

Fact sheet: Disability Discrimination and COVID-19

If someone has treated you unfairly because of COVID 19 or another illness or disability, they may have unlawfully discriminated against you. You can call Kingsford Legal Centre on [9385 9566](tel:93859566) or [1300 722 795](tel:1300722795) for legal advice about discrimination.

What is unlawful discrimination?

Under Australian law, there are two main types of disability discrimination:

- **Direct discrimination** is treating a person less favourably than other people because they are a person with disability, someone thinks they are a person with disability or they have had a disability in the past. This can include failing to make reasonable adjustments for a person with disability.
- **Indirect discrimination** is imposing an unreasonable requirement which is harder for people with disability to meet.

Example: a requirement for all staff to work night shifts might be indirect discrimination against people who experience chronic tiredness due to their epilepsy medications.

Discrimination is unlawful if it occurs in certain areas of life, including:



Discrimination and COVID-19

The word disability is defined broadly under the law and includes having an illness. **You are protected by the law if you are discriminated against because of a COVID-19 related disability**, which includes if:

- you have COVID-19;
- you previously had COVID-19;

Kingsford Legal Centre is funded by the UNSW Sydney Faculty of Law, and the Community Legal Centres Program administered by Legal Aid NSW

- you may get COVID-19 in the future; and/or
- someone thinks you have COVID-19 (even if you do not).

You are also protected if you live with disability unrelated to COVID-19, and you are being discriminated against due to COVID-19.

Example: it might be disability discrimination for a worker with disability to be prevented from coming to work because their boss wrongly believes all people with disability are more likely to transmit the COVID-19.



If you have been discriminated against at work, you may also have rights under employment law. If you have lost your job, you may have to take action within 21 days. You should quickly seek legal advice about your rights at work.

When can you be treated differently?

In some circumstances you can be treated differently because you have COVID-19 or another disability.

Discrimination on the basis that you have an infectious disease (like COVID-19) is allowed where it is **reasonably necessary to protect public health**.



If you have COVID-19, it will be reasonable for your employer to tell you not to come to work, or a shopkeeper to ask you to get your goods delivered rather than coming into the shop.



It would not be reasonable for your employer to tell you not to come to work because they believe people with your disability all have COVID-19.

Your employer may also be able to treat you differently if having COVID-19 or another disability means that you cannot perform the **inherent requirements** of your role.

Where can you go if you have been discriminated against?

Australian Human Rights Commission

You can complain to the AHRC about disability discrimination.

- Free
- Assist you to negotiate with the person who discriminated against you
- Time limit for complaint: **6 months**

Anti-Discrimination NSW

Alternatively, you can complain to ADNSW about disability discrimination.

- Free
- Assist you to negotiate with the person who discriminated against you
- Time limit for complaint: **12 months**

Fair Work Commission

If you have been treated unfairly or discriminated against at work, you may be able to complain to the Fair Work Commission.

- Fee of \$73.20 (as of July 2020)
- Assist you to negotiate with your employer, and in some situations make a decision about your case
- Time limit for complaint:
 - **21 days** if you are complaining about being fired
 - **6 years** if you are not complaining about being fired

You should get legal advice about the best option for you.

If you live in NSW, you can contact **Kingsford Legal Centre on (02) 9385 9566 or 1300 722 795** or email us at legal@unsw.edu.au for advice about discrimination.

This factsheet is current as at 5 August 2020. It contains general information only and does not constitute legal advice.