



Carer's responsibilities discrimination

What does the law say about carer's responsibilities discrimination?

It is generally against the law in NSW to treat you unfairly or harass you because of your responsibilities as a carer.

The law also applies if you don't have a carer's responsibility at the moment, but you are discriminated against or harassed because:

- someone thinks that you have a carer's responsibility;
- you had a carer's responsibility in the past, or someone thinks you did; or
- you will have a carer's responsibility in the future, or someone thinks you will.

For example, it would be against the law if an employer did not offer you a job, promotion or training because they thought that in the future you might have children for whom you would be responsible.

Indirect discrimination

Indirect carer's responsibilities discrimination is also against the law. This occurs when there is a rule or requirement that disadvantages people who have a carer's responsibility more than people who don't — unless it can be shown that the rule or requirement is "reasonable in all the circumstances".

For example, a requirement for all staff to start work at a specific time might indirectly discriminate against a person who needs to take their child to school. It might be quite possible to organise the person's work so they could start and finish later.

When does this law apply?

Unlike other types of discrimination that are against the law in NSW, discrimination and harassment because of carer's responsibilities are only against the law when they occur in **employment**.

In addition, the law only applies to your responsibility for caring for particular people. These are listed in the next column.

Which people does the law cover?

The law about carer's responsibilities discrimination applies if you are responsible for the care of a family member who is in need of care and support. This includes any of the following people:

- **Your child** — this includes your own child, your stepchild, your adopted child, your foster child and any child for whom you have a legal responsibility (for example, you are their legal guardian or authorised carer).
- **The child of your current or former husband, wife or de facto partner, including a same sex partner** — this includes their own child, their stepchild, their adopted child, their foster child and any child for whom they have a legal responsibility.
- **Any adult of whom you are the legal guardian.**
- **An "immediate family member"**. This includes any of the following people:
 - your husband, wife or de facto partner, including a same sex partner;
 - your former husband, wife or de facto partner, including a same sex partner;
 - your grandchild, including your own grandchild, your step-grandchild and your grandchild through adoption, fostering or any other legal arrangement;
 - the grandchild of your current or former husband, wife or de facto partner, including a same sex partner. This includes your partner's grandchild, their step-grandchild and their grandchild through adoption, fostering or any other legal arrangement;
 - your parent, including your own parent, your stepparent and your parent through adoption, fostering or any other legal arrangement;
 - the parent of your current or former husband, wife or de facto partner, including a same sex partner. This includes your partner's parent, their stepparent, and their parent through adoption, fostering or any other legal arrangement;

- your grandparent, including your own grandparent, your step-grandparent, and your grandparent through adoption, fostering or any other legal arrangement;
- the grandparent of your current or former husband, wife or de facto partner, including a same sex partner. This includes your partner's grandparent, their step-grandparent, and their grandparent through adoption, fostering or any other legal arrangement;
- your brother, including your own brother, your half-brother, your stepbrother and your brother through adoption, fostering or any other legal arrangement;
- the brother of your current or former husband, wife or de facto partner, including a same sex partner. This includes your partner's brother, their half-brother, their stepbrother and their brother through adoption, fostering or any other legal arrangement;
- your sister, including your own sister, your half-sister, your stepsister and your sister through adoption, fostering or any other legal arrangement;
- the sister of your current or former husband, wife or de facto partner, including a same-sex partner. This includes your partner's sister, their half-sister, their stepsister and their sister through adoption, fostering or any other legal arrangement.

If you are treated unfairly or discriminated against because of your responsibility to care for someone who is not on the above list, (for example, a cousin, niece, nephew or friend), the anti-discrimination law may not be able to help you. Please phone our Enquiry Service if you need advice about this.

It's also unlawful to discriminate against you or harass you if you are **pregnant** or **breastfeeding**. For more information, refer to our website and select "Anti-discrimination law", or ask for our factsheet *Pregnancy and breastfeeding discrimination*.

What are my rights when I am looking for work?

In general, you have the right to apply for and be fairly considered for all jobs, apprenticeships and traineeships on the basis of merit. This also applies if you are applying for a licence to perform a job, for example a taxi licence or registration to practice as a nurse.

If you are the best person for the job and you can do all the essential things required, then you should generally get the job, irrespective of your carer's responsibilities. Your starting pay and conditions must not be any worse just because you have a carer's responsibility.

If you are the best person for the job, the employer must also provide any special arrangements you need to do your job at the same time as managing your carer's responsibilities — unless it would cause them "unjustifiable hardship" to do this.

