



EQUAL AT WORK

Manager Guide

Workplace Discrimination

What is workplace discrimination?

Workplace discrimination occurs when a person or group is treated less favourably at work because of a personal characteristic, rather than their skills, performance or role requirements. Discrimination can be direct or indirect and may occur intentionally or unintentionally.

South Australian discrimination laws protect people from unfair treatment based on a range of personal characteristics, including:

- Age
- Disability
- Race, colour, country of origin, or ancestry
- Sex, pregnancy, marital or relationship status
- Caring responsibilities (including breastfeeding)
- Sexual orientation, gender identity or intersex status
- Religious appearance or dress
- Identity of spouse or domestic partner

Types of discrimination

There are two main types of discrimination:

Direct discrimination

This occurs when someone is treated less favourably than others in similar circumstances because of a personal characteristic.

Indirect discrimination

This occurs when a rule, policy or practice applies to everyone, but unreasonably disadvantages people who share a particular personal characteristic.

Managers play a key role in identifying and addressing both types of discrimination in the workplace environment, by ensuring workplace decisions, policies and practices are fair, reasonable and inclusive. Even if it is not intentional, the outcome can still be discriminatory and therefore unlawful.

What is not considered discrimination?

Not all different treatment at work is unlawful discrimination. Managers can treat employees differently **when there is a valid, work-related reason** and the decision is not based on a protected personal characteristic.

For example, performance management, disciplinary action or different work arrangements may be appropriate where they are:

- based on role requirements, performance or conduct
- applied fairly and consistently
- not influenced by factors such as age, race, sex, disability or other protected attributes

The key consideration is whether decisions are **reasonable, merit-based and focused on inherent requirements of the role and work outcomes**, rather than on a person's protected attributes.

Workplace discrimination damages the affected person's wellbeing and work performance and can create a hostile workplace culture.

If a decision would land differently for different people, it is worth pausing and checking it

Understanding equity and special measures

Treating everyone exactly the same is not always fair or appropriate. In some situations, managers can lawfully provide targeted support or opportunities to address disadvantage or remove barriers. Australian equal opportunity laws allow for special measures to support disadvantaged groups, where the purpose is to promote fairness and inclusion rather than exclude others.

In some circumstances, it is also lawful to make a decision based on personal, protected attributes where such attributes impact the individual's ability to safely undertake the inherent requirement of the role. When applying this approach, managers should focus on fair outcomes, ensure actions are reasonable and proportionate, and be able to clearly explain and justify their decisions.

When discrimination may occur

Discrimination can occur at any stage of the employment relationship. It is unlawful for employers to discriminate against workers, whether they are paid or unpaid, including full-time, part-time and casual employees, as well as apprentices, trainees, volunteers and contractors.

For managers, discrimination may arise when making decisions about:

- Recruiting and selecting employees
- Setting terms, conditions and workplace benefits
- Access to training, development and learning opportunities
- Transfers, promotions or career progression
- Redundancy, retrenchment or dismissal

Being aware of these key risks helps make fair, consistent and lawful decisions based on merit and role requirements, rather than personal, protected attributes.

Employer responsibilities

Everyone plays a critical role in preventing discrimination and setting the standard for respectful behaviour in the workplace. This includes role-modelling appropriate conduct, making fair decisions, and responding promptly when issues arise.

Employers are expected to

- Treat all employees fairly and with respect
- Set clear expectations about inclusive and non-discriminatory behaviour
- Avoid and challenge discriminatory behaviour, jokes or "banter"
- Address concerns or complaints seriously and without bias
- Follow and apply workplace discrimination policies consistently
- Make decisions based on merit, performance and role requirements
- Avoid assumptions or stereotypes based on personal attributes
- Be aware of any unconscious bias that may play out and take active steps to mitigate this from occurring

Actively meeting these responsibilities helps to create a work environment where people feel safe, valued and included and reduce the risk of harm to individuals and the organisation. (See Unconscious Bias Facts Sheet in this series for more information).