

# FACT SHEET 6

## GENERAL PROTECTIONS

**The General Protections section of the Fair Work Act protects employees from discrimination and other forms of unfair treatment at work.**

### What is a workplace right?

A workplace right is an employment entitlement and the freedom to exercise and enforce those entitlements.

Workplace rights can also relate to performing a role or responsibility in the workplace, which is provided for by an industrial law or award/agreement (such as a Health and Safety Representative or a Workplace Union Representative).

Employees have the right to engage in industrial activity, including joining and being represented by a trade union and to participate in lawful industrial activities.

Employees also have the right to make an inquiry or complaint in relation to their employment or to participate in proceedings under workplace laws.

An employer must not take adverse action against an employee because they possess or exercise a workplace right.

Adverse action may include:

- refusing to employ a prospective employee
- dismissing an employee
- altering the position of an employee to the employee's prejudice, or
- discriminating against an employee

Adverse action also includes threatening to take any of the above actions.

### Protections against discrimination

An employer is prohibited from taking adverse action against an employee or a prospective employee because of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion or political opinion.

### Other protections

An employer cannot deliberately or recklessly make false or misleading representations about someone else's workplace rights: eg an employer cannot tell an employee that they do not have the right to be represented by a union during bargaining.

An employer must not represent an employment relationship as an independent contracting relationship or dismiss an employee in order to engage the person to perform the same work as an independent contractor.

Unions cannot charge bargaining fees, discriminate against employers because of their industrial arrangements, or coerce employers to hire or not hire a particular person or to engage or not engage a particular independent contractor.

The employer bears the onus of proving that it did not take adverse action against an employee for one of the unlawful reasons.

### Enforcing workplace rights

An employee, union or Fair Work inspector can enforce a workplace right. Where a person alleges a contravention of the general protections, Fair Work Australia is able to hold a conference to help resolve the matter. If the case involves dismissal, the conference is mandatory. In all other cases, the FWA conference is voluntary and a person can elect to proceed directly to court.

Where a person is dismissed from employment, an application to Fair Work Australia to hold a conference must generally be made within 60 days of the dismissal. If the matter isn't resolved at the conference, the person can apply to the Fair Work Division of the Federal Court or Federal Magistrates Court for a remedy. Remedies include monies, injunctions, compensation and reinstatement.

