



Factsheet Twelve

GENERAL PROTECTIONS & ADVERSE ACTION

General protections – what is protected exactly?

The *Fair Work Act 2009* provides protections of certain rights, including:

- workplace rights;
- the right to engage in industrial activities;
- the right to be free from unlawful discrimination; and
- the right to be free from undue influence or pressure in negotiating individual arrangements.

These rights are protected from certain unlawful actions, including (but not limited to):

- adverse action;
- coercion;
- misrepresentations; and
- undue influence or pressure including in relation to:
 - individual flexibility arrangements under Modern Awards and enterprise agreements;
 - guarantees of annual earnings;
 - deductions from wages.

What is a workplace right?

The term 'workplace right' is broadly defined under the *Fair Work Act 2009*, and exists where a person:

- is entitled to a benefit or has a role or responsibility under a workplace law, workplace instrument (such as an Modern Award or agreement) or an order made by an industrial body; or
- is able to initiate or participate in a process or proceedings under a workplace law or workplace instrument; or
- has the capacity under a workplace law to make a complaint or inquiry:

- to a person or body to seek compliance with that workplace law or workplace instrument
- if the person is an employee, in relation to their employment

Workplace rights include, for example, taking leave, joining or not joining a union, making an enquiry about your working conditions or pay and reporting dangerous equipment.

What does the term Adverse Action mean?

The term *Adverse Action* is a relatively new term in industrial relations. Adverse action means any unfavourable treatment by an employer or potential employer such as dismissing (or threatening to dismiss) you because you have exercised a workplace right (such as the right to take annual leave) or because you exercise a workplace right (e.g. you take parental leave).

Adverse action includes refusing to employ you, dismissing you, denying you access to training or promotions, demoting you, or changing your hours or status.

The *Fair Work Act 2009* sets out when a person takes adverse action against another person. It includes action taken:

- by employers against employees;
- by employers against prospective employees;
- by employees against employers;
- by industrial associations; and
- against independent contractors.

In order for the adverse action to be unlawful under the General Protections provision, it has to be taken:

- for a discriminatory reason;
- because the employee has exercised, or proposes to exercise (or not exercise) a workplace right; or
- to prevent the employee (or another person on their behalf) from exercising a workplace right.

Temporary absences from work due to illness or injury

It is unlawful to be dismissed because of a 'temporary absence' from work due to personal ill health or injury. A temporary absence means an absence on unpaid sick leave of less than 3 months in total in any 12 month period (time spent on paid sick leave or workers' compensation does not count).

You must have informed your employer of your absence through, for example, a medical certificate which indicates you are unfit for work due to illness. If you fail to attend work

without notice you may be terminated from your workplace.

What can I do if I have been subjected to adverse action at work but NOT dismissed?

If you have been subject to an Adverse Action at work that is not a dismissal and you wish to make a complaint to the Fair Work Commission this is known as a General Protections Dispute Application. If the adverse action was not a dismissal, you have 6 years to lodge this application. If both parties agree, then the Fair Work Commission must hold a private conference to try and resolve the dispute. If the dispute is not resolved, you may make an application for a court to deal with it.

What can I do if I have been subjected to adverse action at work AND dismissed?

If your employment has been terminated and you believe it was an adverse action, then you can apply to the Fair Work Commission to deal with the matter. This is also called a General Protections Dispute Application, however in this case the application must be made **within 21 days** of when your dismissal took effect. Refer to factsheet 7 *Termination of employment* for more information.

Depending on the circumstances, another option if you have been discriminated against at work may be to make a complaint through either the Northern Territory Anti-discrimination Commission or the Australian Human Rights Commission. Every situation is different, so seek advice before you decide which is the best option for you.

Other General Protections provisions

As well as protection from Adverse Action on discriminatory or workplace rights grounds, the *Fair Work Act 2009* provides for a number of other protections:

- industrial activities — all employers, employees and independent contractors are free to choose whether or not they join an industrial association such as a trade union or association, and whether or not they choose to engage or not engage in industrial activity, and must not be victimised for their decision;
- coercion — it is unlawful for a person to organise, take, or threaten to take, action in order to coerce a person to use or not use a workplace right, join a union or industrial action, employ or not employ another person, engage or not engage a contractor, or to allocate duties etc;
- misrepresentation — a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person, the use or effect of the use of a workplace right by another person, another person's obligation to take part in industrial activity, or another person's obligation to tell anyone whether they or someone else are a member of an industrial association or are taking part in

- any industrial activity;
- undue influence — it is unlawful for an employer to exert significant or inappropriate pressure on an employee to modify or alter their conditions of employment.

Where can I get more help?

NT Working Women's Centre

Freecall: 1800 817 055

Web: www.ntwwc.com.au

Your Union

Unions NT

Ph: 8941 0001

Web: www.unionsnt.com.au

The Fair Work Commission

Ph: 08 8936 2800

Local call: 1300 799 675

Web: www.fwc.gov.au

NT Anti Discrimination Commission

Freecall: 1800 813 846

Web: www.adc.nt.gov.au

Australian Human Rights Commission

Complaints Info line: 1300 656 419

Web: www.humanrights.gov.au

To access an interpreter

Interpreting and Translating Service NT

Ph: 1800 676 254

Web: www.itsnt.nt.gov.au/

Aboriginal Interpreter Service

Ph: 8999 8353

Web: www.ais.nt.gov.au/

For people with a hearing and/or speech impairment

National Relay Service

Ph: 133 677

Freecall: 1800 555 677

The NT Working Women's Centre provides free and confidential information, advice and assistance to women about work related matters.

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