

Aspects of the law

Resource sheet

This information provides some key points about some of the laws that are relevant to the workplace. It is provided as a guide only and should not be relied upon for legal advice.

Relevant laws

There are relevant state, territory and Commonwealth anti-discrimination and equal opportunity, occupational health & safety, and industrial relations laws. The following laws contain provisions that are important in the area of employment (they are called 'Acts' as they are actions of parliaments):

1. *Sex Discrimination Act (1984) (Commonwealth)*

This Act makes discrimination on the grounds of sex, marital status, pregnancy, potential pregnancy, sexual harassment and family responsibilities unlawful in a range of areas of public life such as employment, accommodation, education and the provision of goods and services.

What is sex discrimination?

'Sex discrimination' means being treated less favourably than someone else because of your sex or marital status or because you are pregnant or potentially pregnant. It also includes being dismissed from employment because you have family responsibilities. For example, if the manager of a company said that all male employees would receive a wage increase, but all the female employees would not, this would be 'direct' sex discrimination.

Discrimination also exists where there is a requirement (a rule, policy, practice or procedure) that is the same for everyone, but which has an unfair effect on particular groups and is not reasonable. For example, to receive an annual bonus you have to work full-time. Women may argue that this indirectly discriminates against them because more women than men work part-time because of family responsibilities.

What is sexual harassment under the Sex Discrimination Act?

Sexual harassment is a type of sex discrimination. Sexual harassment is any unwelcome sexual advance or request for sexual favours or conduct of a sexual nature which makes a person feel humiliated, intimidated or offended. Sexual harassment can take many different forms and may include physical contact, verbal comments, propositions, the display of pornographic material or other behaviour which creates a sexually hostile working environment.

2. *Racial Discrimination Act (1975) (Commonwealth)*

This Act prohibits discrimination in a range of areas of public life on the basis of a person's race, colour, descent, national or ethnic origin.

What is racial discrimination under the Racial Discrimination Act?

Racial discrimination occurs when someone is treated less favourably than someone else in a similar situation because of their race, colour, descent, or national or ethnic origin. For example, if a hotel said it would not serve Aboriginal customers.

Racial discrimination can also happen indirectly when a policy or rule appears to treat everyone in the same way but actually has an unfair effect on more people of a particular race, colour, descent, or national or ethnic origin than others. For example, that where a police service says that you have to be a certain height to join. This requirement may impact on some ethnic groups more than others.

Racial Hatred Act (1995)

The Act prohibits offensive behaviour based on racial hatred under certain circumstances and is an amendment to the *Racial Discrimination Act (1975)*, above.

What is racial hatred under the Racial Hatred Act?

Racial hatred is an act which is likely to offend, insult, humiliate or intimidate a person or group of people, which is based on race, colour, descent or national or ethnic origin. The act must have occurred either within sight and hearing of other people or in a place to which the general public is invited or has access. If the act happened in a private telephone conversation or in a private place, such as a person's home, it is not covered under the law.

3. Disability Discrimination Act (1992) (Commonwealth)

The Act makes discrimination on the grounds of a person's disability unlawful. It covers a wide range of disabilities and areas of public life including employment, access to premises and provision of goods and services.

What does the Disability Discrimination Act cover?

The Act covers direct discrimination, for example, if a company decided not to employ a person in a call centre because the person was blind. The Act states, though, that a person has to be able to fulfil the 'inherent requirements of the particular job'.

The Act also covers indirect discrimination. For example, if a person who uses a wheelchair cannot gain access to a building, this may constitute discrimination.

4. Age Discrimination Act (2004) (Commonwealth)

The Age Discrimination Act 2004 (ADA) addresses age discrimination in many areas of public life. The ADA is applicable in all Australian states and territories.

Age discrimination occurs when an opportunity is denied to a person solely because of their age and where age is irrelevant to the person's ability to take advantage of that opportunity.

Direct age discrimination happens when a person is treated less favourably because of their age than a person of another age group would be treated in the same or similar circumstances.

Discrimination also happens when there is a requirement, condition or practice that is the same for everyone but has an unfair effect on a person of a particular age. This is known as indirect discrimination.

People covered by the law

The reach of these Acts extends to the workplace - all employees, contract workers, managers, supervisors, business partners, union officials, agents, and customers are covered by the law, and are responsible for the terms of the Acts being upheld by themselves as individuals.

Vicarious liability

Employers are legally responsible for acts of discrimination or harassment committed by their employees or agents, unless the employer has taken all reasonable steps to prevent such acts, such as advising all employees that discrimination is not tolerated, providing a written policy, and refreshing employees' knowledge of the policy from time to time. Individuals can also be held personally responsible for acts of discrimination or harassment.

Employers' responsibilities include:

- the development of a written policy that states the legal rights and responsibilities of employees and the employer
- ensuring the effective dissemination of that policy
- training staff about the policy and appointing a contact person with whom issues of concern may be raised
- the establishment of effective complaint procedures
- taking prompt action and maintaining confidentiality if a complaint is made
- monitoring of the workplace situation.

Employers should not:

- make assumptions based on stereotypes about individuals and particular groups of people
- ignore a complaint of discrimination or harassment
- lose sight of the responsibility to protect the rights of those who may face discrimination or harassment.

Other relevant legislation includes:

- State and territory anti-discrimination legislation
- *Fair Work Act (2009)* (Commonwealth)
- State and territory industrial relations legislation
- Occupational health and safety legislation

For further information see the Commission's *Good Practice, Good Business* resources at:
http://humanrights.gov.au/info_for_employers/index.html