

FACT SHEET:

Impairment discrimination

The *Anti-Discrimination Act 1991* makes it unlawful to discriminate against a person because of their impairment.

What is impairment discrimination?

The definition of impairment is very broad, and includes many types of disability, such as:

- **physical:** including the total or partial loss of a person's bodily functions; the malfunction, malformation or disfigurement of a part of a person's body;
- **psychiatric:** including mental illnesses; depression; anxiety; schizophrenia; bipolar disorder; anorexia;
- **sensory:** including visual impairment and blindness; hearing impairment and deafness;
- **impairments** related to the presence in the body of organisms capable of causing illness or disease, such as hepatitis, AIDS and HIV positivity;
- **other conditions:** including learning more slowly; epilepsy; autism and intellectual disabilities.

It includes conditions that a person might be born with, as well as those that develop later, or result from an injury.

It also includes a previous impairment which no longer exists.

It includes reliance on a guide, hearing or assistance dog, or a wheelchair or other remedial device.

Impairment discrimination can be direct or indirect. Direct discrimination is treating a person less favourably because of their impairment than someone in similar circumstances without an impairment.

For example, a taxi driver refusing a ride to a person with a guide dog, but picking up another passenger down the street.

Indirect discrimination may be less obvious. Sometimes a rule or policy seems to treat everyone the same, but in fact, some people end up being treated less favourably. Indirect discrimination happens when there is an unreasonable requirement that people with a certain attribute (or characteristic) would have difficulty complying with, compared to others without that attribute.

For example, a person with a hearing impairment applying for a job, and the employer only conducting initial interviews by telephone without a translation service (for example, the National Relay Service).

It is also unlawful to discriminate against a person because of their association with or relation to a person identified on the basis of their impairment - such as a friend, family member or co-worker.

For example, a person in a wheelchair and their friend go to a concert but are told they can only sit at the back. The person in the wheelchair may have been discriminated against because of their impairment, and their friend without a disability has been discriminated against because they are there together.

It doesn't matter if the person doesn't mean to discriminate, or whether they think they are being discriminatory or not. It also doesn't matter if their beliefs or assumptions about the person or people they are discriminating against are correct or not. Under the Act, someone's motive for discriminating is irrelevant.

If you have experienced any of these types of discrimination, you may be able to lodge a complaint with us here at the Commission.

Not all treatment that might seem unfair is unlawful discrimination under the Act (see the exemptions below).

When and where is impairment discrimination unlawful?

Impairment discrimination is unlawful in all aspects of work, including recruitment, terms and conditions on which a job is offered, employment benefits, training, transfers, promotion and dismissal.

It is also unlawful when a person is:

- a customer in a shop or restaurant,
- a student at school or university (if it is by the educator),
- looking for accommodation,
- applying for credit, insurance or a loan, or
- when dealing with tradespeople, businesses or State or local government.

Examples of impairment discrimination

When it becomes known in the workplace that a young worker has previously received care for a psychiatric condition, other workers call him names such as psycho and weirdo.

A resident of a new block of units who relies on a motorised wheelchair has great difficulty moving around the common areas of the property and requires assistance to get through security gates.

A tertiary student has a hearing impairment. However the university lecturer says it's too much trouble to provide lecture notes in a suitable format.

A taxi refusing to take a passenger because they have a guide dog.

When and where is different treatment okay?

Not all treatment that might seem unfair is against the law. The Act lists some exemptions that allow conduct that would otherwise be discriminatory. Whether or not an exemption applies will depend on individual circumstances.

There are some exemptions which may apply to impairment discrimination, as follows.

Special services or facilities required: Businesses, employers and educational institutions are expected to make reasonable adjustments for people with disabilities. However, it can be lawful to discriminate on the basis of impairment where special services or facilities are needed for a person or people with an impairment, and supplying the special services or facilities would impose unjustifiable hardship on the provider.

Whether supplying special services or facilities creates an unjustifiable hardship depends on:

- the type of service or facility being requested;
- the cost of providing this;
- the number of people who'd benefit or be disadvantaged by it;
- the disruption that might be caused by providing the service or facility; and
- the type of benefit or detriment to everyone concerned.

For example, a small business owner with three employees agrees to install a large computer monitor for a new book-keeper with low vision, but says converting all written documents to a larger font would be too great a demand on the business.

Genuine occupational requirements: An employer may impose genuine occupational requirements for a position.

For example, it was a genuine requirement for a rail ticket inspector to be able to jump from a platform to an uneven surface and to chase fare evaders. A man who had undergone two knee operations was unable to perform these.

Special terms if job capacity restricted by impairment: An employer may fix reasonable terms for a worker who has a restricted capacity to do a job, or who needs special conditions in order to do the work.

Sports: Participation in a competitive sporting activity may be restricted to people who can effectively compete, or to people with a specific impairment.

Public health: A person may do an act that is reasonably necessary to protect public health.

For example, not allowing a person with the measles to enter a public place.