

Equal Opportunity – your rights and responsibilities

Main topics:

- Getting an understanding of equal opportunity
- The law and equal opportunity
- Discrimination and sexual harassment
- Preventing equal opportunity complaints
- More information and support

The basics:

- everyone in your workplace should know their rights and responsibilities
- choose equal opportunity policies which are best suited to your business
- employers must take steps to prevent discrimination and sexual harassment

Getting an understanding of equal opportunity

As an employer, you have a legal responsibility to ensure your workplace is safe and free from discrimination and sexual harassment. **Most** complaints received by the Victorian Equal Opportunity and Human Rights Commission are **employment-related** and could have been avoided with the right procedures.

There are also benefits to having a workplace free from discrimination and sexual harassment. Workers are more likely to have better morale and be more productive if they feel safe and supported. Staff turnover and recruitment costs are reduced, as are staff complaints, disruptions and legal disputes.

The law and equal opportunity

The legislation and who's covered

Equal opportunity in the workplace is covered by two Victorian laws: the *Equal Opportunity Act* and *Racial and Religious Tolerance Act*. It is also covered by five Commonwealth laws: the *Human Rights and Equal Opportunity Commission Act*, *Racial Discrimination Act*, *Sex Discrimination Act*, *Disability Discrimination Act* and *Age Discrimination Act*.

These laws make workplace discrimination and sexual harassment **against the law**. All full-time, part-time, casual, temporary and probationary workers, contractors, workers paid by commission, managers and supervisors have a legal right to be treated fairly in the workplace. Job applicants and probationary employees are also covered by the laws, and in some cases, volunteers. It is also against the law to discriminate against customers or clients.

Exceptions to the law

Under the *Equal Opportunity Act*, there are exceptions which can allow an employer to discriminate legally in certain circumstances. As an example, employers may limit the offering of a job to people of a particular sex if being that sex is a genuine and reasonable job requirement.

However, employers should be aware that relying on an exception may **not** necessarily prevent a discrimination complaint being made against them.

To decide if a work requirement is reasonable, you need to consider:

- if it's essential to the tasks and responsibilities of the job
- if any alternatives exist
- the effect on other workers if the employee can't perform the work
- the financial cost of adjusting to the employee's needs
- the size and flexibility of the rest of the workforce
- any workplace employment agreement

Did you know?

The *Workplace Relations Act 1996* also covers discrimination at work.

Businesses with 100 or more employees also come under the *Equal Employment Opportunity for Women in the Workplace Act 1999*.

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Discrimination and sexual harassment

It is against the law to treat an employee less favourably because of a personal characteristic which is **protected** under equal opportunity laws. These include:

- age
- physical features
- sex
- gender identity
- lawful sexual activity
- sexual orientation
- race
- disability
- marital, parental and carer status
- pregnancy and breastfeeding
- industrial activity
- political belief or activity
- religious belief or activity
- employment activity (making a reasonable request for information about entitlements or expressing a concern about receiving entitlements)
- personal association with someone who has, or is assumed to have, one of these personal characteristics

Discrimination can also occur even if the person once had, may in the future have, or is assumed to have, one of these protected characteristics. It may also occur where **assumptions** about a person with one of these characteristics are made e.g. if an employer doesn't offer work trips to employees with children because of the assumption that parents can't be away from their families.

It's also against the law to have workplace policies which an employee may find it hard to comply with if they have one of the above protected characteristics.

People who believe they have been discriminated against can make a complaint to the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) or the federal Human Rights and Equal Opportunity Commission (HREOC).

When can discrimination happen?

At recruitment time: e.g. job advertisements, interview questions, who is offered a job, who is refused a job, setting the terms of employment

During employment: e.g. allocation of shifts, treatment of employees, opportunities for promotion, transfers, training and professional development

When dismissal is being considered: e.g. termination of employment or contract, retrenchment, redundancy, not giving a contractor further work

When can indirect discrimination happen?

