

Building eQuality in the workplace

Parents and Carers

What the law says

It is against the law to discriminate against an employee who is a parent or carer. 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 workers who are parents and carers includes:

- 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 parents and carers cannot comply with compared with other employees.

Equal Opportunity laws apply to:

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

Tips to creating a flexible workplace

Consider:

- ✓ allowing part-time work, job sharing or working from home
- ✓ changing start or finish times, roster arrangements or break times to accommodate parental and carer responsibilities
- ✓ options for paid and unpaid leave and 'career breaks'. For example, allowing unpaid leave during school holidays
- ✓ allowing last minute absences from work for unexpected events
- ✓ time off in-lieu for extra hours worked

For more information about creating a flexible workplace visit our website www.humanrightscommission.vic.gov.au



Victorian Equal Opportunity
& Human Rights Commission

Recruitment

A job applicant who is a parent or carer should be assessed on their ability to do the job and not on assumptions about the impact of their responsibilities outside work.

Dismissal and retrenchment

Any worker can be sacked if their work is unsatisfactory or the business has genuine financial and operational reasons. For example, irregular attendance can be addressed as a performance issue. But it is against the law to sack or retrench a person because they are a parent or carer.

Tips to avoid parent and carer discrimination in recruitment

- ✓ avoid personal questions about parent or carer responsibilities; instead, ask questions relevant to the job such as about capacity to travel or ability to complete a project within a given timeframe
- ✓ don't make assumptions about an applicant's ability to perform the work based on their parental or carer status
- ✓ select the person best suited to the job.

Tips to avoid discrimination in dismissal or retrenchment

- ✓ only sack an employee for poor work performance or serious misbehaviour.
- ✓ document unsatisfactory work performance and discuss it with the employee, including steps they can take to address the issue
- ✓ accommodate reasonable requests for changed work arrangements.

Case Study

Sheila, a dental nurse, wants to return to work on a job share basis after adopting a child. Her employer refuses and gives no reasons except that the position has always been full-time. She is offered a lower position on a part-time basis or her former position on a full-time basis. Following a complaint to the Victorian Equal Opportunity and Human Rights Commission, the matter is referred to the Victorian Civil & Administrative Tribunal.

The tribunal finds she has been treated unfairly because the requirement to work full-time is incompatible with family responsibilities. The view that the job cannot be shared is based solely on historical fact and the perception of senior management that it will not work. The tribunal orders Sheila's reinstatement to her former position on a job-share basis as well as damages.



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

Case Study

Lindy, an airline customer service manager, returns from maternity leave and asks for a transfer to short haul flights, or part-time rostering. The airline refuses the request. Following a complaint to the Victorian Equal Opportunity & Human Rights Commission, the matter is referred to the Victorian Civil and Administrative Tribunal.

The tribunal finds the number of part-time positions is limited as a result of an Enterprise Bargaining Agreement. It finds discrimination has not occurred on the basis of parental status because the airline is unable to accommodate the request for part-time work because no positions are available at that time.

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.



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& Human Rights Commission**

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