Employment Rights Legal Service

Call: 02 8004 3270
Email: coordinator@erls.org.au

DISCRIMINATION

WHAT IS DISCRIMINATION?

All workers in Australia (even people applying for a job) are protected from discrimination in the workplace. Unlawful discrimination occurs when your employer takes action against you, because of your (or your family member's) particular characteristics, such as:

- sex (including pregnancy and breastfeeding)
- sexual orientation, gender status or intersex status
- race (including colour, national extraction and social origin)
- physical or mental disability
- age
- relationship status
- family or carer's responsibilities
- religion; or
- political opinion

also known as "protected attributes".

The type of action which is not able to be taken in your employment because of a protected attribute includes:

- ending your employment or refusing to employ you in the first place
- injuring you in your employment (in any way – including financially)
- changing your position and leaving you worse off; or
- treating you worse than your co-workers.

JO'S STORY

Jo works as a permanent part time employee at the front-desk of a hotel. She has been doing this job for a long time and she's really good at it. She fell pregnant a few months ago. Ben is Jo's supervisor and begins cutting down Jo's shifts, from 28 hours a week to 18 hours. Jo hears Ben saying to a co-worker in his office,

"Jo needs to go. The customers have given me feedback, saying we can't have someone with dark skin working on the front desk. Plus she's pregnant and is probably going on parental leave very soon anyway so I'm cutting her hours right down."

Ben (and the hotel customers) have directly discriminated against Jo in her employment because of the colour of her skin. Ben has also discriminated against Jo because of her pregnancy. Both instances amount to unlawful discrimination.

The type of discrimination described above is direct discrimination. But discrimination can also be indirect discrimination. Indirect discrimination occurs when a requirement or rule, which seems to be the same for everyone, actually has the effect of disadvantaging you because you have a protected attribute.

LILY'S STORY

Lily's boss decides to schedule important weekly meetings at 8:00am on Tuesdays, which is an hour before everyone usually starts work. Everyone needs to be there, so the requirement is the same for everyone. But Lily has family responsibilities and needs to drop off her children at school at 8:30am on Tuesdays. Lily's boss refuses to change the time of the meeting to include her. This disadvantages Lily because of her family responsibilities, which can amount to unlawful indirect discrimination.

WHAT CAN I DO IF I THINK I HAVE BEEN DISCRIMINATED AGAINST?

Speak to us!

We can help you, and we may be able to give you free and confidential legal advice. You can call us on **02 8004 3270**, or email us at **coordinator@erls.org.au** to speak to us about your situation. We can talk you through some of the options that might be available to you, such as:

- ***Speaking to your employer***
  If you believe your employer has discriminated against you, speaking to your supervisor, manager or boss can often be the best place to start. They should listen to your concerns and might be able to suggest a solution that works for both of you.
- ***Seeking help from the Fair Work Commission***
  The Australian Fair Work Commission tries to resolve complaints where somebody has suffered adverse action in the workplace because of a protected attribute. Speak to us if you would like to take your complaint to the Fair Work Commission.
- ***Seeking help from the NSW Anti-Discrimination Board***
  The Anti-Discrimination Board of NSW provides information and tries to resolve complaints relating to discrimination.
- ***Approaching the Australian Human Rights Commission***
  The Australian Human Rights Commission investigates and tries to resolve complaints about discrimination.

The information provided in this factsheet is for information only. It must not be relied on as legal advice. You should seek legal advice about your own situation.