

Workplace discrimination against transgender and gender diverse people: What are my rights?

It is against the law for employers or other employees to discriminate against you at work because of your gender identity.

Employers in Victoria have obligations under the *Equal Opportunity Act 2010* (Vic) to prevent and respond to discrimination based on gender identity and other protected characteristics.

Where are you protected from workplace discrimination?

Employers (any organisation or person that employs another person) cannot discriminate against **employees** (including ongoing and fixed-term employees, casual and contract workers, independent contractors, consultants and paid interns) at any stage of the employment cycle. This includes in:

- recruitment
- at your workplace
- in common spaces (for example, carpark, reception areas, bathrooms, changerooms)
- during work-related events (for example, a party or work trip)
- online spaces.

What are examples of workplace discrimination?

You are protected from **direct discrimination**, which is when someone treats you unfavourably (including being bullied) at work because of your gender identity (and/or other protected characteristics).

Example: Skye is a non-binary person who applies for a job as a flight attendant. The recruitment team are concerned that hiring Skye might make other employees or customers feel uncomfortable because Skye uses they/them pronouns and does not present in a traditionally 'male' or 'female' way. Due to this concern, the recruitment team decides to hire another candidate who is not as qualified. This may be direct discrimination in the recruitment process.

Example: Kris is a transgender man who has worked in customer service at a hardware store for several years. Kris takes leave from his job to have top surgery and starts taking testosterone, as part of affirming his gender. Kris' manager has always complimented Kris on his excellent customer service and high number of sales. However, after Kris returns from leave, his manager tells him that he is being moved to a stockroom role and will not serve customers anymore because 'we don't want to confuse or scare away the customers now that you look and sound so different'. This may be direct discrimination.

You are also protected from **indirect discrimination**, which is when there is an unreasonable requirement, policy or practice in the workplace that disadvantages or unfairly impacts you because of your gender identity (and/or other protected characteristics).

Example: A construction company requires all job applicants to identify their gender as either male or female in its electronic application form. This could disadvantage some people (whose gender identity is neither male nor female) based on their gender identity and may be indirect discrimination.

Example: A physiotherapy clinic hires a new physiotherapist, Amara, who is a transgender woman. Amara changed her name from Amree several years ago, as part of affirming her gender. However, on Amara's physiotherapy qualification her name is recorded as Amree. When the clinic creates Amara's professional email address, they use the name Amree rather than Amara, because their procedure requires the IT department to create a new email address based on the physiotherapy qualification. By following this procedure, the clinic deadnames Amara, and reveals that Amara is a trans woman. This is very distressing for Amara and may be indirect discrimination.

There are some limited situations where discrimination is lawful under the Equal Opportunity Act (for example, where special measures, exceptions or exemptions apply). For further information, see the Commission's **Guideline: LGBTIQA+ inclusive workplaces**.

What must my employer do to prevent discrimination?

Your employer has a **positive duty** under the Equal Opportunity Act to take steps to eliminate discrimination as far as possible, regardless of whether someone has made a complaint.

Our **Guideline: LGBTIQA+ inclusive workplaces** provides practical examples of actions your employer can take, and **minimum standards** that your employer should achieve to comply with their positive duty.

What if I experience discrimination at work?

If you experience discrimination at work, you may want to raise a complaint or make a report through your workplace's internal processes. It is unlawful for employers to **victimise** you (i.e. treat you badly) because you have made a complaint or have helped someone else to make a complaint.

The **Victorian Equal Opportunity and Human Rights Commission** can also help resolve complaints: phone 1300 292 153 or visit www.humanrights.vic.gov.au/complaints.

There are other organisations you can contact for legal advice and support.

See the Commission's website for some options:

www.humanrights.vic.gov.au/get-help/referrals-to-other-organisations/.

For more information, download the Commission's **Guideline: LGBTIQA+ inclusive workplaces** available at humanrights.vic.gov.au/resources or via the QR code.

