



Equal Opportunity Tasmania

Myths about Discrimination

Complaints

- A complaint can be made at any time.
 - A person has 12 months from the date of the discrimination to lodge a complaint with the Anti-Discrimination Commissioner. Discrimination that happened more than 12 months ago can be complained about but will require permission from the Commissioner to do so.
- A complaint can be made anonymously.
 - A person who believes they have been discriminated against or harassed can elect to make a formal complaint by completing a complaint form or by completing a report it form. A complaint cannot be anonymous but a report it form can.
- The protected attribute (race/gender/family responsibilities/disability) must be the only reason for the discrimination or harassment.
 - The law says that the reason for the discrimination or harassment does not have to be the sole or dominant reason for the alleged treatment.
- The person discriminating or harassing must know they are discriminating or harassing and intends to discriminate or harass.
 - The law says that intention is not relevant, that it is not necessary that the person who discriminates regards the treatment as unfavourable or has any particular motive in discriminating.
- Discrimination or harassment is against the law in any situation.
 - The law says that for discrimination to be unlawful, it has to be in connection with an area of public life, for example, at work, at an educational or training place, where services are provided or facilities or goods are provided, domestic and commercial accommodation.

Race

- It is not possible for a person to discriminate against someone of the same race.
 - The law says it is unlawful to discriminate against a person on the basis of race and this can include treating a person of the same race less favourably.

- Giving a person a nickname cannot be considered discriminatory.
 - The law says if an employee is given a nickname because their name is too ethnic to pronounce or to anglicise their name this could be discrimination.
- Employees are not permitted to speak to each other at work in a language other than English.
 - The law says employers can require employees to speak English only at work if they can show that doing so is a business necessity, for example for safety reasons.
- People on visas cannot make complaints of discrimination or only permanent residents or citizens can complain.
 - The law says that a person against whom the alleged discrimination or prohibited conduct was directed can complain. The definition of race in the Act includes the status of being or having been an immigrant.
- Racial discrimination has to be deliberate and intentional.
 - The law says racial discrimination can be demonstrated by rules or practices that are unreasonable in the circumstances and disadvantage a person or group of people who share the attribute of race more than a person or a group of people who don't have the attribute of race. Racial discrimination can include what's referred to as 'casual racism' for example, joke telling, disapproving glances, exclusionary body language, and marginalising people's experiences as invalid.
- Racism only affects those people who are subjected to racism.
 - Racism affects everyone, it is a cost to the community and has negative effects on everyone.

Family Responsibilities

- Only women can request flexible working arrangements.
 - The law says any employee has the right to request flexible working arrangements.
- Family responsibilities only applies to women caring for children.
 - The law says family responsibilities can relate to any gender and includes caring for a partner or spouse, parents, grandparent or grandchild, siblings, a partner.
- Employers can ask a woman if she is planning to have children soon or if she has children.
 - The law says this may be less favourable treatment on the basis of gender, parental status and/or family responsibilities.

Disability

- An employee with disability has to request reasonable adjustments (changes to assist the employee to do their work or parts of their work) from their employer.
 - The law says that an employer is obliged to consider reasonable adjustments if an employee discloses a disability.
 - The law says that if the adjustment is found to be an unjustifiable hardship it may not be reasonable and an employer may have a defence to the discrimination.

Sexual Harassment

- Only women can be sexually harassed.
 - The law says that anyone can be sexually harassed.
- Sexual harassment only happens between a man and a woman.
 - The law says that people of the same gender or of different genders can be sexually harassed.
- The person who is harassed is the only victim.
 - The law says third parties who witness harassment or are around it can also be victims and can also complain.
- Sexual harassment is just about touching.
 - The law says sexual harassment doesn't have to be physical, it can be verbal, by seeing pictures or videos on a screen and can be about comments or actions towards and about third parties.
- Only intentional harassment is unlawful.
 - The law says intention to harass is not relevant, but the impact on the person being harassed and a reasonable person looking at all the circumstances is relevant.
- It can't be sexual harassment if the harasser was only joking.
 - The law says that even though a person intends the conduct to be funny, it may still be offensive to others and may be found to be sexual harassment.
- The behaviour must be repeated to be sexual harassment.
 - The law says sexual harassment can be repeated or it may be just a single incident.

Victimisation

- Any type of victimisation can be complained about.
 - The law says that for a complaint of victimisation to be actionable, it has to be connected to certain actions set out in the victimisation provision of the Anti-Discrimination Act. What might appear to be victimisation could be discrimination or offensive conduct.

If you have any questions, contact us on 6165 7515 or 1300 305 062 or e-mail:

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Embracing Equality