

Note: Delete this page and following three pages (total 4 pages) once you complete tailoring the template for your own business.

Why do I need this document?

All employers should have an Anti-Discrimination and EEO Policy to enable them to meet their legal obligations under the various state and federal anti-discrimination, freedom of association, employment, equal employment opportunity, vilification and harassment laws.

The Anti-Discrimination and EEO Policy is suitable for use by all Australian employers.

Are there any related documents?

Other related documents are:

Workplace Bullying Policy

Employers should also have a separate Workplace Bullying Policy which has been developed to assist employers to meet their legal obligations under Work Health and Safety Legislation and the Fair Work Act and thereby to eliminate or minimise bullying in the workplace.

Gender Equality in Workplace Policy

Certain employers are required to report to the Workplace Gender Equality Agency on their gender equality outcomes. These employers are: private sector employers, community organisations, non-government schools, trade unions and group training schemes, with **100 or more** staff and higher education institutions regardless of the number of staff they employ.

The policy states the employer's aim to implementing a workplace program which will attempt to eliminate discrimination and contributing to gender equality in employment and in the workplace.

1. What grounds of discrimination are outlawed?

The Fair Work Act (s.351) says an employer must not take adverse action against an employee, or prospective employee, because of that person's race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

Exceptions apply where the discrimination is authorised under a state or territory discrimination law, there are inherent requirements of the particular position concerned or religious grounds.

An employer also must not take adverse action against an employee because of temporary absence for illness or injury.

2. Watch out for discrimination claim instead of unfair dismissal claim

It is becoming increasingly common for a dismissed worker to make a claim under state or federal anti-discrimination legislation, instead of making an unfair dismissal or unlawful termination claim. A complaint may be made to an anti-discrimination tribunal on the basis that the employer's conduct in the dismissal was unlawfully discriminatory.

Unlike unfair dismissal cases, **compensation** awarded under anti-discrimination legislation is **not capped**, leaving the potential for large payouts – see **Getting it wrong**, below.

Anti-discrimination legislation prohibits discrimination, including terminating employment, on various grounds. The legislation also prohibits victimisation of an employee, such as dismissing an employee because they have made a discrimination complaint.

3. Who can bring a claim?

Generally, there are no limitations on who may bring a claim under anti-discrimination legislation.

An employee or contractor may lodge a complaint of discrimination, sexual harassment, vilification or victimisation in employment with the relevant anti-discrimination or EO Commission. The Commission will attempt to resolve the complaint through conciliation. If this cannot be achieved, the complainant has the right to refer the complaint on to the relevant court or tribunal for a formal, public hearing.

The Anti-Discrimination and EEO Policy sets out a complaint handling process that can be followed should a complaint be received, with the aim of resolving it in-house.

Getting it wrong

Recent court cases have reinforced the importance of employers ensuring that their workplace behaviour policies and training are up to date and comply with the law. Getting it wrong can be financially crippling.

In *Richardson v Oracle Corporation Australia Pty Ltd* [2014] FCAFC 82 (15 July 2014) the Full Court significantly increased the damages the employer had to pay to the employee for the sexual harassment she experienced at the hands of a co-worker from **\$18,000 to \$130,000**.

In *Vergara v Ewin* (includes Corrigendum dated 14 November 2014) [2014] FCAFC 100 (12 August 2014), it was held that an employer can be vicariously liable for unlawful conduct of its employees even where that conduct occurs outside the traditional confines of the office/workplace (in this case, at a pub and in a corridor outside the office). The applicant was awarded damages of **\$476,163** for the sexual harassment she experienced over an 8-month period.

Due to the uncapped monetary compensation (in addition to penalties and reinstatement) that may be ordered where there is a finding of adverse action, such as not employing an applicant based in discriminatory grounds, this area continues to be a popular avenue for employees seeking to challenge the employer's decision not to recruit a person.

Pregnancy

The actions of the owners of a child care centre in dismissing a pregnant employee 'strike at the heart' of the protections afforded to employees by the Fair Work Act, in a ruling by the Federal Magistrates Court. The applicant was clearly dismissed because she was pregnant, rather than for the employer's issues regarding her poor performance, which were only raised at the time the applicant's dismissal.

