



## Discrimination and unlawful dismissal

### Can dismissal of employees still be unlawful?

Under the federal government's recently introduced *WorkChoices* legislation, employers who employ fewer than 100 employees (including part-time and regular casual employees of more than 12 months) are exempt from federal unfair dismissal laws. The legislation also limits the ability of employees and unions to contest redundancy decisions made by employers.

This may lead to an increase in alternative claims of unfair dismissal, including claims brought under federal and state anti-discrimination laws and occupational health and safety laws, which have not been specifically excluded under *WorkChoices*.

Employers and employees should be aware that many types of dismissals remain unlawful in NSW.

### What types of dismissal are against the law in NSW?

It is generally unlawful to dismiss a person in NSW on the basis of any of the following:

#### ■ Sex discrimination

because a person is male or female – for example because of unsupported assumptions about what a man or woman can or can't do.

#### ■ Pregnancy discrimination

because a woman is pregnant.

#### ■ Race discrimination

because of a person's race, colour, ethnic background, ethno-religious background, descent or nationality.

#### ■ Age discrimination

because of a person's age – for example, because of unsupported assumptions about what an older or younger person can or can't do. It is also generally unlawful to force a person to retire at any particular age.

#### ■ Marital status discrimination

because a person is single, married, living in a de facto relationship, divorced or widowed.

#### ■ Homosexual discrimination

because a person is lesbian or gay, or someone thinks they are lesbian or gay.

#### ■ Disability discrimination

because a person has a disability, or someone thinks they have a disability, or they had a disability in the past, or you think they may have one in the future. Disability includes physical, intellectual and psychiatric disabilities, learning and emotional disorders, and any organism capable of causing disease (for example, HIV).

#### ■ Transgender (transsexual) discrimination

because a person is transgender or someone thinks they are transgender, that is, they live or seek to live as a member of the opposite gender (sex) to their birth gender.

#### ■ Carers' responsibilities discrimination

because a person has responsibilities to care for or support certain children and adults, or someone thinks they have these responsibilities. This includes responsibility for their child, stepchild, foster child, an adult of whom they are the legal guardian, and immediate family members including their spouse or partner, ex-spouse or partner, parent, grandparent, grandchild and sibling.

#### ■ Discrimination because of who they are related to, or who they associate with

because of the sex, pregnancy, race, age, marital status, homosexuality, disability or transgender status of a person's relative, friend or work colleague.

#### ■ Victimisation

because a person has complained either within their organisation or externally about discrimination or harassment on any of the grounds listed above, or about sexual harassment, or they have assisted another person with a complaint about any of these matters.

## What can happen if NSW anti-discrimination law is breached?

Generally the Anti-Discrimination Board recommends that people who think they have been discriminated against should first try to resolve the problem within the organisation in which it has occurred.

If this is not possible, or does not work, people can lodge complaints of discrimination with the Anti-Discrimination Board. Complaints must be lodged within twelve months of the events that are being complained about.

The Board will assess whether or not the circumstances described in the complaint seem to be against the law. If this is the case, the Board will try to conciliate the complaint.

This means we will help the two parties to reach a private settlement that they both agree on. These parties are referred to as the “complainant” (the person making the complaint) and the “respondent” (the person or organisation against whom the complaint is being made).

Any settlement worked out through the conciliation process will depend on the circumstances of the case, and on what the respondent and complainant are willing to offer and accept. It could be an apology, financial compensation, reinstatement of the employee, an education program to try to ensure it doesn't happen again, and so on.

Most complaints are conciliated. If a particular complaint is not conciliated it may be referred to the Equal Opportunity Division of the Administrative Decisions Tribunal, which is like a court and has public proceedings. It provides a legal judgement that must be followed.

## What is the Anti-Discrimination Board of NSW?

The Anti-Discrimination Board of NSW is part of the NSW Attorney General's Department. It administers the anti-discrimination law.

Staff at the Anti-Discrimination Board:

- deal with complaints of discrimination;
- try to prevent discrimination happening — by educating people about what the anti-discrimination law says and why it is important; and
- report to the Government if they think the law needs changing to help prevent discrimination.

## The Anti-Discrimination Board of NSW

(open weekdays 9am-4.30pm)

### Sydney

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Sydney South NSW 1235  
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### Wollongong

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Wollongong East NSW 2520  
Phone (02) 4224 9960  
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### Newcastle

Level 1, 414 Hunter St  
Newcastle West 2302  
Phone (02) 4926 4300  
Fax (02) 4926 1376  
TTY (02) 4929 1489

### Enquiries

(02) 9268 5544

### Employers Advisory Service

(02) 9268 5544

### Toll free number

1800 670 812

(if you are calling from rural or regional NSW)

### Website

[www.lawlink.nsw.gov.au/adb](http://www.lawlink.nsw.gov.au/adb)

**For more information about rights and responsibilities under anti-discrimination law, including factsheets on all of the types of discrimination listed above, refer to our website at**

**[www.lawlink.nsw.gov.au/adb](http://www.lawlink.nsw.gov.au/adb)**