Indirect discrimination occurs when people are treated the same, but a person with one of the protected characteristics is disadvantaged. It usually involves imposing an unreasonable condition or requirement on someone with a personal characteristic which the person can't meet or has difficulty meeting.

As an example, to make it a condition of employment that employees must read and speak fluent English when this is not necessary to do their jobs, may discriminate against individual employees because of their racial background.

■ Bullying

WorkSafe Victoria sees bullying as a hazard in the workplace. If bullying related to a protected characteristic occurs at your workplace, it should be reported as an act of discrimination.

For answers to enquiries about bullying, call the WorkSafe Advisory Service on 1800 136 089.

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Discrimination due to parent and carer responsibilities

From 1 September 2008 changes to the Victorian *Equal Opportunity Act 1995* will mean employers are required to consider seriously an employee's request for changes in their working arrangements to help them balance their parental and carer responsibilities. Changes can mean: changing the days of work, making working arrangements more flexible, or providing a phone or child-care room at the workplace. Employers who unreasonably refuse to make changes to working arrangements may be discriminating against their employees.

To work out if such a change request is reasonable, employers should consider:

- personal circumstances including parent or carer responsibilities
- the employer's financial circumstances
- size and nature of the workplace and business
- the effect these changes will have on the workplace and the business

For more details see **Employer Guidelines** and **Employee Guidelines** on the Victorian Equal Opportunity and Human Rights Commission website.

Sexual harassment

Sexual harassment is unwelcome behaviour of a sexual nature where a person is likely to be offended or humiliated. It doesn't just apply to physical behaviour or asking someone for sexual favours, but can also include questions about a person's sex life or comments on their physical appearance. Constant leering, explicit emails or text messages and displaying pornographic pictures are also considered sexual harassment. Sexual harassment can occur at the workplace and also during work-related activities away from the normal workplace e.g. at social functions, during off-site training or work-related travel.

People who believe they've been sexually harassed can make a complaint to the Victorian Equal Opportunity and Human Rights Commission, or the Commonwealth Human Rights and Equal Opportunity Commission.

Racial and religious vilification

Vilification is public behaviour that incites hatred or ridicule of others because of a personal characteristic. Vilification aimed at a person's race or religion is illegal in Victoria. Employers can be held responsible for such conduct unless they can show reasonable precautions were taken to prevent this behaviour.

People who believe they are a victim of racial or religious vilification can make a complaint to the Victorian Equal Opportunity and Human Rights Commission, or the Commonwealth Human Rights and Equal Opportunity Commission.

■ Get the message out

Help your employees get the message about their rights and responsibilities by:

- including a copy of your equal opportunity policies in your induction kit
- getting some posters and brochures printed for your staff areas
- for larger organisations, posting equal opportunity news on your intranet

Victimisation

Victimisation is treating people badly. It is illegal to victimise someone for:

- complaining of discrimination, sexual harassment or vilification
- indicating they will be making such a complaint
- supporting someone who's making a complaint, providing information in the investigation of a complaint, or attending a conciliation conference
- refusing to engage in behaviour which opposes anti-discrimination law

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Write your own policy

The Business Victoria website has a **Human Resources Manual Template** which includes an equal opportunity policy.

Go to:
business.vic.gov.au/mybusinessmypeople

Vicarious liability:

As an employer, you're legally responsible for the behaviour of your employees. So, you can be legally responsible if one employee makes a complaint against another employee. This legal responsibility is known as 'vicarious liability'.

You can reduce the risk of vicarious liability by having:

- a clearly written and accessible equal opportunity policy
- a procedure for handling complaints that everyone understands

Preventing equal opportunity complaints

Create an equal opportunity policy: your workplace needs a written policy which is openly displayed. If you're writing it from scratch, you should include:

- a clear indication illegal behaviour will not be tolerated
- examples of the kinds of behaviour which are unacceptable
- how employees should react to discrimination and sexual harassment
- how complaints will be handled and escalated when necessary

Educate your staff: staff need to know the details of their equal opportunity policy, what is unacceptable behaviour, and what their rights and responsibilities are. They should be able to identify and prevent discrimination and harassment.