Conversely, if adverse action is taken against a pregnant employee, there will be no breach of the general protections provisions unless the employee's pregnancy was the reason (or a reason) for the taking of the adverse action.

Age

The Federal Circuit Court ruled that an employer who offered part-time work to a full-time worker because the company's policy was that they do not employ any staff who attains the retirement age breached the Fair Work Act because the policy was discriminatory. The employer received penalties totalling **\$29,150**.

General Information

This policy you will create indicates that unlawful conduct under EEO laws will not be tolerated. Further, it provides mechanisms for disciplining those who engage in such acts within the workplace. In addition, the policy also provides formal and informal mechanisms for dealing with any complaints.

Ensure that your employees are aware of the policy, the standards that are expected of them and the consequences for breaching the policy. Training about the policy should take place as part of the induction process for all new employees and in specific training sessions for existing employees.

Your employees should be reminded of the policy on a regular basis. This may involve conducting regular 'refresher' sessions at which employees are taken through the policy or sending out emails in relation to the policy and the locations where employees can access the policy. Reminders should also occur prior to certain events, eg the company end of year function.

The policy should be effectively communicated internally, for example, including the policy in induction manuals, procedure manuals, on notice-boards, together with pay slips, or in internal newsletters and company magazines.

Employers should ensure that they have a separate Bullying Policy, in addition to this Anti-Discrimination and EEO Policy.

How to complete this template

Designed to be customised

It is completely customisable based on your specific requirements.

Include what you must and can comply with

This document should be used in conjunction with your contract of employment, and any specific company procedures and processes. Only include the commitments you are confident you can comply with, make sure you update and review the document regularly.

Important: You may have legal obligations to your employees under an employment or industrial agreement such as an award, workplace agreement or employment contract. Make absolutely certain what's written in this document is consistent with these. If you're unsure what covers your employees, ACFA Members can contact ACFA's workplace advice team on 1300 342 248 or on 02 4340 2000 for further advice/assistance

To complete the template:

1. Using Word's Replace function, search for (INSERT COMPANY NAME) and replace with your company name.
2. Replace (items in brackets) with your own wording.
3. Once you have finished work on the template, delete the introduction/explanation page/s of the document.
4. Update page numbers

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Anti-Discrimination and Equal Employment Opportunity Policy

1. Purpose

- 1.1 (Insert company name), aims to provide an environment where employees and others in the workplace are treated fairly and with respect, and are free from unlawful discrimination, harassment, vilification and bullying.
- 1.2 (Insert company name) aims to ensure that when employment decisions are made, they are based on merit, not on irrelevant attributes or characteristics that an individual may possess. (insert company name) also tries to create a work environment which promotes good working relationships.

2. Commencement of policy

- 2.1 This policy will commence from XX/XX/XXXX. It replaces all other Anti-Discrimination & Equal Employment Opportunity Policies (whether written or not).

3. Application of policy

- 3.1 This Policy applies to employees, agents and contractors (including temporary contractors) of (insert company name), collectively referred to in this Policy as 'workplace participants'.
- 3.2 This Policy is not limited to the workplace or work hours. This Policy extends to all functions and places that are work related. For example, work lunches, conferences, Christmas parties and client functions. Equal Employment Opportunity (EEO) laws apply to all areas of employment, as well as the provision of goods and services.
- 3.3 This Policy does not form part of any employee's contract of employment. Nor does it form part of any other workplace participant's contract for service.

4. EEO laws

- 4.1 Under EEO laws, discrimination, vilification, sexual harassment, bullying and victimisation are unlawful and strictly prohibited.

5. Discrimination

- 5.1 Direct discrimination in employment occurs when a person is treated less favourably than another in their employment because of a reason or ground which is prohibited by law. The prohibited grounds of discrimination are set out in the Federal, State and Territory anti-discrimination laws and include sex, race, age etc. A full list of the grounds of discrimination which operate federally and in the State and/or Territories in which workplace participants undertake their work for (insert company name) will be relevant and are listed below.

- Race (including colour, nationality, descent, ethnic, ethno-religious or national origin)
- Religious belief, affiliation, conviction or activity

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