



Anti-discrimination

It is generally against the law to discriminate against or harass people in the workplace because of their age, sex, race/ethnic group, marital status, pregnancy, disability, homosexuality or transgender. It is also against the law to discriminate against people because of their responsibility to care for or support a child or other 'immediate family member'. This fact sheet will assist you to be aware of your obligations for preventing discrimination and harassment in your business. It is advisable that you also contact the Anti-Discrimination Board for more information and assistance with promoting a fair and equitable workplace.

Discrimination means ...

Direct discrimination is where someone is treated differently or unfairly because of their sex, race or other distinctive characteristic. For example, if an employer decides not to interview a well qualified man for a nursing job because the employer believes that women make better nurses, this would be direct sex discrimination.

In circumstances where everyone is treated the same, but the effect of this treatment unreasonably disadvantages people of a particular type, this is indirect discrimination. For example, if it is not possible for people with disabilities to access your business, this is indirect disability discrimination, unless you can prove that it is unreasonable to provide the access disabled people need, given your business situation.

Harassment means ...

Harassment is any form of unwanted behaviour that offends, humiliates or intimidates a person because of their age, sex, race/ethnic group, marital status, pregnancy, disability, homosexuality or transgender. Harassment also includes sexual harassment.

It is not always necessary for the victim to explicitly say that they do not want the harassing behaviour, as the law recognises that this is not always easy to say.

Harassing behaviour not only relates to physical actions and contact, but can also be in the form of material being publicly displayed, gestures, verbal abuse, comments or intrusive questions.

Are You Legally Liable?

As a business owner, you are responsible to take reasonable actions to prevent discrimination and harassment in your business. In the case where you do not take preventative actions, you are legally liable for unlawful discrimination or harassment that occurs in your business.

Discrimination and Harassment in Your Business

Anti-discrimination laws may apply to your business in several ways.

As a provider of goods and services, you are responsible for harassment or discrimination that occurs:

- By your employees against your clients;
- By your clients against your employees (in the case of sexual harassment); and
- Between your clients.

You and your employees must not use a person's (or their relative's, friend's or associate's) age, sex, race/ethnic group, marital status, pregnancy, disability, homosexuality or transgender to decide:

- Whether the goods or services are provided;
- The type of service to be provided; or
- The manner in which the service is provided.

You must also manage the behaviour of your clients who deal with your business, by indicating that discrimination and harassment are not tolerated in your business.

As an employer, you must make sure that you do not discriminate against or harass job applicants and employees. Discrimination or harassment against job applicants or employees may arise in many situations, such as when:

- Recruiting employees;
- Interviewing job applicants;
- Delegating work to your employees;
- Selecting employees to do overtime;
- Offering training courses;
- Providing pay increases to employees;
- Conducting performance appraisals of your employees.

Therefore, it is advisable that you take preventative actions against discrimination and harassment to reduce your legal liability as a business owner.

How to Eliminate Discrimination and Harassment in Your Business

As a business owner, you are legally liable for any discrimination or harassment that occurs in your business. You must make sure that your employees and clients understand that discrimination and harassment are not tolerated in your business. Also, your employees need to know exactly how to make decisions and generally behave in front of your clients.

You may prevent discrimination and harassment in many ways, including:

- Reviewing your business's policies and procedures to make sure that they clearly indicate that discrimination and harassment are not tolerated in your business;
- Communicating your policies and procedures to your employees, especially on their first day at work;
- Regularly discussing anti-discrimination and anti-harassment practices with your employees. This may be done at staff meetings or through regular anti-discrimination/harassment training sessions with your employees;
- Encouraging your employees to consult you with their problems;
- Being alert to the behaviour of your employees;
- Providing your clients with feedback forms to report any grievances.

It is important you take steps to prevent discrimination and harassment in your business to deter unwanted grievances. Visit the Anti-Discrimination Board's website (www.lawlink.nsw.gov.au/adb.nsf) to review anti-discrimination and anti-harassment guidelines for businesses.

Exemptions

Generally it is illegal to discriminate against or harass people because of their age, sex, race/ethnic group, marital status, pregnancy, disability, homosexuality, transgender or carer's responsibilities. However, the *NSW Anti-Discrimination Act 1977* provides specific exemptions where it is legally acceptable to target jobs or services to people with particular characteristics, favouring one group of people against other group(s).

For example, it is ok to advertise a job for one sex only, if being of that sex is an essential requirement of the job, such as recruiting a woman to clean the female toilets or a man to clean the male toilets, if the cleaning is to be done while the toilets are in use.

However, in many other circumstances, if you want to favour one particular group, and therefore discriminate against other groups, you must apply for and be granted an exemption under the law. If you don't get an exemption, you will be breaking the law.

An exemption is likely to be granted if you are still upholding the principles of anti-discrimination and are promoting equal opportunity between all persons. Contact the Anti-Discrimination Board for more information about applying for exemptions.

Contacts

Visit the Anti-Discrimination Board website at www.lawlink.nsw.gov.au/adb.nsf or contact them on 1800 670 812 or (02) 9268 5544 for:

- Confidential (and anonymous) advice on handling a particular discrimination or harassment issue or grievance.
- Staff training support.
- Advice and consultancy services to help you develop policies and procedures for anti-discrimination/harassment.
- A series of publications designed to help you understand your obligations under anti-discrimination law.

For More Information:

Contact your local Business Advisory Service on 1300 650 058 to talk over business management issues or visit the Department of State and Regional Development's Small Business Website at www.smallbiz.nsw.gov.au.