



Discrimination Fact Sheet

Workplace discrimination is unlawful in Australia, and employers have a responsibility to prevent discrimination and harassment.

As well, discrimination can take many forms, and it is important to address and prevent it to foster a fair and inclusive work environment.

What should I know?

The Fair Work Act 2009 (FWA) makes it unlawful to discriminate against a current, former or prospective employee, including job applicants.

This requires employers to take all job applications seriously and consider each applicant fairly and with an open mind.

Employers should have these requirements in mind when advertising or interviewing for a vacancy.

Australia also has federal, state and territory anti-discrimination laws that prohibit discrimination, harassment (including sexual harassment and harassment on the grounds of sex), victimisation, bullying and (in some jurisdictions) vilification in various areas of public life, including in the workplace.

What is Discrimination?

Discrimination means the unjust or prejudicial treatment of people based on their race, sexual orientation, gender identity or intersex status, physical appearance, family or carer's responsibilities, pregnancy, breastfeeding, religion, political opinion or social origin. Treating someone differently because of the aforementioned attributes, including during the recruitment process, is discrimination and potentially unlawful.

Direct Discrimination

This type of discrimination happens when you directly discriminate against a person based on the qualities mentioned above (for example race, religion, or physical appearance.)

Indirect Discrimination

This type of discrimination occurs when an employment condition, policy or requirement imposed contains criteria that a candidate or an employee cannot comply with because of personal attributes.

An example is requiring all your employees to be within a certain height range, when height is not relevant to the role.

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Job Advertisements

When you create a job advertisement it is important to be wary of specifying traits that could be viewed as discriminatory. For example, you may wish to hire a young and dynamic person.

It is not advisable to include in the job advertisement "We are looking for a young dynamic male in his 20's" as this could be considered discriminatory. An alternative statement would be one that is inclusive of all ages. For example: "We are looking for a dynamic individual to join our team," is a phrase that eliminates discriminatory language, and is advised.

Positive Discrimination

Not all discrimination is unlawful, there are exceptions to this rule. Sometimes discrimination is allowed if it is a special measure to improve equality for candidates and/or employees.

For example, a form of positive discrimination in the workplace is when there are "quotas" established to increase the number of female employees.

A further exception includes discrimination against a person on the basis of their physical attributes if it is reasonably necessary to protect the health, safety or property of any person (including the person discriminated against).

Equal Opportunity

Equal opportunity means providing an equal opportunity to all candidates and employees, regardless of their gender, sexual orientation, race or religion.

This is key to ensuring that the employer avoids accusations of discrimination. In ensuring equal opportunity, all applicants should be given equal consideration and provided equal employment terms and conditions.

This means ensuring that this is based on objective experiences, skills and qualifications of the individual, regardless of the gender, race or religion of the employee or candidate.

Need guidance about training and support about discrimination in the workplace? We can help.

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