Following are examples of the kind of arrangements that may not cause an employer unjustifiable hardship, depending on the circumstances:

- allowing you to work from home on some or all days — in this case they may also need to provide you with the facilities to do this, such as a computer, software or reimbursement for work phone calls;
- changing your start or finish times, roster arrangements or break times;
- allowing you to work your hours over fewer or more days;
- allowing you to work part-time instead of full-time, or to job-share with someone else; or
- being flexible with the amount of unpaid or paid leave you can take and when you can take it.

There are no set rules about special arrangements, and it is up to you and your future employer to negotiate a suitable arrangement. As long as you can get the job done properly, the employer must consider whatever arrangements are necessary, unless this would cause them unjustifiable hardship.

There will be times when an employer will be able to say that it would cause them unjustifiable hardship to provide the arrangements you need. This may be the case if these arrangements would seriously harm their business, or cost them more than they can afford. But in

deciding whether a particular arrangement would cause them unjustifiable hardship, the employer must take all the circumstances into account, including the following:

- the benefits of the arrangement to their other staff and clients, as well as to you,
- the effects on the employer and all the people involved if they don't provide the arrangement; and
- the costs involved in relation to their financial circumstances.

What are my rights during employment?

In general, you have the same right to opportunities for promotion, transfer, training and all other work benefits as other employees who do not have carer's responsibilities. Your carer's responsibilities should not affect these decisions in any way.

For example, if you were not given a promotion for which you were otherwise qualified, and your employer said that they did not want someone in the position who had young children because they would not be able to put in enough time, this could be carer's responsibilities discrimination.

The rules and requirements that you have to follow to do your work must be reasonable. They must not unreasonably disadvantage people with a carer's responsibility more than people without a carer's responsibility.

Your employer should also provide any special arrangements you need to do your job at the same time as managing your carer's responsibilities, unless this is not reasonable in all the circumstances. See the list under "What are my rights when I am looking for work?" in the previous column for examples of possible arrangements.

What are my rights in relation to dismissal or threatened dismissal?

In general, your employer can only dismiss you or make you redundant because of your carer's responsibilities if they stop you from doing the essential parts of your job properly, and it would cause them unjustifiable hardship to make special arrangements that would mean that you could do the essential parts of your job.

For more information about possible arrangements and what is meant by unjustifiable hardship, see *What are my rights when I am looking for work?* in the previous column.

What are my rights in relation to harassment?

You have the right to work in a harassment-free environment throughout your employment, from applying for a job to leaving the job. You must not be harassed because of your carer's responsibilities by your employer, your co-workers, a union representative or a client.

Victimisation is also against the law

It is against the law for anyone to hassle or victimise you or treat you unfairly because:

- you have complained to your employer or another person about carer's responsibilities discrimination;
- you have complained to the Anti-Discrimination Board; or
- you have supported someone with a carer's responsibilities discrimination complaint, or acted as a witness in a carer's responsibilities discrimination case.

You can lodge a separate complaint of victimisation with the Anti-Discrimination Board if you have been victimised because of a carer's responsibilities discrimination complaint.

What can I do if I'm treated unfairly or harassed because of my carer's responsibilities?

First you need to work out if what has happened to you seems to be against the law. If you are not sure after reading this factsheet, phone our Enquiry Service for more information.

If what's happened to you does seem to be against the law, you should try talking to your employer or the person involved. Your employer may have a policy on these issues or a process for dealing with grievances, and you may be able to address your problem through these channels. You can also get help from other sources such as trade unions.

If you don't feel able to talk to the person or your employer, or you talk to them but it doesn't solve the problem, you can make a complaint to the Anti-Discrimination Board. It won't cost anything to make a complaint, and you don't need a lawyer.

If what has happened to you is not against the law, there may be other ways you can solve the problem. Refer to our factsheet *How to deal with discrimination, unfair treatment or harassment* or phone our Enquiry Service for advice.

Making a complaint

Your complaint must be in writing. You can make a complaint by completing our discrimination complaint form, which is available on our website or from our Enquiry Service. Another option is to write to the President of the Anti-Discrimination Board, explaining what happened and why you think you have been discriminated against because of your carer's responsibilities (as defined in this factsheet). Our addresses and phone numbers are at the end of this factsheet.

You can write to us in any language, or in Braille, and we will have your complaint translated free of charge. If you need assistance to write your complaint down, phone us and we will help you or refer you somewhere else for help.

We also accept complaints made on your behalf by organisations such as trade unions and representative community groups (for example a carer support group). In this case you must be named in the complaint and

it must be clear in the complaint that you agree with it being made. You may also be asked to show that you consent to the complaint being made on your behalf.

If you want to make a complaint on behalf of a child or a person with a disability who cannot make their own complaint, contact us for more information.

The Board can only accept a complaint if the discrimination or harassment occurred in the twelve months before we receive the complaint. If you make a complaint about events that occurred more than twelve months before we receive it, we may not investigate the complaint.

