

DISCRIMINATION IN EMPLOYMENT

WHAT IS DISCRIMINATION?

Discrimination means treating someone differently and less favourably because of some personal attribute they have. Below is a list of attributes covered by discrimination legislation.

The Act says it is against the law to treat you less favourably because of your:

- age
- breastfeeding status
- gender identity
- impairment
- industrial activity
- lawful sexual activity
- marital status
- parental status
- religious belief or activity
- carer status
- physical features
- political belief / activity
- pregnancy
- race
- sex
- sexual orientation
- or personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.

DISCRIMINATION MAY BE DIRECT OR INDIRECT

Discrimination on certain grounds is prohibited in both Federal and State anti-discrimination legislation. While these laws prohibit discrimination in a range of areas, for example, education, the provision of goods and services, and accommodation, their coverage of discrimination in employment is of particular interest to trade unions.

DIRECT DISCRIMINATION

Direct discrimination is treating someone unfairly or unequally simply because they belong to a particular group or category of people. For example, it is direct discrimination to refuse to employ a person because he or she is Aboriginal, or because the person is a woman, and is therefore assumed to be more likely to have a family and to be less committed to her career.

INDIRECT DISCRIMINATION

Indirect discrimination in employment occurs when there is a requirement (a rule, policy practice or procedure) that is the same for everyone, but which has an unequal or disproportionate effect on a particular group. Unless the requirement is 'reasonable in all circumstances', it will be indirectly discriminatory. There is no need for the employer to have a deliberate intention to discriminate against a particular group for the imposition of such requirements to be considered to be discriminatory.

An obvious example of indirect discrimination is the height requirement formerly imposed by the police force. This excluded women from the force because fewer women than men were tall enough to meet the requirement. Another example is where an employer bases promotion on length of service and seniority, rather than on demonstrated capacity to do the job. Requirements based on length of service are likely to disadvantage women workers, who are more likely to have broken periods of employment because of their family responsibilities.

How the ASU can help

The ASU provides advice and information to members regarding workplace rights and obligations. ASU members can contact their State ASU office for more information. If required the ASU provides members with individual representation.

To obtain the contact details of your local ASU Branch visit the ASU national website www.asu.asn.au or contact the JSA National Project Coordinator on (03) 9342 1400 or help@employmentservicesunion.org.au

www.employmentservicesunion.org.au



For indirect discrimination to be established it must be shown that,

1. The discriminator required the complainant to comply with a requirement or condition;
2. A substantially higher proportion of people of a different status than the complainant are able to comply with the requirement or condition than people of the same status as the complainant;
3. The complainant must not be able to comply with the requirement or condition, and
4. The requirement or condition is unreasonable in the circumstances.

IS ALL DISCRIMINATION AGAINST THE LAW?

No. The law is very clear. No matter how unfair the treatment is, it must be covered by the relevant Act before it can be dealt with under this type of legislation.

If you feel you are being discriminated at work, but not on the grounds of one of the attributes listed in this information sheet, you should talk to your union Delegate, or contact your local ASU office.

WHAT ABOUT BULLYING?

Bullying as such is not covered under discrimination legislation. It could only be dealt with under this legislation if it is linked to one of the listed attributes. If it is not linked to one of the attributes you can read the ASU Information Sheet on workplace bullying.

EQUAL EMPLOYMENT OPPORTUNITY (EEO)

Equal employment opportunity is the absence of discrimination in employment policies and practices, in such areas as recruitment, training, career path progression and workplace restructuring. It describes the ideal situation where these policies and practices operate equitably and fairly for employees and prospective employees, regardless of their race, sex or disability etc.

AFFIRMATIVE ACTION (AA)

Affirmation action is the taking of positive steps to achieve equal employment opportunity for groups who have been disadvantaged by past discrimination. AA involves identifying and removing barriers to equality for such groups.

The *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* covers employees in the private sector with more than 100 employees, and higher education. The Act requires organisations to develop and implement programs to identify and eliminate barriers for women in employment, and to report annually to the Affirmative Action Agency on their progress in implementing their programs.