



General Workplace Protections

Australia's new workplace relations system

From 1 July 2009, most Australian workplaces are governed by a new system created by the *Fair Work Act 2009*.

The Fair Work Ombudsman helps employees, employers, contractors and the community to understand and comply with the new system. We provide education, information and advice, investigate workplace complaints, and enforce relevant Commonwealth workplace laws.

All people working in Australia under relevant Commonwealth workplace laws are entitled to general workplace protections.

The *Fair Work Act 2009* provides protections of certain rights, including:

- workplace rights
- the right to engage in industrial activities
- the right to be free from unlawful discrimination
- the right to be free from undue influence or pressure in negotiating individual arrangements.

These rights are protected from certain unlawful actions, including (but not limited to):

- adverse action
- coercion
- misrepresentations
- undue influence or pressure in relation to:
 - individual flexibility arrangements under modern awards and enterprise agreements
 - guarantees of annual earnings
 - deductions from wages.

What rights are protected under General Protections?

Workplace Rights

The term 'workplace right' is broadly defined under the *Fair Work Act 2009*, and exists where a person:

- is entitled to a benefit or has a role or responsibility under a workplace law, workplace instrument (such as an award or agreement) or an order made by an industrial body

- is able to initiate or participate in a process or proceedings under a workplace law or workplace instrument
- has the capacity under a workplace law to make a complaint or inquiry:
 - to a person or body to seek compliance with that workplace law or workplace instrument
 - if the person is an employee, in relation to their employment.

Industrial activities

All employers, employees and independent contractors are free to become, or not to become, members of an industrial association, such as a trade union or employer association. In addition, all employers, employees and independent contractors are entitled to engage or not engage in what are called 'industrial activities'.

These activities are defined in the *Fair Work Act 2009*. They include various forms of lawful participation in an industrial association (such as a trade union) and its activities, including organising or promoting lawful activities for or on its behalf, representing its views, and seeking to be represented. Further, it covers a person being victimised for refusing to be involved in unlawful activity organised or promoted by an industrial association or industrial action.

For more information on industrial action, including what is protected industrial action, please see the *Fair Work Ombudsman Fact Sheet - Industrial Action*.

Discrimination

Under the *Fair Work Act 2009*, it is unlawful for an employer to take adverse action against a person who is an employee, former employee or prospective employee because of the person's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

For more information on unlawful workplace discrimination, please see the *Fair Work Ombudsman Fact Sheet - Unlawful workplace discrimination*.

What am I protected from?

Adverse Action

Adverse action is action that is unlawful if it is taken for particular reasons. The *Fair Work Act 2009* defines a number of actions as adverse actions.

Adverse action taken by a person includes doing, threatening, or organising any of the following:

- an employer dismissing an employee, injuring them in their employment, altering their position to their detriment, or discriminating between them and other employees
- an employer refusing to employ a prospective employee or discriminating against them in the terms and conditions the employer offers
- a principal terminating a contract with an independent contractor, injuring them or altering their position to their detriment, refusing to use their services or to supply goods and services to them, or discriminating against them in the terms and conditions the principal offers to engage them on
- an employee or independent contractor taking industrial action against their employer or principal
- an industrial association, or an officer or member of an industrial association, organising or taking industrial action against a person, or taking action that is detrimental to an employee or independent contractor
- an industrial association imposing a penalty of any kind on a member.

The *Fair Work Act 2009* prohibits a person from taking adverse action against another person because that person:

- has a workplace right
- has or has not used a workplace right
- proposes to, or proposes not to, use a workplace right
- does or does not belong to a trade union
- engages or does not engage in industrial activity (as set out previously).

Adverse action does not include:

- action that is authorised by or under the *Fair Work Act 2009* or any other Commonwealth law
- an employer standing down an employee who is engaged in protected industrial action
- an employer standing down an employee who is employed under a contract of employment that provides for the employer to stand down the employee in the circumstances.

Coercion

It is unlawful for a person to organise or take action (or threaten to) with the intent to coerce another person or third party to:

- use or not use a workplace right, or use it in a particular way
- take part in industrial activity
- employ or not employ a particular person
- engage or not engage a particular independent contractor
- allocate or not allocate certain duties or responsibilities to a particular employee or independent contractor
- give a particular employee or independent contractor certain duties and responsibilities.

Misrepresentations

A person must not knowingly or recklessly make a false or misleading representation about:

- the workplace rights of another person
- the use, or the effect of the use, of a workplace right by another person
- another person's obligation to take part in industrial activity
- another person's obligation to tell anyone whether they, or a third person:
 - is or is not an officer or member of an industrial association
 - is or is not taking part in industrial activity.

Undue influence or pressure

Undue influence or pressure is when an employer exerts significant or inappropriate pressure on an employee to modify or alter their conditions of employment.

It is unlawful for an employer to force or try to force an employee to:

- make or not make an agreement or arrangement under the National Employment Standards (which commenced operation from 1 January 2010)
- make or not make an agreement or arrangement under a term of a modern award or enterprise agreement that is permitted to be included in the award or agreement
- agree to or terminate an individual flexibility arrangement under an enterprise agreement or modern award
- accept a guarantee of annual earnings
- agree or not agree to a deduction from amounts payable to the employee in relation to the performance of work.

The undue influence or pressure or coercive behaviour can be unlawful even if it does not succeed in making the person take or not take the action.

How can I seek help for a general protections contravention?

There are a number of avenues a person can pursue if they believe they have been subject a general protections contravention.

A person who believes they have been subject to a general protections contravention can lodge a complaint with the Fair Work Ombudsman.

A complaint can be lodged in three ways:

- online – electronically by visiting www.fwo.gov.au
- by post – you can obtain a hard-copy complaint form by contacting the Fair Work Infoline on 13 13 94, or download the form from www.fwo.gov.au
- in person – at any of the Fair Work Ombudsman's 26 locations around Australia. To locate your nearest office, please visit www.fwo.gov.au

The Fair Work Ombudsman can investigate allegations of contraventions of the general protections provisions. Where identified, the Fair Work Ombudsman can initiate legal action for penalties of up to \$6,600 for an individual, or \$33,000 for a corporation.

Fair Work Australia can also deal with alleged contraventions of the general protections provisions.

There are two main types of applications:

- disputes – if a person has not been dismissed, but alleges that there has been some other contravention of the general protections provisions, they may make an application to Fair Work Australia to deal with the dispute
- dismissals – if a person believes they have been dismissed and alleges that their dismissal was in contravention of the general protections provisions, they should make an application to Fair Work Australia to deal with the dismissal in the first instance. A general protections dismissal application must be lodged within 60 days of the dismissal taking effect.

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: **13 13 94**

Monday to Friday, between 8.00am–6.00pm

Fair Work Australia website: www.fwa.gov.au

FWA Help Line: **1300 799 675**

Monday to Friday, between 9.00am–5.00pm

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

- For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94
- Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94