Train an equal opportunity officer: having a trained equal opportunity officer is helpful for everyone. The officer acts as a contact person for employees needing equal opportunity information, or wanting to make a complaint. The Victorian Equal Opportunity and Human Rights Commission runs training sessions for equal opportunity officers.

Know how to handle complaints: always try to handle it internally first. A six-step procedure is detailed in the table below. Your procedure should also be easy to find and confidential for all staff. If your internal approach doesn't work, contact the Victorian Equal Opportunity and Human Rights Commission.

1. Try resolving it internally	A clearly set up procedure helps you to resolve a complaint before it becomes a formal complaint. A complaint should always be taken seriously and everyone involved treated fairly. Aim to resolve it quickly and confidentially.
2. Getting external assistance	If the matter cannot be resolved internally, contact the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) to get free and confidential assistance. Contact details for the VEOHRC are on the last page.
3. Responding to a formal complaint	When a formal complaint has been lodged with the VEOHRC, you will be contacted by an investigator who will remain neutral and keep information confidential. The investigator could ask you for: more information over the phone; a written response addressing the allegations; a site visit or meeting with employees to be organised; evidence to show you've taken action to prevent discrimination and sexual harassment.
4. Resolution of formal complaint	Depending on the outcome of the investigation, the VEOHRC may either, not proceed with ('decline') the complaint, or refer it to the conciliation process.
5. Conciliation: finding an agreement	Working with a conciliator your resolution options may include the following: an apology or reinstatement; financial compensation or a job reference; access to previously denied job opportunities or service; an agreement to change or stop certain behaviour; an agreement to put equal opportunity policies in place; an agreement to take part in equal opportunity training.
6. Last resort: application to VCAT	The last resort is for a complaint to be referred to the Victorian Civil and Administrative Tribunal (VCAT). Applications to VCAT can come from: <ul style="list-style-type: none"> - a person whose complaint has been declined or did not achieve an agreed resolution at the VEOHRC - a party to the dispute ('respondent') who applies to strike out the complaint

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More information and support

What can they help you with?	Organisation	Web address
For all small business and new starter enquiries	Small Business Victoria	business.vic.gov.au
Get more information on equal opportunity in your workplace	Visit the Victorian Consumer and Business Centre Ground Floor, 113 Exhibition Street, Melbourne VIC 3000 Business Victoria 13 22 15 TTY (telephone typewriter) Service (03) 9651 7596	
	For your nearest Victorian Business Centre (VBC) call Business Victoria on 13 22 15	business.vic.gov.au/vbc
Look up licences and permits required by business from state, federal and local governments on the Business Licence Information Service (BLIS)	Business Licence Information Service (BLIS) section of the Business Victoria website	business.vic.gov.au/blis
Search for contact details across all levels of government and business organisations	Contacts section of the Business Victoria website	
Complete the step-by-step guide, Employing People	Step-by-step section of the Business Victoria website	business.vic.gov.au/stepbystep
Get information on equal opportunity, and your rights and responsibilities as an employer	Victorian Equal Opportunity and Human Rights Commission (VEOHRC)	humanrightscommission.vic.gov.au
Search for training sessions on equal opportunity in the workplace	3/380 Lonsdale Street, Melbourne VIC 3000 (03) 9281 7111	
Have your complaint forwarded to the Victorian Civil and Administrative Tribunal	Victorian Civil and Administrative Tribunal (VCAT) 55 King Street, Melbourne VIC 3000 (03) 9628 9900	vcat.vic.gov.au
Get information on bullying in the workplace	WorkSafe Victoria 222 Exhibition Street, Melbourne VIC 3000 1800 136 089	worksafe.vic.gov.au

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