



**Victorian Equal Opportunity
& Human Rights Commission**

LGBTIQA+ discrimination in the workplace: What are my legal duties?

All employers in Victoria have a legal duty to eliminate discrimination against LGBTIQA+ employees under the *Equal Opportunity Act 2010* (Vic).

Employers must not discriminate against LGBTIQA+ employees (in other words, employees who are lesbian, gay, bisexual, transgender and gender diverse, intersex, queer, asexual, aromantic and other people with diverse gender identities, sexual orientations and sex characteristics) at work.

Employers have a positive duty to take reasonable and proportionate steps to eliminate discrimination, sexual harassment and victimisation based on a person's gender identity, sex characteristics or sexual orientation (being LGBTIQA+), as far as possible.

This is a summary of the Victorian Equal Opportunity and Human Rights Commission's **Guideline: LGBTIQA+ inclusive workplaces**. You can download the full guideline and related resources here: www.humanrights.vic.gov.au/resources or via the QR code.



Where are LGBTIQ+ employees protected from 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
- in the workplace
- in common spaces (for example, carparks, reception areas, bathrooms, changerooms)
- during work-related events, meetings, and settings (for example, a party or work trip)
- in online spaces.

What are examples of workplace discrimination?

Under the Equal Opportunity Act, there are two types of discrimination: direct and indirect.

Direct discrimination happens when you treat (or propose to treat) someone unfavourably because of a characteristic protected by law, including their gender identity, sex characteristics and/or sexual orientation.

CASE STUDY: RUPERT

Rupert was born with XXY chromosomes (sometimes known as Klinefelter syndrome). He chooses to disclose to a close friend at work that he has an innate variation of sex characteristics and word gets out around the office that he is intersex. Rupert's colleagues begin asking him inappropriate questions about 'what he has down there', which Rupert finds intimidating and offensive. This may be direct discrimination based on sex characteristics, as well as sexual harassment, which is also unlawful under the Equal Opportunity Act.



Indirect discrimination happens when there is an unreasonable requirement, condition or practice that applies to everyone but disadvantages (or is likely to disadvantage) people with a particular characteristic. In workplaces, this might be a policy, practice or process that may not seem discriminatory on the surface, but disadvantages LGBTIQ+ people when applied.

CASE STUDY: APPLICATION FORMS

A construction company requires all job applicants to identify their gender as either 'male' or 'female' on its electronic application form. This could disadvantage some people (whose gender identity is neither male nor female) based on their gender identity and may amount to 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 chapter 3 of the Commission's **Guideline: LGBTIQ+ inclusive workplaces**.

It is also against the law to treat someone badly or unfairly (**victimisation**) because they have:

- asserted their rights under equal opportunity law
- made a complaint, or it is believed they intend to make a complaint
- helped someone else to make a complaint
- refused to do something because it would be discrimination, sexual harassment or victimisation.

CASE STUDY: TALIA

Talia is an openly bisexual woman who has been a high-performing employee at a marketing firm for 4 years. A new starter at the firm finds out that she is bisexual and tells Talia she should 'get off the fence' and 'pick a side'. Talia complains to her manager Abbie about the comments, which are prejudiced and based on inaccurate stereotypes.

After the complaint, Talia is passed over for a promotion she had been told she was on track to receive. Abbie provided feedback that 'the CEO does not want a troublemaker in the leadership team'. This could amount to victimisation as Talia is the target of detrimental treatment because she spoke up about discrimination.



How do employers comply with their positive duty under the Equal Opportunity Act?

The Commission has identified **5 minimum standards** that employers must uphold to comply with the **positive duty** under the Equal Opportunity Act. Organisations that comply with these minimum standards will build inclusive workplaces, where everyone is treated fairly.

Minimum standard	Example of action you can take
 1. Knowledge & understanding: Organisations understand their obligations under the Equal Opportunity Act, have up-to-date knowledge about discrimination against LGBTIQ+ people at work, and know how to eliminate it.	Read the Commission's Guideline: LGBTIQ+ inclusive workplaces and provide information and training to your employees.
 2. Systems, policies & procedures: Organisations have systems, policies and procedures to eliminate discrimination against LGBTIQ+ people at work.	Develop (or adapt) an equal opportunity policy that addresses discrimination and promotes inclusion of LGBTIQ+ people at your workplace.
 3. Reporting & response: Responses to complaints and reports of discrimination support impacted people and hold perpetrators to account.	Make sure your employees know how to report discrimination if it happens.
 4. Workplace culture: Organisations are committed to creating a culture of equality, safety and respect.	Leaders and managers model respectful behaviour and set clear expectations that discrimination against LGBTIQ+ people will not be tolerated (for example, in your organisation's values, employee contracts, codes of conduct, induction processes and resources on noticeboards).
 5. Continuous improvement: Organisations regularly review, evaluate and improve systems, policies and procedures to eliminate discrimination against LGBTIQ+ people at work and promote an inclusive workplace culture.	Reflect on feedback (including from employee surveys or by consulting with your LGBTIQ+ employees), complaints data and other relevant information to consider how your systems, policies and procedures are working and what improvements can be made.

For detailed guidance on how to meet your duties under the Equal Opportunity Act, and information sheets for your LGBTIQ+ employees, see the Commission's **Guideline: LGBTIQ+ inclusive workplaces** and other resources: humanrights.vic.gov.au/resources.

Where can I go for more information or help?

You can contact the Commission for free and confidential information about Victoria's equal opportunity laws. Contact us by email at enquiries@veohrc.vic.gov.au or phone 1300 292 153 (9am–5pm, weekdays).