

Building eQuality in the workplace

Employers' Rights and Obligations

An employer needs to take reasonable precautions to provide a safe work environment free from discrimination and harassment. Creating a discrimination-free workplace not only builds a productive and healthy workplace, but also boosts the pool of potential employees.

Not doing the right thing in the workplace can lead to:

- time consuming legal action for discriminatory behaviour
- expensive legal bills
- damage to your reputation through bad publicity and/or word of mouth
- loss of current and potential business
- lower moral among existing workers

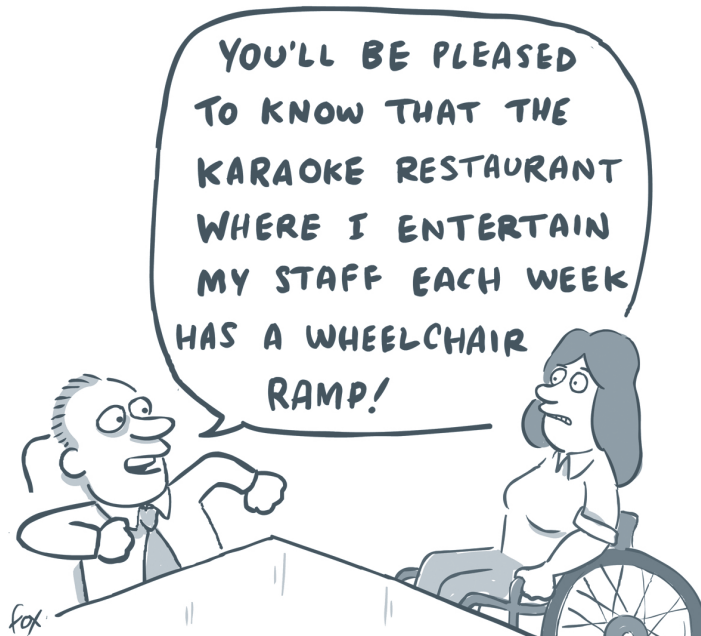
What the law says

It is against the law to treat an employee or potential employee unfairly because of a personal characteristic that is protected under equal opportunity laws. 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.

It is also against the law to have discriminatory and unreasonable workplace policies, practices and procedures that are difficult for an employee to comply with because of their personal characteristics.

Under the Equal Opportunity Act it is against the law to discriminate against people on the basis of:

- Age
- Breastfeeding
- Carer status
- Disability/impairment
- Employment activity
- Gender identity
- Industrial activity
- Lawful sexual activity
- Marital status
- Parental status
- Physical features
- Political belief/activity
- Pregnancy
- Race
- Religious belief/activity
- Sex
- Sexual orientation
- Personal association with someone who has, or is assumed to have, any of these characteristics



Tips on creating eQuality in the workplace

- ✓ Develop and promote an equal opportunity policy
- ✓ Obtain active executive management support
- ✓ Train all staff to identify and prevent workplace discrimination and sexual harassment
- ✓ Establish an effective internal complaints handling procedure
- ✓ Monitor the workplace environment and culture and regularly review equal opportunity strategies.



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When the laws apply:

Equal Opportunity laws apply to:

- sacking or demotion
- denying or limiting access to promotion, transfer, performance bonus pay, training or any other benefits
- unreasonable workplace policies, practices and procedures that employees cannot comply with compared with other employees.

All stages of employment are covered including:

- recruitment
- workplace conditions
- retrenchment and dismissal

Exceptions to the law

In limited situations, an employer can discriminate against a worker because of a genuine and reasonable job requirement. For example, an employer can discriminate against a worker on the basis of disability if they cannot perform essential tasks and it causes unjustifiable hardship on the business to make the special adjustments needed.

When considering whether a work requirement is reasonable, an employer needs to take into account:

- whether it is essential to the tasks and responsibilities of a position
- the effect on other workers if an employee cannot comply
- the financial cost of adjusting to a worker's needs
- the size and flexibility of the workforce
- any workplace industrial agreement.

Indirect discrimination

Care needs to be taken that less obvious forms of discrimination do not occur. Some requirements may appear reasonable but are in fact discriminatory. For example, requiring employees to speak and read fluent English may discriminate on racial grounds if this is not necessary to carry out a job.

Sexual Harassment

Unwelcome conduct of a sexual nature that offends another person is likely to be against the law. Sexual harassment does not just apply to physical behaviour or asking someone for sexual favours. Questions about a person's sex life, comments on physical appearance and constant leering are examples of sexual harassment. Sexually explicit emails or text messages and offensive pornographic posters or calendars are also sexual harassment.



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

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**

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