



Pregnancy and breastfeeding discrimination

What does the law say about pregnancy and breastfeeding discrimination?

It is generally against the law in NSW to treat you unfairly or harass you because you are

- pregnant;
- breastfeeding your baby;
- expressing milk; or
- making arrangements to breastfeed or express milk.

It is also against the law to treat you unfairly or harass you because you have a relative, friend, associate or work colleague who is pregnant or breastfeeding.

Pregnancy and breastfeeding discrimination are classified as a type of sex discrimination under NSW law.

Indirect discrimination

Indirect pregnancy and breastfeeding discrimination are also against the law. This occurs when there is a rule or requirement that disadvantages people who are pregnant or breastfeeding more than people who are not – unless it can be shown that the rule or requirement is 'reasonable in all the circumstances'. Some examples of indirect discrimination are included in the following sections.

When does this law apply?

Pregnancy and breastfeeding discrimination are against the law in the following situations:

- **in employment** – when you apply for a job, when you are at work and when you leave a job. This also covers bodies which issue licences to perform particular jobs;
- **when you get or try to get most types of goods or services** – for example, from shops, banks, lawyers, government departments, the police, public transport, local councils, doctors, hospitals and other medical services, hotels, sporting venues and entertainment venues;
- **when you apply to get into or study in any State educational institution**, which includes any government school, college or university;

- **when you rent accommodation** such as houses, units, flats, hotel or motel rooms, caravans or commercial premises; and
- **when you try to enter or join a registered club, or when you get services from one.** A registered club is a club that sells alcohol or has gambling machines.

What are my rights at work?

Pregnancy discrimination

Our statistics show that most discrimination against pregnant women occurs in employment.

Generally, employers must treat pregnant employees the same way as they treat all their other employees. They must do this whether you are permanent, full-time, part-time or casual. They can only treat you differently if there's a legal reason for them to do so.

For example, it is generally against the law to:

- not hire you because they think you might become pregnant;
- dismiss or retrench you because you are pregnant;
- harass you, or allow other employees to harass you, because of your pregnancy;
- not provide you with larger sizes of uniforms – if they normally provide your uniform;
- transfer you to another job 'out of sight' because you're pregnant – unless you willingly agree to the transfer;
- transfer you to another job where they think a pregnant woman will be safer – unless there are valid medical or safety reasons for this;
- deny you training just because you're pregnant;
- stop you being promoted just because you're pregnant; or
- not give you the same or a similar job when you return from maternity leave.

Generally, if you've been working regularly for 12 months with the same employer, you have the right to take maternity leave and return to your job afterwards. For full information about maternity leave, contact your employer, your union or NSW Industrial Relations on 131 628.

Breastfeeding discrimination

It is generally against the law to refuse to make arrangements to assist you to breastfeed at work, if these are reasonable. For example, it may be discrimination if:

- your employer does not provide you with suitable facilities for breastfeeding or expressing milk;
- you are not allowed to organise your work breaks to facilitate breastfeeding or expressing milk;
- your employer insists that you work night shift when other shifts are available that would allow you to continue breastfeeding; or
- you are told that you must wean your baby before you can return to work.

Carers' responsibilities

If you are treated unfairly or harassed at work because you caring for or supporting a child, you may have been unlawfully discriminated against.

For more information, refer to our website and select 'Anti-discrimination law', or ask for our factsheet *Carers' responsibilities discrimination*.

What are my rights in other situations?

It is generally against the law to tell you that you can't go somewhere or do something because you are pregnant, in any of the other situations listed under 'When does this law apply?'; unless there are valid medical or safety reasons why you shouldn't do this.

It's also against the law to harass you for being pregnant in any of these situations. For example, it could be against the law for a restaurant proprietor to tell you that you shouldn't wear a particular type of clothing in their restaurant because you are pregnant, if other customers are wearing similar clothing.

It is also generally against the law to tell you not to breastfeed or express milk in any of the situations listed under 'When does this law apply?'. For example, it could be against the law to tell you not to breastfeed at a sporting facility such as a gym or swimming pool, at a cinema or club, in a shopping mall, in a restaurant or in an aeroplane.

It may be against the law to tell you that you have to breastfeed in a particular place, if this disadvantages you in some way. For example, telling a student that they must breastfeed outside the classroom and therefore miss their lecture may be discrimination.

Victimisation is also against the law

It is against the law for anyone to hassle or victimise you or treat you unfairly because:

- you have complained to your employer or another person about pregnancy or breastfeeding discrimination;
- you have complained to the Anti-Discrimination Board; or
- you have supported someone with a pregnancy or breastfeeding discrimination complaint, or acted as a witness in a pregnancy or breastfeeding discrimination case.

You can lodge a separate complaint of victimisation with the Anti-Discrimination Board if you have been victimised because of a pregnancy or breastfeeding discrimination complaint.

What can I do if I am treated unfairly or harassed because I am pregnant or breastfeeding?

First you need to work out if what has happened to you seems to be against the anti-discrimination law. If you are not sure after reading this factsheet, phone our Enquiry Service for more information.

If what's happened to you does seem to be against the law, you should try talking to the person or organisation involved. The organisation may have a policy on these issues or a process for dealing with grievances, and you may be able to address your problem through these channels. You can also get help from other sources such as trade unions.

