

Workplace discrimination against intersex people: What are my rights?

It is against the law for employers or other employees to discriminate against you at work because of your innate variations of sex characteristics.

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

Example: 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*.

Example: Elsa applies for a job as a receptionist in a hospital. In her job application, Elsa discloses that she is intersex and has a physical disability that is associated with her innate variation in sex characteristics. She notes in her job application that she requires reasonable adjustments to her work schedule so she can attend regular medical appointments. This has been accommodated easily at her previous workplace. Even though Elsa is the best candidate, she is not offered the job because the employer thinks Elsa's circumstances are too complicated. Another candidate who is less qualified is offered the job. This may be direct discrimination based on sex characteristics, and may also be discrimination based on disability.

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 at work because of your sex characteristics (and/or other protected characteristics).

Example: Huy works in the office of a logistics company. Huy has hypospadias, an innate variation in his sex characteristics where the opening of his urethra developed at the base of his penis while in utero. Because of this variation, he is unable to use the urinal in the men's bathroom and requires access to a cubicle with a toilet. His variation in sex characteristics also impacts his bladder control, so it is important for Huy to have quick access to a cubicle. Huy feels uncomfortable using the male bathroom at work because there is just one cubicle and that is often occupied. Huy would rather use the accessible toilet, but he requires an access pass to use it.

Huy asks his boss to provide him with an access pass but his boss refuses Huy's request because 'our policy is that only people with mobility issues are allowed to use the accessible toilet. You should use the male toilet like the other men in the office'. Huy does not identify as disabled, but still needs access to the accessible bathroom due to his variation of sex characteristics. This 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.

