

Adverse Action

You have the right to a workplace that is free from discrimination and where you are able to exercise your general workplace rights without fear of reprisal. Under the General Protections provisions of the *Fair Work Act*, if an employer takes an adverse action against an employee **for certain reasons**, then it is unlawful. These protections are extended to prospective as well as current employees.



What is an Adverse Action?

Under the *Fair Work Act*, an employer takes an adverse action against an employee when they:

- dismiss the employee;
- injure them in their employment;
- alter their position to their detriment (eg demotion); or
- discriminate between them and other employees

Some examples of being injured in your employment are having your hours reduced, having responsibility taken away from you, having a leave application refused unreasonably or being offered lesser conditions than a colleague who does the same job.

An employer may be taking adverse action against a prospective employee if they:

- refuse to employ them, or
- Discriminate against them in the terms and conditions of employment offered (although there are some limitations on this).

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, 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..

What is a Workplace Right?

According to the *Fair Work Act*, a workplace right exists where a person is entitled to a benefit or has a role or responsibility under a workplace law, workplace instrument (such as an award or agreement) or an order made by an industrial body. A workplace right also exists when a person is able to initiate or participate in a process or proceedings under a workplace law or workplace instrument, including making a complaint or inquiry to a person or body to seek compliance with that law or instrument or simply when they make a complaint or inquiry regarding their employment (including to their employer).

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.

For example, an employer will be in contravention of this provision where an employee is overlooked for promotion, and a substantial reason for the decision is that the employee makes persistent complaints to his or her union or safety committee about alleged safety breaches.

What kind of Discrimination is covered?

The *Fair Work Act* specifically prohibits adverse action being taken against an employee or a prospective employee because of their race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

Discriminatory action may not be prohibited if the action is based on the inherent requirements of the position or where it is taken within an institution run in accordance with religious beliefs and is taken in good faith to protect those religious beliefs.

An example of discriminatory Adverse Action would be an employer refusing to provide an annual pay increment to an employee because the employee was pregnant and would be going on leave, despite there being no performance issues and all other employees receiving their annual increase.



What can I do about it?

If you have been subject to an Adverse Action that is not a dismissal and you wish to make a complaint, there are three avenues available to you.

You can lodge a complaint with the Fair Work Ombudsman, who has the power to investigate the allegations and where a contravention is identified may initiate legal action. This process is at no cost to you, however the choice is not yours as to whether any legal action is taken or not.

Alternatively, you may make an application to Fair Work Australia. 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 Fair Work Australia 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.

You may proceed directly to the Magistrates Court in some cases. You should seek advice on this.

If your employment has been terminated and you believe it was an adverse action, then you can apply to Fair Work Australia to deal with the matter. This is also called a General Protections Dispute Application, however in this case the application must be made **within 60 days** of your dismissal. Check our Fact Sheet on 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* 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 or 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 or 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.

If you have experienced any of these then seek advice as you may be able to take action.

Where can I get more help?

NT Working Women's Centre
Ph: 8981 0655
Freecall: 1800 817 055
Web: www.ntwwc.com.au

The Fair Work Ombudsman
Ph: Fair Work Infoline (local call) 13 13 94
Web: www.fwo.gov.au

Fair Work Australia
Ph: FWA Helpline (local call) 1300 799 675
Web: www.fwa.gov.au



Your Union
Unions NT
Ph: 8941 0001
Web: www.unionsnt.com.au

NT Anti Discrimination Commission
Ph: 8999 1444
Freecall: 1800 813 846
Web: www.adc.nt.gov.au

Australian Human Rights Commission
Ph: (02) 9284 9600
Complaints Infoline: 1300 656 419
General enquiries and publications: 1300 369 711
Web: www.humanrights.gov.au

Telephone Interpreter Service
Ph: 131 450

National Relay Service (for people with a hearing and/or speech impairment)
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.
Contact us on 1800 817 055, or www.ntwwc.com.au**

Thanks to Chiggy's Place of Art & Design and Clayton Utz. The NT Working Women's Centre gratefully acknowledges the support of the Northern Territory Government in funding this factsheet. The information, opinions and advice contained have been prepared with due care and are believed to be correct at the time of printing. The publishers expressly disclaim any liability whatsoever to any person who suffers any loss arising from the contents of, errors in, or omissions from this publication. This factsheet is not intended as a substitute for legal advice. Please seek advice for further information about your situation.

Printed May 2010.