If you don't feel able to talk to the person or organisation, or you talk to them but it doesn't solve the problem, you can make a complaint to the Anti-Discrimination Board. It won't cost anything to make a complaint, and you don't need a lawyer.

If what has happened to you is not against the law, there may be other ways you can solve the problem. Refer to our factsheet *How to deal with discrimination, unfair treatment or harassment* or phone our Enquiry Service for advice.

Making a complaint to the Anti-Discrimination Board

Your complaint must be in writing and if possible you should sign it. You can make a complaint by completing our discrimination complaint form, which is available on our website or from our Enquiry Service.

Another option is to write to the President of the Anti-Discrimination Board, explaining what happened and why you think you have been discriminated against because you are pregnant or breastfeeding. Our addresses and phone numbers are at the end of this factsheet.

You can write to us in any language, or in Braille, and we will have your complaint translated free of charge. If you need assistance to write your complaint down, phone us and we will help you or refer you somewhere else for help.

We also accept complaints made on your behalf by organisations such as trade unions and representative community groups (for example a breastfeeding support group). In this case you must be named in the complaint and it must be clear in the complaint that you agree with it being made. You may also be asked to show that you consent to the complaint being made on your behalf.

If you want to make a complaint on behalf of a person with a disability who cannot make their own complaint, contact us for more information.

The Board can only accept a complaint if the discrimination or harassment occurred in the 12 months before we receive the complaint. If you make a complaint about events that occurred more than 12 months before we receive it, we may not investigate the complaint.

If your problem is urgent, for example you are about to lose your job or housing, make this clear in your complaint and we will try to help you quickly.

What happens when you lodge a complaint?

The Board will send you a letter of acknowledgment within two weeks of receiving your complaint, and will assess your complaint to determine if it is covered under the Anti-Discrimination Act.

If this is the case, we will try to conciliate your complaint. This means we will try to help you and the person or organisation you are complaining about to reach a private settlement that you both agree on. The Board is impartial in this process and does not take sides.

The settlement will depend on the circumstances of your case, on what the other parties are willing to offer and what you are willing to accept. It could be an apology, financial compensation, getting your job back, changes to your working arrangements, getting the service you were denied and so on.

We treat all complaints confidentially, but we have to inform the organisation or person you are complaining about of the complaint. This is so we can give them a fair chance to respond to your complaint. We will not release information about your complaint to anyone else except with your permission or if we are required to by law.

Most complaints are conciliated. If yours isn't, you may go to the Administrative and Equal Opportunity Division of the NSW Civil and Administrative Tribunal, which is like a court. It provides a legal judgment that must be followed. Very few cases need to go to the Tribunal and in some circumstances you can ask for your details to be kept confidential.

Examples of pregnancy and breastfeeding discrimination complaints we have handled

- A woman who was a receptionist for a health practitioner complained that when she told her employer she was pregnant, he suddenly became critical of her work performance and she had to go on stress leave. She initially wanted to stay in her position, but eventually decided that this was not viable. The complaint was settled when the employer agreed to provide her with a statement of performance and a payment of \$5,000 for lost wages.
- A young woman lodged a complaint of pregnancy discrimination after her employer sacked her while she was pregnant. The employer had not told the woman she was sacked because of her pregnancy, but there was no other explanation why she was chosen for dismissal above two other young women who began working there at the same time. The employer had said that there was a downturn in business, but had apparently hired more staff soon after the woman was sacked. The complaint was resolved with a financial settlement.
- A woman complained that she was told not to breastfeed her baby while visiting a government-run institution. When we contacted the relevant department, they said that this was contrary to their policy and they would tell the relevant staff member that he or she had been wrong. They also undertook to provide further training to ensure that staff would implement their policy correctly. The complaint was settled as the woman was satisfied with this response.
- A woman complained that the university where she was studying would not make any accommodation for her to breastfeed her baby while sitting her exams. When she told the university authorities that she had made the complaint, they agreed to review their exam policy and incorporate special arrangements for breastfeeding.

The Anti-Discrimination Board of NSW

Enquiries

Phone (02) 9268 5544
Toll free number 1800 670 812
(if you are calling from outside Sydney)
Email: adbcontact@justice.nsw.gov.au

Complaints

Phone (02) 9268 5544
Toll free number 1800 670 812
(if you are calling from outside Sydney)
Email: complaintsadb@justice.nsw.gov.au

Telephone interpreter service

Phone 13 14 50

Website

www.antidiscrimination.justice.nsw.gov.au

Parramatta

Level 7, 10 Valentine Avenue, Parramatta NSW 2150
PO Box W213, Parramatta Westfield NSW 2150
Phone (02) 9268 5555 Fax (02) 9268 5500

Wollongong

84 Crown Street, Wollongong NSW 2500
PO Box 67, Wollongong NSW 2520
Phone (02) 4267 6200 Fax (02) 4267 6261

Newcastle

Suite 5, Level 5, 400 Hunter Street,
Newcastle NSW 2300
PO Box 1077, Newcastle NSW 2300
Phone (02) 4903 5300 Fax (02) 4929 7952

For more detailed information on making a complaint and the complaint process refer to our website and select 'Making a complaint', or ask for our factsheet on *Complaining to the Anti-Discrimination Board*.