
www.industrialrelations.nsw.gov.au/awards

Department of Employment & Workplace Relations (Cth) (02) 9246 0600
www.dewr.gov.au

Federal Awards Enquiries 1300 363 264
Service
www.dewr.gov.au

Discrimination & Harassment in the workplace





It is unlawful for you to be harassed or treated unfairly because of your:

- Sex
- Pregnancy
- Race (including ethnic and ethno-religious background)
- Disability (including physical and/or mental illness)
- Homosexuality
- Transgender status
- Marital status
- Age
- Carer's and family responsibility

Unlawful discrimination:

Unlawful discrimination is when someone is treated less favourably than others because they have one of the characteristics listed above.

Harassment:

Harassment is any form of behaviour which is unwelcome and which causes offence, and which targets one of the listed characteristics.

Sexual Harassment:

It is unlawful to make an unwelcome sexual advance or request for sexual favours, or to engage another person in unwelcome sexual conduct.

Vilification:

Vilification is when a person publicly encourages hatred, severe ridicule or serious contempt because of a person (or group's) racial, homosexual, transgender or HIV/AIDS status.

Victimisation:

It is unlawful for another person to victimise you because you have made a complaint of discrimination.

Discrimination and harassment in employment:

Your employer must ensure that your workplace is safe, including being free of unlawful discrimination and harassment. If you are unlawfully discriminated against or harassed there are several legal options that you may have in relation to your situation, including the following:

Discrimination complaint:

You can make a complaint against your Employer (and/or the person discriminating against you) to either the NSW Anti-Discrimination Board (ADB) or the Commonwealth Human Rights and Equal Opportunity Commission (HREOC). You are able to request that your employer do whatever is necessary to stop the discrimination and to compensate you for economic loss (eg lost wages) and non-economic loss (eg pain and suffering, humiliation, etc). Advice should be obtained regarding the most appropriate forum to deal with your complaint - see Contact Points.

Anti-Discrimination Board:

A complaint of discrimination can be made to the Anti-Discrimination Board (ADB) of New South Wales by you or if you are unable to do so another person (such as a trade union) may be able to make the complaint on your behalf. The complaint must be lodged within 12 months of the date of the discrimination. If there are good reasons, a late application may be accepted. There is no cost to lodging the complaint.

The ADB shall list your matter for conciliation. You would normally not be allowed to have a lawyer represent you at the conciliation, however exceptions are made in certain circumstances.

If the conciliation is not successful then you may choose to have the matter heard by the Equal Opportunity Division of the Administrative Decisions Tribunal. The maximum compensation the Tribunal can award is \$40,000. In most cases each party pays its own legal costs.

Human Rights and Equal Opportunity Commission:

A complaint of discrimination may also be made to the Federal Human Rights & Equal Opportunity Commission (HREOC). Again the complaint must be lodged within 12 months of the date of the discrimination. Late applications may be accepted where good reasons are shown.

As in the ADB, HREOC will attempt to conciliate the complaint informally. If the matter cannot be resolved then HREOC may issue a "termination notice" and you may then choose to have your matter heard by the Federal Court or by the Federal Magistrates Court. The Court can make an order declaring that the respondent has committed unlawful discrimination and can make a number of orders including the payment of compensation and payment of your legal costs. Unlike in the ADB, the losing party will be ordered to pay the successful party's legal costs, and there is no limit on the amount of compensation that may be awarded.

Workers compensation claim:

Discrimination and harassment may result in a workplace injury – resulting in a permanent impairment and/or a decreased earning capacity and requiring medical treatment. There is limited ability to claim for a psychological injury under the NSW Workers Compensation Scheme. There are no legal costs involved as it is illegal for a solicitor to charge a worker for legal costs associated with a workers compensation claim. You may, however, be required to pay for the cost of medical reports. You should notify your employer within six months of the date of the injury occurring either by completing a workers compensation claim form or reporting the matter to your supervisor. The failure to report the injury is not, however, a bar to making a claim and you should seek legal advice.

If you are being discriminated against or harassed in the workplace, get free legal advice!

