

# Women and Anti-Discrimination Law in the Workplace



This fact sheet summarises the Ask LOIS webinar on this topic, presented by Gabriel Craig, Senior Solicitor, Women's Legal Services NSW on 13 May 2014. This webinar can be downloaded for free at [www.asklois.org.au/webinars/past-webinars](http://www.asklois.org.au/webinars/past-webinars).

## This fact sheet covers:

- Indirect vs. direct discrimination
- Carer's responsibilities
- Pregnancy
- Sexual harassment
- Where to get help

## Discrimination

In NSW it is against the law to discriminate against someone on the basis of:

- Sex
- Pregnancy
- Carer's responsibilities
- Race
- Disability
- Homosexuality
- Marital status
- Age
- Transgender status

This webinar deals only with sex, pregnancy and carer's responsibilities.

In many circumstances both **direct** and **indirect** discrimination is against the law

- **Direct discrimination** occurs where someone is treated less favourably because of particular characteristic
  - Eg, If someone is not given a job because they are a woman or pregnant
- **Indirect discrimination** occurs where:
  - The discriminator imposes a condition or requirement; and
  - The requirement has, or is likely to have the effect of, disadvantaging persons of a particular group
    - Eg, A rule that employees must be a certain height might indirectly discriminate against women
  - For **indirect discrimination ONLY**, a rule or requirement **will not** be considered unlawful if it is *reasonable in the circumstances*

## Carer's Responsibilities

It is against the law for an employer to discriminate against you because of your responsibilities as a carer for children, or for other family members who might need you to care for them such as a partner, parent, grandparent, grandchild or sibling.

Examples of carer's discrimination include:

- Not employing you
- Not offering you training or promotions because you have responsibility for young children or perhaps will in the future
- Firing you because you have to care for an ill partner
- Not considering a reasonable request for part-time work which would accommodate your responsibilities as a carer
- Requiring all staff to start and finish work at a particular time which is more likely to negatively effect people who have responsibility for dropping off and collecting children from school

## Pregnancy

It is against the law for an employer to discriminate against you because you are or may become pregnant.



Examples of pregnancy discrimination include:

- Not employing you or not promoting you because you are pregnant or might become pregnant
- Firing you because you are pregnant
- Not providing you with a larger size uniform
- Not giving you the same or similar job when you return from parenting leave

## Sexual Harassment

Protection against sexual harassment in the workplace can be found in both Commonwealth legislation under the Sex Discrimination Act 1984 and in NSW legislation under the Anti-Discrimination Act 1977.

The laws vary slightly and sometimes workers are covered by one law and not the other. It is therefore important to make sure an employee obtains legal advice if they believe they are experiencing discrimination.

## What is Sexual Harassment?

Sexual harassment is unwelcome sexual conduct, which is humiliating, offensive, embarrassing or intimidating.

It includes things like staring and leering; sexual comments and jokes; inappropriate questions about your private life or your body; sexual or physical contact such as slapping, kissing, touching, hugging and massaging; circulating or displaying emails, texts, posters, magazines and screen savers of a sexual nature.

It is important to remember that **the applicant doesn't have to be the intended target**. Eg, a statement might be made in front of them but may not be directed towards them or be about them or employee might be sent an email by mistake. This would still be unlawful sexual harassment.

## What circumstances are taken into account?

The circumstances that can be taken into account include:

- The sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the person harassed;
- The relationship between the person harassed and the person who made the advance or request or who engaged in the conduct;
- Any disability of the person harassed; and
- Any other relevant circumstance.

## When is it against the law?

It is against the law for a person to sexually harass an:

- Employee of the person; or
- A person who is seeking to become an employee of the person
- It is also unlawful for employees to harass other employees or workplace participants.

## Employer Obligations

An employer has an obligation to take all reasonable steps to prevent sexual harassment occurring in the workplace. Things that they could do to prevent sexual harassment include:

- Clear sexual harassment policy;
- Clear complaint process; and
- Training for staff and management.



## How to make a complaint

If someone is experiencing discrimination or sexual harassment in the workplace they may be able to make a complaint to the:

- Australian Human Rights Commission (AHRC); or
- NSW Anti-Discrimination Board (ADB).

There is usually a **12-month** time limit to make a complaint.

Remember that you have to choose which body to make a complaint to. In some circumstances it might be more appropriate to choose one over the other so it is important to get legal advice.

## Process

1. Lodge complaint
2. Conciliation conference
  - Can ask for an apology, change of policy or practice, compensation for economic loss and/or general damages
3. NSW Anti-Discrimination Board – Equal Opportunity Division of the NSW Civil and Administrative Tribunal OR Australian Human Rights Commission – Federal or Federal Circuit Court

## Other options

- In some circumstances the conduct may constitute a criminal offence and should be reported to the police
- Parties may also require an Apprehended Violence Order in some circumstances
- If an employee has been discriminated against in the workplace or treated adversely as a consequence of making a complaint or exercising their workplace rights, then they may alternatively be able to make a:
  - General Protections complaint to the Fair Work Commission; or
  - Unfair Dismissal complaint to the Fair Work Commission (where complainant is terminated).

If someone feels that they are not safe at work then they also may be able to make a complaint to **WorkCover**. It is very important to seek legal advice as only some employees are able to apply and there are special rules around applying.

## Where to get help

- Working Women's Legal Service (02) 8745 6954
- Australian Human Rights Commission – 1300 656 419
- Anti-Discrimination Board NSW – 9268 5544
- Fair Work Ombudsman – 13 13 94
- Fair Work Commission – 1300 799 675
- WorkCover – 13 10 50