

Factsheet Eleven

DISCRIMINATION AND SEXUAL HARASSMENT

Discrimination

You have the right to a workplace that is free from discrimination and so you should be treated fairly when it comes to getting a job, in opportunities for training and promotion, in your working conditions and if you are dismissed. This applies whether you work full-time, part-time, casually or as a contractor.

Employees in the NT are covered by both the *NT Anti-Discrimination Act* as well as federal discrimination legislation.

The Northern Territory *Anti-Discrimination Act* defines discrimination as any distinction, restriction, exclusion or preference made on the basis of an attribute that has the effect of nullifying or impairing equality of opportunity and harassment on the basis of an attribute. In other words, unlawful discrimination is unfair treatment based on one of the attributes set out in the Act. These attributes include:

- race
- sex
- age
- sexuality
- parenthood
- pregnancy
- trade union or employer association activity
- religious belief or activity
- political opinion, affiliation or activity
- irrelevant criminal or medical record
- marital status
- impairment (disability)
- breast feeding
- association with a person who has, or is believed to have one of these attributes

The Act also sets out other prohibited conduct including:

- sexual harassment;
- unreasonable failure to accommodate a special need because of an attribute;
- seeking unnecessary information that might lead to unlawful discrimination;
- discriminatory advertising;
- refusal to allow a guide dog; and
- victimisation for having made, or intending to make, a complaint, or having been a witness in a discrimination complaint.

Anti-discrimination laws also provide protection to 'potentially pregnant' women (i.e. women of child bearing age, who may be likely, or perceived to be likely, to become pregnant). It is also unlawful for employers or potential employers to question you about current or future pregnancies.

There are some exemptions in the Act, which state that discrimination may be allowable in some situations. These include the ability to fix reasonable terms and conditions where a person has a restricted capacity to do the work because of their age or impairment, if the discrimination is based on a genuine occupational qualification, or if the person is unable to fulfil the inherent requirements of the job. In addition, discrimination may be allowable where the work is to be performed in a person's home. Discrimination on the grounds of irrelevant criminal record may also be allowed where the work involves the care, instruction or supervision of vulnerable people. Another exemption applies to religious educational institutions who may discriminate on the grounds of religious belief or activity, or sexuality.

Under the federal *Sex Discrimination Act* it is unlawful to discriminate against a person on the basis of:

- sex;
- gender identity;
- intersex status;
- sexual orientation;
- marital or relationship status (including same sex or de facto couples);
- family responsibilities;
- pregnancy or potential pregnancy; or
- breastfeeding.

In addition, a complaint may be made under the federal *Australian Human Rights Commission Act* in relation to unfair treatment, discrimination, harassment or bullying in employment because of your criminal record, trade union activity, religion or political opinion.

Other federal laws provide protection against discrimination in employment on the grounds of age, disability, medical record and race.

The Northern Territory *Anti-Discrimination Act* and federal discrimination legislation have slightly different grounds for discrimination, so it is best to check to see which law best applies to your situation.

Sexual harassment

Sexual harassment is unwelcome attention of a sexual nature. The behaviour doesn't have to be ongoing to be sexual harassment; it can be a one off incident.

Sexual harassment is unlawful under both the *NT Anti-Discrimination Act* and the *Federal Sex Discrimination Act*. Sexual harassment is a form of sex discrimination. Sexual harassment is any unwelcome conduct of a sexual nature. If a reasonable person would anticipate this behaviour might make you feel offended, humiliated or intimidated, it may be sexual harassment.

Examples of sexual harassment in the workplace include:

- sexually suggestive behaviour, comments or jokes;
- staring and/or leering;
- sexual propositions or asking for sexual favours;
- unwanted invitations for dates;
- unwelcome sexual or physical contact such as touching, hugging, kissing, groping;
- insults or taunts based on a person's sex;
- sexually offensive gestures;
- sexually explicit materials, images, phone calls texts or emails; or
- intrusive questions about one's private life or physical appearance.

"The workplace" can include work, on work-related trips, and at work-related social events. Under the federal legislation, sexual harassment is also unlawful in shops, restaurants, or anywhere that goods and services are provided (which protects staff from sexual harassment perpetrated by customers).

Mutual attraction at work

It is not unlawful to commence a personal relationship with a colleague as long as both parties are consenting. Sexual harassment has nothing to do with mutual attraction or friendship.

What can I do if I believe I am being sexually harassed?

There are a number of things you can do:

- if you feel safe enough to do so, let the offender know how you are feeling; sometimes they are unaware that their actions are affecting you;
- tell your boss or supervisor;
- talk to others at work, especially others who also may have been harassed or discriminated against. They may be able to support you;
- tell your harasser's superior if your boss or supervisor is the one harassing or discriminating against you;
- check if your workplace has a policy or grievance procedures for dealing with sexual harassment or discrimination;

- keep a written record of what has happened; and
- get external advice and lodge a complaint.

Timeframes for pursuing complaints

A time limit of 12 months applies to complaints under both NT and federal legislation, while under the *Fair Work Act 2009* you have 6 years to lodge a complaint with the Fair Work Ombudsman about discriminatory treatment at work (unless it ended in dismissal, in which case you only have 21 days - see factsheet 12 *General Protections and Adverse Action* for more information).

Don't be discouraged by others who may not believe you or try to make you feel foolish for complaining. You don't have to resign to escape sexual harassment and discrimination at work. If you do feel like resigning, get advice first, as you may be able to claim constructive dismissal.

What if my boss sacks me because I've complained?

If you are sacked because you made a complaint (for example, to the Fair Work Commission, the NT Anti-Discrimination Commission or the Australian Human Rights Commission), or because you helped someone make a complaint, this is victimisation which is unlawful. You may be entitled to make a claim for unlawful termination under the *Fair Work Act 2009*, or to lodge a complaint under anti-discrimination legislation. See factsheet 12 *General Protections and Adverse Action* for more information.

Where can I get more help?

NT Working Women's Centre

Freecall: 1800 817 055

Web: www.ntwwc.com.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

The Fair Work Ombudsman

Fair Work Info line: 13 13 94

Web: www.fairwork.gov.au

The Fair Work Commission

Ph: 08 8936 2800

Local call: 1300 799 675

Web: www.fwc.gov.au

Your Union

Unions NT

Ph: 8941 0001

Web: www.unionsnt.com.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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