

Workplace discrimination against people with diverse sexual orientations: What are my rights?

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

Employers in Victoria have obligations under the *Equal Opportunity Act 2010* (Vic) to prevent and respond to discrimination based on sexual orientation¹ 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 sexual orientation (and/or other protected characteristics).

Example: James is a bisexual man employed by a government department. His manager Simon overhears James talking to a close friend at work about a bisexual-friendly dating app he uses. During James' next performance review, Simon tells James that he is no longer being considered for a promotion he was on track to receive. James asks whether anything had changed in his work performance. Simon responds: 'no, your work is fine – it's just that your unconventional lifestyle choices are not in line with the leadership qualities we are looking for'. This may be direct discrimination.

Example: Amari is an asexual employee at a graphic design firm. During a work lunch, Amari's manager asks her inappropriate questions about Amari's relationship with her partner, including 'If you don't have sex, aren't you just roommates?'. Amari feels very uncomfortable and upset by her boss's intrusive and inappropriate questions. This may be direct discrimination as well as sexual harassment, which is also unlawful under the *Equal Opportunity Act*.

¹ The definition of 'sexual orientation' under the *Equal Opportunity Act* covers both sexual attraction and romantic attraction.

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 sexual orientation (and/or other protected characteristics).

Example: Kristen is a lesbian who works at a small dental practice. Her wife Lana recently gave birth to their first child. When Kristen applies for leave under the company's parental leave policy, her manager says this leave is only available for biological parents. When Kristen points out that both she and Lana are registered as mothers on their child's birth certificate, her manager says, 'well you aren't the birth parent and I have to follow company policy, so your request is denied'. This may amount to indirect discrimination based on sexual orientation (as well as the protected characteristic of parental status).

Example: Carlos is a married gay man who works as a real estate agent. The company he works for offers an all-expenses paid holiday each year for one employee and their partner, as a bonus for reaching their commission target. The holiday is in a country where gay sexual activity is illegal. Carlos reaches his commission target but is unable to accept the bonus offered to him because it may not be safe for him and his husband to be in a country that criminalises gay sexual activity. This may amount to indirect discrimination based on sexual orientation.

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.

