



Australia's Fair Work system

5. General protections for freedom of association and other workplace rights

The Australian Government believes that the choice of whether or not people belong to a union is a basic democratic right. That is why, under the Fair Work system, all Australian employees remain free to choose to be or not to be a union member along with the choice of whether or not they wish to participate in collective activities such as bargaining for an enterprise agreement or taking protected industrial action.

It is unlawful to try to stop an employee exercising this free choice, for example by threats, pressure, discrimination, victimisation or dismissal.

Combined protections

The *Fair Work Act 2009* streamlines a range of related protections into one part of the legislation, making them simpler to follow. The freedom of association, unlawful termination and other miscellaneous protection provisions (such as an employee's right to reasonably refuse to work on a public holiday) in the *Workplace Relations Act 1996* have been combined into a new set of general protections, effective on 1 July 2009.

Under these combined protections, it is unlawful for a person to take adverse action because another person has, or exercises, a workplace right. Adverse action includes dismissal, discrimination, refusing to employ a person, or prejudicially altering the position of a person. Workplace rights include an entitlement under an award or agreement, or a workplace law.

For example, it is unlawful to discriminate against an employee because they have taken parental leave in accordance with their entitlement under the National Employment Standards.

It is also unlawful to discriminate against a person because they are, or aren't, a member of a trade union.

What else is covered?

The general protections also cover industrial action, sham contracting arrangements, discrimination on a number of grounds including race, sex, sexual preference, age, disability, pregnancy, among others, and absence from work because of illness or injury.

The new general protections provide more comprehensive protections for workers in some situations than was the case under the *Workplace Relations Act 1996*.

For example, under the *Workplace Relations Act 1996* it was unlawful for an employer to dismiss an employee for certain reasons such as because of their sex, race or family responsibilities. Under the new laws, a range of additional adverse actions, falling short of dismissal, are unlawful, for example, placing an employee in a position that pays less, or refusing to employ them, for one of the prohibited reasons.

There are protections to ensure parties are not coerced into making a particular type of enterprise agreement or discriminated against because of the type of agreement that covers them. For example, it is unlawful to coerce an employer to make a multi-employer agreement. Fair Work Australia may only approve such an agreement if it is satisfied that all employers genuinely agreed to make the agreement and were not coerced.

It is also unlawful to discriminate against an employer because they have a particular type of agreement or an agreement that covers or does not cover a union or a particular union. There is a new protection to prevent a person being coerced to employ or engage a particular person or appoint them to a particular role.

Case Study 1

Sally works for a finance company. Under her enterprise agreement, she is entitled to a performance bonus if she meets certain personal performance targets. She is assessed by her supervisor as having met the criteria. She then tells her manager that she is pregnant and will be taking maternity leave in four months time.

Sally's manager advises her that she won't be paid the performance bonus because the bonus is paid to "keep good people in the business" and "she won't be around".

Sally could seek a remedy under the new laws because she believes that she was denied the performance bonus because she is pregnant.

Case Study 2

Stephen has been asking his employer to explain his overtime entitlements to him. His employer says he is too busy to discuss it, so after some months Stephen says he will phone the Fair Work Infoline to get the information. Stephen's employer changes the roster that Stephen has been working for the last year, and puts him on night shift, and says to Stephen, "what do you expect if you're a trouble maker?"

Stephen can seek assistance from the Fair Work Infoline and, if the issue is not resolved, Stephen (or a Fair Work Inspector on his behalf) can seek an urgent remedy from the Fair Work Division of the Federal Court.