

# Discrimination

Your rights and options if you are  
discriminated against at work



# What is discrimination?

Discrimination is when you are treated unfairly because you have a personal characteristic protected by law.

This includes things like disability, sex, age, gender identity, race, sexual orientation, physical features, pregnancy (a 'protected attribute'). **It is against the law for your boss to discriminate against you.**



There are two main types of discrimination:



If you have an injury, or a physical or mental disability, your employer is required to make 'reasonable adjustments' to assist you to do your job.



Direct discrimination

When someone treats you unfavourably (badly) because of your protected attribute.

For example:

Your boss fires you (ends your job) because you are pregnant.



Indirect discrimination

When a rule or requirement applies to everyone, but disadvantages people with certain protected attributes; and the rule is not reasonable.

For example:

A boss says workers cannot wear anything on their heads because it doesn't look good. This is not fair for a person who needs to wear headwear (such as a turban, hijab or kippah) for religious reasons.

# What if I have been discriminated against?



## You choose what happens

It is up to you whether you want to make a claim or a complaint. There are many options to resolve the issue without having to go to court.

If you have been discriminated against at work, there are a number of different things you can do.

### You are legally protected if you complain.

Your employer is not allowed to treat you badly because you have made a complaint about discrimination at work.

If you are fired or some other negative action is taken against you because you have complained, this is against the law. This is called **victimisation** or **adverse action**.

Unfortunately this does happen sometimes. If so, please get legal help **quickly** (ask us for another appointment).





1



## Talk to your boss

If you feel comfortable, tell your supervisor, boss or HR manager what happened.

Be polite and try to speak calmly.

Ask for things which would make your situation better, such as working at a different office or with a different manager, or money (**compensation**) for medical expenses or hurt feelings.



### Tips for talking to your employer

You can bring a support person (such as a friend, family member or union representative).

Take written notes about what was said during the conversation and send them to your employer after the meeting (by text or email).

If you reach an agreement, write down what you each agreed to.

2



## Make a complaint to a government agency

Complaints can be made to:

- the Victorian Equal Opportunity and Human Rights Commission
- the Australian Human Rights Commission
- the Fair Work Commission.

You will be invited to attend a meeting (**conciliation** or **mediation**) where an independent person (**mediator/conciliator**) will help you and your boss to talk to try and agree to a solution.

The mediator/conciliator does not decide your case — it is up to you and your boss to work it out.

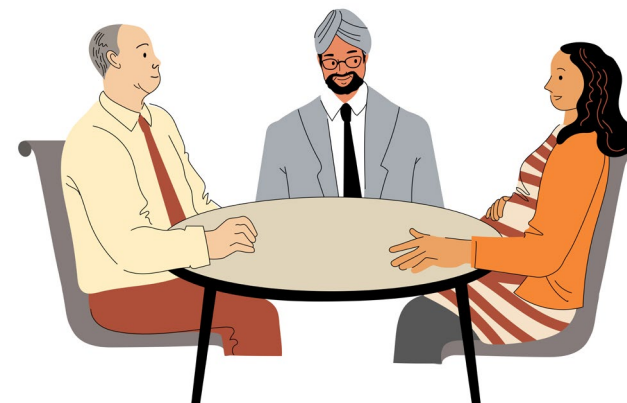
3

## Make a claim at a Tribunal or Court.

It may cost you money to go to the Tribunal or Court.

If you go to the Tribunal or Court, you need to fill out forms to start your case and prepare evidence.

3a



## There may be a mediation first

The mediator will help you and your boss to talk to try and agree to a solution.

The mediator does not decide your case — it is up to you and your boss to work it out.

3b



## If you and your boss can't agree, the case may go to trial

A judge will listen to you and your boss and look at the evidence. They will decide whether you have been unlawfully discriminated against.

Your boss may have to pay you money.

Your boss may also have to pay a fine (**penalty**) or do training to learn the law.

# What are the possible outcomes?

Possible outcomes from mediation or Court include:



You receive money  
(**compensation**)

Money (**compensation**) for lost wages, medical expenses and for the hurt and suffering caused.



You receive an apology

An apology from the person who discriminated against you and/or your employer.

Your boss agrees to change things to make your situation better (such as working for a different supervisor or working in a different office).



Anti-discrimination training  
for your boss

Your boss is required or agrees to attend anti-discrimination training.



You get your job back  
(if you have been fired)

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**OR**

Your boss helps you to get another job by:

- A** Providing a letter which states how long you worked for and your duties (**reference** or **statement of service**).
- B** Treating the dismissal as a resignation (**retrospective resignation**).

# Are there any time limits?

**If you don't start your legal claim within the relevant time limit, you might lose your right to bring that claim.**

## **If you are fired**

You have 21 days from the date your job ended to bring a claim at the Fair Work Commission.

## **Discrimination claims**

You have 6 months (Federal law) or 12 months (State law) from the date of the discrimination to bring a claim in the Tribunal or Court.

## **Adverse action claims**

(If you are not fired)

You have 6 years from the date of the adverse action to bring a claim.

# Questions?

## **WEstjustice**

(Interpreters available)

(03) 9749 7720

[westjustice.org.au](https://westjustice.org.au)

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## **Disclaimer**

This document contains general information only and is NOT legal advice. If you require advice about your specific circumstances please consult a lawyer or your union. This information is current at 16 February 2021.

