

# Building eQuality in the workplace

## Pregnancy and the workplace

### What the law says

It is against the law to discriminate against a female because she is pregnant or may become pregnant. 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 pregnant workers 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 they 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.

### Recruitment

A pregnant job applicant should be assessed on her ability to do a job, irrespective of whether or not she is pregnant.

However an employer may choose not to recruit a pregnant woman because:

- she is 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.

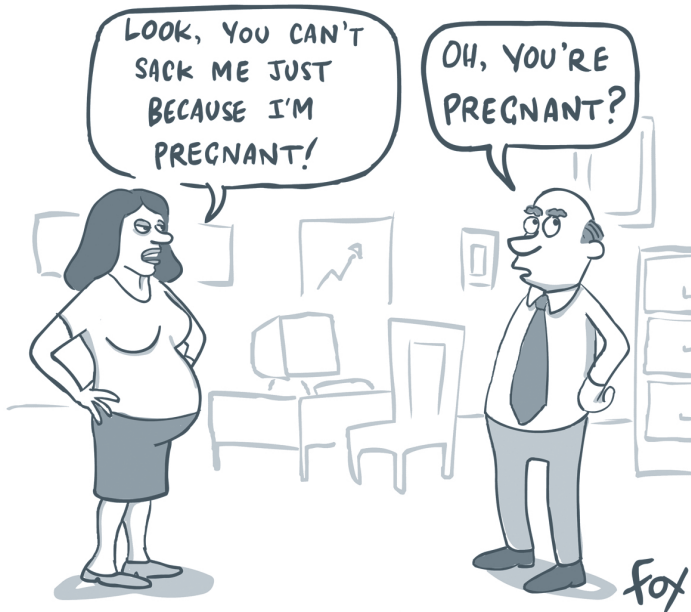
### In the workplace

**Health and Safety** - It is against the law to sack a pregnant worker because of assumed health and safety risks in the workplace. Health and safety risks rarely affect only pregnant women and employers must make reasonable adjustments to accommodate the health and safety of all their workers.

**Maternity leave** - Apart from casual workers, all employees with 12 months continuous service in the one workplace are entitled to 12 months unpaid maternity leave. While employees with less than 12 months continuous service do not have an automatic right to maternity leave, an employer cannot sack a woman because she is pregnant. Given this a pregnant employee may negotiate a period of absence, subject to the needs of the employee and the employer.

Women returning to work after maternity leave are entitled to their previous job or one of equivalent status if the previous position no longer exists. If they were transferred during pregnancy, they are entitled to return to their original position.

**Dismissal and retrenchment** - Any worker can be sacked if their work is unsatisfactory or if the business has genuine financial and operational reasons. But it is against the law to sack or retrench a worker because she is pregnant.



## Tips to avoid pregnancy discrimination in recruitment

- ✓ Avoid personal questions about pregnancy; instead, ask about capacity to travel or ability to complete a project within a given timeframe
- ✓ avoid assumptions about what pregnant women 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 pregnancy 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 pregnant workers
- ✓ consult with the woman about the possibility of making adjustments such as reduced work hours, extra leave, providing seating, extra toilet breaks or larger uniforms. Note: Sometimes the specific requirements of a workplace make it unreasonable for the employer to organise alternative duties for a pregnant employee
- ✓ only sack a pregnant worker for poor work performance; document unsatisfactory work performance and discuss it with the employee, and include steps they can take to address the issue
- ✓ do not assume that a pregnant worker will want to return to a part-time position or will be interested in retrenchment or redundancy
- ✓ if restructuring or downsizing while a worker is on maternity leave, only assess the position, not the person.

## Case study

Janet is sacked the day she tells her employer she is pregnant. Janet has been counselled numerous times about her poor performance and given opportunities and encouragement to improve. Her employer claims the decision to dismiss her had been made the previous week and provides evidence to this effect. Janet makes a complaint of pregnancy discrimination to the Victorian Equal Opportunity & Human Rights Commission. The Commission declines the complaint because pregnancy was not a factor in the decision to dismiss her.



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**

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