



## Carers responsibilities discrimination

### Is discrimination because of my carers' responsibilities against the law?

In general, yes — but:

- only in relation to employment; and
- only in relation to your responsibility to care for or support particular children and adults (as listed below), not everyone.

It is also generally against the law to treat you unfairly or harass you in employment situations because:

- someone thinks that you have a responsibility to care for or support any of the people listed below; or
- you had a responsibility to care for or support any of the people listed below in the past, or someone thinks you did; or
- you will or someone thinks you will have a responsibility to care for or support any of the people listed below in the future.

### Which of the people I care for or support are included in this law?

Any of the following — as long as they need your care or support:

- **Your child** — including your own child, your stepchild, your adopted child, your foster child and any child you have a legal responsibility for (for example, you are their legal guardian or authorised carer).
- **The child of your current or ex (former) husband, wife, de facto opposite sex partner or de facto same sex partner** — including their own child, their stepchild, their adopted child, their foster child and any child they have a legal responsibility for (for example, they are their legal guardian or authorised carer).
- **Any adult of whom you are the legal guardian.**
- **Any 'immediate family member'.** This means any of the following:
  - **your husband, wife, de facto opposite sex partner or de facto same sex partner;**
  - **your ex (former) husband, wife, de facto opposite sex partner or de facto same sex partner;**

- **your grandchild** — including your own grandchild, your stepgrandchild and your grandchild through adoption, fostering or any other legal arrangement;
- **the grandchild of your current or ex (former) husband, wife, de facto opposite sex partner or de facto same sex partner** — including your partner's grandchild, their stepgrandchild and their grandchild through adoption, fostering or any other legal arrangement;
- **your parent** — including your own parent, your stepparent and your parent through adoption, fostering or any other legal arrangement;
- **the parent of your current or ex (former) husband, wife, de facto opposite sex partner or de facto same sex partner** — including your partner's parent, their stepparent, and their parent through adoption, fostering or any other legal arrangement;
- **your grandparent** — including your own grandparent, your stepgrandparent, and your grandparent through adoption, fostering or any other legal arrangement;
- **the grandparent of your current or ex (former) husband, wife, de facto opposite sex partner or de facto same sex partner** — including your partner's grandparent, their stepgrandparent, and their grandparent through adoption, fostering or any other legal arrangement;
- **your brother** — including your own brother, your half-brother, your stepbrother and your brother through adoption, fostering or any other legal arrangement;
- **the brother of your current or ex (former) husband, wife, de facto opposite sex partner or de facto same sex partner** — including your partner's brother, their half-brother, their stepbrother and their brother through adoption, fostering or any other legal arrangement;
- **your sister** — including your own sister, your half-sister, your stepsister and your sister through adoption, fostering or any other legal arrangement;

- **the sister of your current or ex (former) husband, wife, de facto opposite sex partner or de facto same sex partner** — including your partner's sister, their half-sister, their stepsister and their sister through adoption, fostering or any other legal arrangement.

Only the people listed above are included in the law on carers' responsibilities discrimination. This means that if you are treated unfairly or discriminated against because of your responsibility to care for or support someone else (for example, a niece, nephew or friend), the anti-discrimination law may not be able to help you. Please phone our Enquiry Service if you need advice about this.

It's also unlawful to discriminate against you or harass you if you are **pregnant** or **breastfeeding**. For more information refer to our website at [www.lawlink.nsw.gov.au/adb](http://www.lawlink.nsw.gov.au/adb), or ask for our factsheets on pregnancy discrimination or breastfeeding discrimination.

## What are my rights in relation to getting work?

In general, you have the right to apply for and be fairly considered for all jobs, apprenticeships and traineeships on the basis of merit. In general, your actual, past, presumed or future carers' responsibilities for the people listed above must not be taken into account.

In other words, if you are the best person for the job and you can do all the essential things that the job requires, then you should get the job. Your starting pay and conditions must not be any worse just because you have a carer's responsibility, or because you had a carer's responsibility in the past, or because you may have, or someone thinks you may have, a carer's responsibility in the future.

In addition, all employers must provide any special arrangements you need to do all the essential things the job requires at the same time as managing your carers' responsibilities — unless it would cause them 'unjustifiable hardship' to do this.

For example, depending on the job, the employer may be able to make any of the following sorts of arrangements without it causing them unjustifiable hardship:

- allowing you to work from home some or all days — this may mean that they also need to pay for and provide you with the equipment and facilities to do

this (for example, a computer and modem, payment for work phone calls);

- changing your start or finish times, roster arrangements or break times;
- allowing you to work your hours over fewer days;
- allowing you to work part-time instead of full-time, or to job-share with someone else; or
- being flexible with the amount of unpaid or paid leave you can take and when you can take it.