If your problem is urgent (for example you are about to lose your job), make this clear in your complaint and we will try to help you quickly.

What happens after you make a complaint?

We will generally investigate your complaint to make sure that what has happened to you is against the law. If this is the case, we will try to conciliate your complaint. This means we will try to help you and the person or organisation you are complaining about to reach a private settlement that you both agree on. The Board is impartial in this process and does not take sides.

The settlement will depend on the circumstances of your case, on what the other parties are willing to offer and what you are willing to accept. It could be an apology, financial compensation, your job back, changes to your working arrangements, and so on.

We treat all complaints confidentially, but we have to inform the employer or person you are complaining about of the complaint. This is so we can give them a fair chance to respond to your complaint. We will not release information about your complaint to anyone else except with your permission or if we are required to by law.

Most complaints are conciliated. If yours isn't, you may go to the Equal Opportunity Division of the Administrative Decisions Tribunal, which is like a court. It provides a legal judgment that must be followed. Very few cases need to go to the Tribunal and in some circumstances you can ask for your details to be kept confidential.

Examples of carers' responsibilities discrimination complaints we have handled

A woman complained that she had changed shifts at work so she could pick up her children after a sporting event when her husband was unable to do so, but she was not allowed to leave at the end of her shift. She said her supervisor abused her and cast aspersions on her husband when she told him why she had to go. In conciliation and subsequent negotiation, it was agreed that the supervisor would apologise, the leave she took because of the case would be refunded, and she would receive a payment for lost shift allowances and other expenses.

A man complained that his employer refused his request to take five weeks accrued annual leave so he could care for his preschool daughter while his partner was overseas. The employer said this was because of operational requirements. After the Board wrote to the employer, the request was reconsidered and the man was granted approval to take the leave.

A teacher complained that the principal at her school knocked back her request to take leave without pay for two days a week while her husband, who was in the armed forces, was away from home. She said the principal told her that he didn't believe in leave without pay for carers' purposes. The complaint was settled when the school agreed in conciliation to return the long service leave the complainant had been forced to take, and pay her financial compensation.

A woman who worked as the assistant manager of a retail outlet of a major company complained that they refused her request to work part-time to care for her small baby after she returned from maternity leave. The complaint was resolved when the employer offered her a job-share position as the manager of at one of its other outlets. This was a promotion so the complainant was very happy with the outcome.

A husband and wife who were employed as process workers on alternate shifts complained that their employer discriminated against them because their request for more flexible start and finish times was refused. They shared responsibility for the care of their young child and wanted some overlap between shifts to provide continuity of care. The complaint was resolved when the employer's Manager of Human Resources contacted the Board for advice, and was then able to reach agreement with the couple about their start and finish times.

A man who was the primary carer for his wife complained that he was transferred to a new work location from which it took him an hour to get home. His wife had epilepsy and regularly had severe seizures, so he sometimes needed to leave work urgently and return home to look after her. There was some dispute about whether there were jobs available at the closer location and whether the complainant had applied for them. The complaint was resolved when the employer offered to transfer the complainant back to the closer work location, firstly on a temporary basis and later permanently.

A woman who cared for her elderly mother complained that her employer refused her request to take a combination of leave in order to have every Friday off. She had to take her mother to various medical appointments and tried to organise these so they were all on Fridays. The employer said that using leave like this indefinitely was not possible, but they had offered the woman various other options including part-time work which she had rejected. The complaint was resolved when the woman was given permission to continue to take leave to cover the absences for a fixed period of time.

The Anti-Discrimination Board of NSW

Enquiries

Phone (02) 9268 5544

Toll free number 1800 670 812

(if you are calling from rural or regional NSW)

TTY (02) 9268 5522

Email: adbcontact@agd.nsw.gov.au

Complaints

Phone (02) 9268 5544

Toll free number 1800 670 812

(if you are calling from rural or regional NSW)

TTY (02) 9268 5522

Email: complaintsadb@agd.nsw.gov.au

Website

www.lawlink.nsw.gov.au/adb

Sydney

Level 4, 175 Castlereagh Street, Sydney NSW 2000

PO Box A2122, Sydney South NSW 1235

Phone (02) 9268 5555

Fax (02) 9268 5500

TTY (02) 9268 5522

Wollongong

84 Crown Street, Wollongong NSW 2500

PO Box 67, Wollongong NSW 2520

Phone (02) 4224 9960

Fax (02) 4224 9961

TTY (02) 4224 9967

Newcastle

Level 3, 97 Scott Street, Newcastle NSW 2300

PO Box 1077, Newcastle NSW 2300

Phone (02) 4926 4300

Fax (02) 4926 1376

TTY (02) 4929 1489