

Building eQuality in the workplace

Employment Activity - Employer Guidelines



Discrimination

Discrimination is treating someone unfairly because of a personal characteristic and, as a result, causing them disadvantage. In Victoria, the Equal Opportunity Act 1995 makes it against the law to discriminate against someone because of their actual or assumed personal characteristic, such as:

- Age
- Breastfeeding
- Carer status
- Disability/impairment
- 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

It is now against the law for employers to treat their employees or contractors unfairly because they make reasonable requests and/or communicate concerns about their employment entitlements. This is known as 'Employment Activity'.

This means that if an employee makes a reasonable request about employment entitlements you cannot treat them unfairly or penalise them by:

- cutting their hours or regular overtime
- denying them annual leave
- transferring them to undesirable duties
- not granting a promotion
- not providing them with access to services and training in the workplace
- terminating their employment

It is important to note that this amendment does not compel you as the employer to provide the information requested, it just means that you cannot discriminate against employees for asking for information. It does mean however, that you cannot treat an employee less favourably as a result of them asking for that information.

Examples of requests for information about entitlements

- "What is my rate of pay?" or "How much leave have I accrued?"
- Can I vary my hours to pick up my child from school?
- "Do I have an entitlement to maternity leave?"



Case Study

Barry owns and operates a take away food shop and has three employees. Shirley, one of his employees, asks him if she should be receiving penalty rates for time worked on Saturdays. Soon after this, Shirley's Saturday hours are reduced.

If Shirley believes her hours were cut because she asked about her rate, she can make a complaint of employment activity discrimination to the Victorian Equal Opportunity & Human Rights Commission. Barry may be asked to respond to a complaint of discrimination.

Unreasonable requests

An 'unreasonable' request may be one that is made at an impractical or inappropriate time, or which carries an unrealistic or excessive demand. Requests that are made in a violent or threatening manner may also be unreasonable.

Case Study

Cliff works as an auto electrician for Rodger, the owner of a medium-sized auto repair garage. Cliff wants to bring in a health and safety code of conduct at the workplace, so he calls Rodger at home on Sunday afternoon and asks him for a report of all the accidents that have taken place at the business in the last five years. This request does not relate to employment entitlements, and it may be unreasonable because it was made at an inappropriate time i.e. outside work hours.

Liability

As an employer you are not only liable (legally responsible) for your own actions but also for the behaviour of your staff. This is called vicarious liability.

Case Study

Maria owns a car detailing business with four outlets. Rob, the manager of one of the outlets, is asked by an employee about carer's leave. Rob responds by cutting the employee's hours. The employee then makes a complaint of employment activity discrimination to the Victorian Equal Opportunity & Human Rights Commission. Although the employee names Rob and the business in the complaint, Maria discovers she is liable for Rob's behaviour as she is his employer. The complaint of discrimination affects both Ron and Maria.

About the Victorian Equal Opportunity & Human Rights Commission

The Victorian Equal Opportunity & Human Rights Commission helps people resolve complaints of discrimination, sexual harassment, and racial or religious vilification by offering a confidential, free and impartial complaint resolution service with the aim of achieving a mutual agreement.

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

More Information and resources

As an employer, it is your responsibility to know your employees' entitlements and to ensure that you are providing them correctly.

If you are unsure about these or any related issues, contact any of the services below for information.

- Workplace Infoline - **1300 363 264**
- Workplace Rights Advocate - **1300 882 648**
- JobWatch - **(03) 9662 1933** (Metro) or **1800 331 617** (Regional)
- Victorian Economic Chamber of Commerce and Industry - **(03) 8662 5333**
- Australian Industry Group - **(03) 9867 0111** (Melbourne)
- Victorian Automotive Chamber of Commerce - **(03) 9829 1111**
- Small Business Victoria - **13 22 15**



**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.humanrightscormission.vic.gov.au**

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