

# Building eQuality in the workplace

## Breastfeeding

### What the Law says:

It is against the law to discriminate against an employee because they need to breastfeed or express milk. In Victoria, employers are also liable (legally responsible) for the behaviour of their staff. This means that complaints can be made against the employer, as owner of the organisation, for the discriminatory conduct of employees.

### Discrimination against employees who breastfeed or express milk includes:

- sacking or demotion
- denying or limiting access to promotion, transfer, performance bonus pay, training or other benefits
- unreasonable workplace policies, practices and procedures that they cannot comply with compared with other employees
- failing to accommodate employees who need to breastfeed. Accommodation includes rostering breaks and providing areas for breastfeeding.

### Equal Opportunity laws apply to:

- all stages of employment, including recruitment, dismissal and retrenchment
- full time, part time, casual, temporary workers, probationary workers, those on commission, or job applicants.

### Recruitment

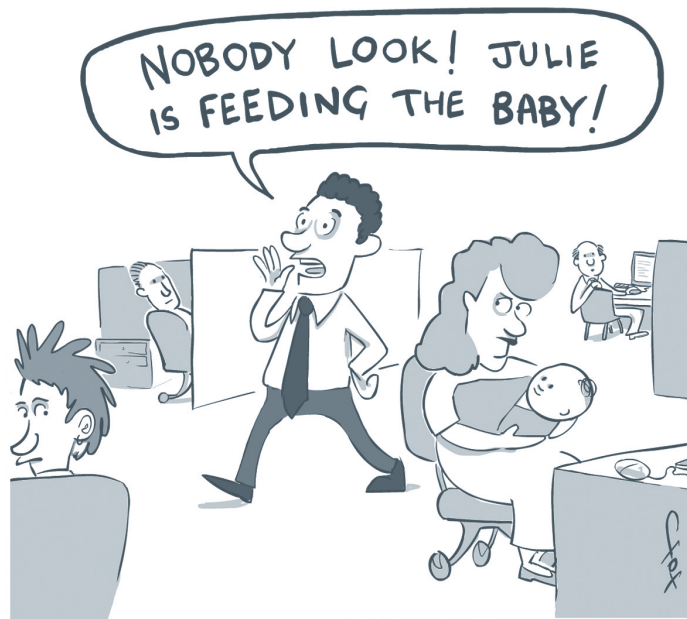
A job applicant should be assessed on her ability to do the job, not whether or not she needs to breastfeed or express milk at work.

However an employer may choose not to recruit an employee who needs to breastfeed or express milk because:

- they are unable to perform essential tasks and it is unreasonable to modify the role
- she or the baby will be affected by occupational health and safety issues that cannot be addressed
- the position is temporary and requires the completion of a project within a timeframe which she cannot meet.

### Tips to avoid breastfeeding discrimination in recruitment

- ✓ avoid personal questions about breast feeding and milk expression; instead, ask about the employees ability to complete a project within a give timeframe
- ✓ avoid assumptions about what women who need to breastfeed can and can't do; instead ask about the applicant's skills and abilities
- ✓ select the person best suited to the job.



## Tips to avoid breastfeeding discrimination in the workplace

- ✓ develop and promote an equal opportunity policy to ensure all staff are aware of their rights and responsibilities
- ✓ address any general occupational health and safety issues and those specific to workers who need to breastfeed or express milk
- ✓ consult with any employees who need to breastfeed or express milk about the possibility of making adjustments to the workplace environment and structure such as altering break times and providing a designated area for breastfeed and expressing milk. Note: Sometimes the specific requirements of a workplace make it unreasonable for the employer to make these arrangements
- ✓ only ever sack an employee for poor work performance; document unsatisfactory work performance and discuss it with the employee, and include steps they can take to address the issue.

## Case Study

Anne is a stockbroker and has brought her 9 month old baby to work because the babysitter is ill. Anne begins feeding the child at her desk and is promptly asked by her manager to move into a broom cupboard and remain there while feeding the child.

This directive may constitute less favourable treatment and Anne could make a discrimination claim. This situation could be avoided by the provision of an adequate area within the workplace for women to breastfeed and express milk in comfort and privacy.

## Health and Safety

It's against the law to sack a worker who breastfeed or expresses milk because of assumed health and safety risks in the workplace. Health and Safety risks rarely affect only employees who need to breastfeed or express milk and employers must make reasonable adjustments to accommodate the health and safety of all their workers.



For more information on employers' general rights and obligations, case studies and tips on avoiding discrimination in the workplace visit our website [www.humanrightscommission.vic.gov.au](http://www.humanrightscommission.vic.gov.au)

## More Information

The Victorian Equal Opportunity & Human Rights Commission offers training and education consultancy services in equal opportunity policies and practices. Training can be delivered onsite throughout Victoria or at our training centre in Melbourne. Please telephone **(03) 9281 7168** for more information.

The Commission also offers a free telephone advice service.

**Disclaimer** This information is intended as a guide only. It is not a substitute for legal advice.



**Victorian Equal Opportunity  
& Human Rights Commission**

**3/380 Lonsdale Street Melbourne Victoria 3000**

Advice Line: **(03) 9281 7100** · Phone: **(03) 9281 7111** · Fax: **(03) 9281 7171**

TTY: **(03) 9281 7110** · Toll Free: **1800 134 142** (country callers) · Interpreters: **(03) 9280 1995**

Email: **information@veohrc.vic.gov.au** · Website: **www.humanrightscommission.vic.gov.au**

Authorised by the Victorian Equal Opportunity & Human Rights Commission, 3/380 Lonsdale Street, Melbourne, Victoria 3000.

Printed by Printmode 125-123 Thistlethwaite Street, South Melbourne, Vic 3205. June 2008