As long as you are the best person for the job, it is really up to you and your future employer what you negotiate. There are no set rules. The only rule is that as long as there is some way of you getting the job done properly, the employer must consider whatever arrangements are necessary — unless it would cause them unjustifiable hardship to do this.

Obviously, there will be times when an employer will be able to say that it would cause them unjustifiable hardship to provide you with what you need. For example, it might be impossible for them to do what you need without seriously harming the business. Or it might cost them more than they can afford.

However, before an employer decides that any particular arrangement would cause them unjustifiable hardship, they must first take into account all the circumstances, including:

- the benefit that you and the workplace generally (including other workers and clients/customers) will get from the special arrangement if they provide it;
- how it will affect you, the person you need to care for or support, and other workers, clients and customers if they don't provide the arrangement;
- the effect of your responsibilities as a carer; and
- the financial circumstances of the employer and the cost of accommodating your carer's responsibilities.

## What are my rights during employment?

In general, you have the right to opportunities for promotion, transfer or training and all other work benefits in the same way as other employees who do not have carers' responsibilities. In general, your actual, past, presumed or future carers' responsibilities for the people listed on pages 1–2 must not affect these things.

In addition, the rules and requirements that you have to follow to do your work must be reasonable. They must

not unreasonably disadvantage people with a carer's responsibility more than people without a carer's responsibility.

Your employer may also need to provide any special arrangements you need to do the job at the same time as managing your carers' responsibilities. In general, they can only refuse to do this if it is not reasonable in all the circumstances for them to provide the special arrangements. Examples of the sorts of arrangements that might be possible are listed above in the section called *What are my rights in relation to getting work?*

## **What are my rights in relation to dismissal or threatened dismissal?**

In general, your employer can only dismiss you or make you redundant because of your actual, past, presumed or future carers' responsibilities for the people listed on pages 1–2 if:

- your carers' responsibilities stop you doing the essential parts of your job properly, and
- it would cause them unjustifiable hardship to make special arrangements for you that would mean that you could do the essential parts of your job.

For more information about the sorts of special arrangements you might be able to organise, and what is meant by unjustifiable hardship see under *What are my rights in relation to getting work?*

## **What are my rights in relation to harassment?**

You have the right to work in a harassment-free environment. You must not be harassed because of your actual, presumed, past, present or future carers' responsibilities for the people listed on pages 1–2. You must not be harassed by any employer, any other employee, anyone in an employment agency, a union delegate or official or any customer/client:

- when you apply for a job;
- at any time during your employment; or
- when you are leaving a job.

## **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 carers' responsibilities discrimination;
- you have complained to the Anti-Discrimination Board; or

- you have supported someone with a carers' responsibilities discrimination complaint, or acted as a witness in a carers' responsibilities 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 carers' responsibilities.

## **What can I do if I'm treated unfairly or harassed because of my carers' responsibilities?**

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 involved 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 of your carers' responsibilities. 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 child or a person with a disability, contact the Board for more information.

For us to be able to accept a complaint, the events involving carers' responsibilities discrimination 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, transfer to another position, the person who discriminated against you being transferred, reprimanded or sent on a training course about discrimination, 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.

### **Examples of carers' responsibilities discrimination complaints we have handled**

**A** woman had changed shifts at work so she could pick up her children after a sporting event when her husband was unable to do so. She was not allowed to leave at the end of her shift, and her supervisor abused her and cast aspersions on her husband when she told him why she had to go. In conciliation and subsequent negotiation, it was agreed that the supervisor would apologise, the leave she took because of the case would be refunded, and she would receive a payment for lost shift allowances and other expenses.

**A** teacher asked to take leave without pay for two days a week while her husband, who was in the armed forces, was away from home. She said the principal knocked this back and said he didn't believe in leave without pay for carers' purposes. In conciliation the school agreed to return the long service leave the complainant had been forced to take, and pay her financial compensation.

### **The Anti-Discrimination Board of NSW**

(open weekdays 9am-4.30pm)

#### **Sydney**

Level 4, 175 Castlereagh Street  
Sydney NSW 2000  
PO Box A2122, Sydney South NSW 1235  
Phone (02) 9268 5555, Fax (02) 9268 5500  
TTY 9268 5522

#### **Wollongong**

84 Crown St, Wollongong NSW 2500  
PO Box 67, Wollongong NSW 2520  
Phone (02) 4224 9960, Fax (02) 4224 9961  
TTY (02) 4224 9967

#### **Newcastle**

Level 1, 414 Hunter St  
Newcastle West NSW 2302  
Phone (02) 4926 4300, Fax (02) 4926 1376  
TTY (02) 4929 1489

**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](http://www.lawlink.nsw.gov.au/adb)