



Breastfeeding discrimination

Is it against the law to discriminate against or harass someone because she is breastfeeding?

Yes. It is generally against the law to treat you unfairly or harass you because you are:

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

When is breastfeeding discrimination against the law?

It is against the law to do this:

- **in employment** — when you apply for a job, at work, or when you leave a job;
- **when you get, or try to get, most types of goods or services** — for example, from shops, hotels and entertainment places, banks, lawyers, government departments, doctors, hospitals and sporting facilities;
- **when you apply to get into, or study in, any public educational institution** — government school, TAFE college or university;
- **when you rent accommodation** — for example, a unit, a house, commercial premises, or a hotel or motel room; and
- **when you try to enter or join a registered club, or when you get services from one** — a registered club is any club that sells alcohol or has gambling machines.

What are my rights?

In practice, it is generally against the law to tell you not to breastfeed or express milk in any of the situations listed above. For example, it may be against the law to tell you not to breastfeed in the workplace, 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.

It may be 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.

It can also be against the law to have any rule or policy that disadvantages more women who are breastfeeding than other people — this is called indirect discrimination. For example, it may be against the law to insist that all employees take a lunch break of a particular length, if someone needs to take a longer break in order to breastfeed and can make up the time later — unless the requirement is reasonable for the particular job.

Victimisation is also against the law

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

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

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

What can I do if one of these things happens to me?

Read through this factsheet to check that what's happened seems to be against the law. If you aren't sure if it's against the law, phone us to check on your rights.

If what's happened seems to be against the law, you can try talking to the person or organisation that you think is discriminating against you or harassing you. The organisation may have a policy on these issues and/or a process in place to deal 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 talking to the person or organisation doesn't work, or isn't appropriate, you may decide to make a complaint to the Anti-Discrimination Board. It won't cost you any money for the Board's staff to help you, and you don't need a lawyer.

Making a complaint

If you want to make a complaint, it must be in writing and it is best if it is signed by you. You can either send us a completed discrimination complaints form, or write a letter to the President of the Anti-Discrimination Board, explaining what happened and why you think you have been discriminated against because you are breastfeeding. Our addresses and phone numbers are at the end of this factsheet.

You can write to us in any language, or in Braille. If you need assistance to make a written complaint, phone the Board and we can help you or refer you to an organisation that can help you.

We also accept complaints on your behalf from your lawyer, or organisations such as unions and other representative bodies. However the complaint must make it clear that you agree with the complaint being made and you must be named in the complaint. In some circumstances you may also be required 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, contact the Board for more information.

For us to be able to accept a complaint, the events involving unfair treatment because of breastfeeding must have occurred in the twelve months before the complaint is received by the Board. If you make a complaint about events that occurred more than twelve months before you lodge your complaint, the Board may refuse to investigate your complaint.

If your problem is urgent (for example, you think you are about to lose your job), tell us this in your letter and we will get back to you in time to do what we can to help.

What happens after you make a complaint?

We have the legal power to investigate your complaint, and if it's against the law, to try to conciliate it. This means that we will try to help you and the person or organisation you are complaining about reach a private settlement that you both agree on. The Board is impartial in this process and does not take sides.

Any settlement will depend on the circumstances of your case, and on what you and the other parties are willing to offer and accept. It could be an apology, financial compensation, the person who discriminated against you being reprimanded, awareness training about breastfeeding at your workplace, access to facilities you were previously denied, and so on.

We treat all complaints confidentially, but we will need to inform the organisation or person you are complaining about of the 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 Equal Opportunity Division of the Administrative Decisions Tribunal, which is like a court. It provides a legal judgment that must be followed. However, very few cases need to go to the Tribunal and in some circumstances it's possible to ask the Tribunal to keep your details confidential.

The Anti-Discrimination Board of NSW

(open weekdays 9am-5pm)

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Enquiries (02) 9268 5544

Employers Advisory Service (02) 9268 5544

Toll free number 1800 670 812

(if you are calling from rural or regional NSW)

Website www.lawlink.nsw.gov.au/adb