

All states have legislation that protects your right to combine breastfeeding and paid work. The Federal Sex Discrimination Act 1984 also protects this right. The Federal Sex Discrimination Act 1984 was amended on 24 May 2011 to further strengthen the laws protecting the rights of breastfeeding women. ANYONE who discriminates against breastfeeding mothers is now breaking the law. A key difference from the amendment is that breastfeeding is now a separate, stand-alone ground of discrimination, rather than a subset of sex discrimination.

Under both Federal and state legislation, it is unlawful to treat a woman less favourably because she is breastfeeding, or to treat a person less favourably based on their status as a parent. This means it may be against the law for an employer to refuse to make arrangements to assist an employee to breastfeed at work.

However, the onus is on the individual employee to negotiate with their employer around their individual breastfeeding needs. Employers are obligated by the above legislation to take reasonable measures to accommodate these needs. If they refuse to accommodate these needs, they must prove that what an employee is requesting is 'unreasonable.' The word 'unreasonable' is open to interpretation and is based purely on the individual circumstances at the individual workplace.

It is generally against the law to refuse to make arrangements to assist you to breastfeed at work, if these are reasonable. For example, it may be discrimination if:

- your employer does not provide you with suitable facilities for breastfeeding or expressing milk
- you are not allowed to organise your work breaks to facilitate breastfeeding or expressing milk
- your employer insists that you work night shifts when other shifts are available that would allow you to continue breastfeeding
- you are told that you must wean your baby before you can return to work.

Taken from the Anti-Discrimination Board of NSW Factsheet: Pregnancy and breastfeeding discrimination

Avoiding discrimination is not the same as embracing different needs of employees.

Employees may face direct and indirect discrimination. Direct discrimination is where someone is treated unfairly because of a personal characteristic. This could include not giving a female a promotion because they are female, pregnant or breastfeeding. Indirect discrimination occurs when a requirement or practice that purports to treat everyone the same becomes unreasonable due to the individual's circumstances. The requirement ends up actually or potentially disadvantaging someone with a personal characteristic that is protected by the law. An example of this would be a rule that all employees must work night shifts.

As all employees must work these shifts, it may seem a fair rule. However, this could be seen as indirect discrimination if there are other shifts available that would be more suitable for employees whose individual circumstances make it challenging for them to work night shifts, e.g., breastfeeding employees. Employees who are breastfeeding may experience discrimination at work if employers do not provide reasonable measures to assist or support breastfeeding. By not providing breastfeeding and expressing facilities and flexible lactation breaks, an organisation may be discriminating against breastfeeding women and may be breaking the law.

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Australian employees are protected by national and state legislation which may give extra protection of rights. A good example is the Equal Opportunity Act 2010 (Victoria). An important aspect of this Victorian law is that it clearly sets out the positive duty to eliminate discrimination, sexual harassment, and victimisation. It is important that organisations know about positive duty and understand how it works. Complying with positive duty will help stop discrimination before it happens.

Lactation breaks:

In relation to the workplace, unfortunately there is no legislation in Australia to give mothers in the paid workforce the legal right to paid breastfeeding breaks as set down by the ILO Convention No. 103. When it comes to unpaid lactation breaks, the legislation again is not specific. Expressing while away from her baby is essential for the health of the breastfeeding employee, therefore preventing a breastfeeding employee from doing this could be considered 'indirect' discrimination. However, it is up to the individual employee to negotiate these breaks with their employer, taking into account both her needs and the organisational needs of the workplace. The Fair Work Act may also apply in this situation, as the right to negotiate flexible working arrangements is one of the protected National Employment Standards. A growing number of private and public sector Enterprise Bargain Agreements, Awards or similar now have provision for lactation breaks.

Babies in the workplace:

There is also no legislation to cover a baby or child being at a workplace with a parent. It is difficult to have a standard law on this, as it often depends on the type of employment and work environment. Some positions are ideal to enable this practice, however, this is entirely up to the employer and the policies of the organisation.

Many employers feel uncomfortable about a baby being in the workplace, especially if it has not occurred previously and would set a precedent. They may be concerned about the Work Health Safety (WHS) issues this raises. They may also have unrealistic ideas about how this will happen and the interference it will have on the work output. In fact, it can often increase work output and enable a mother to return to work earlier than planned.

Some workplaces are open to a carer bringing an infant on site during breaks for a feed and then leaving directly afterwards. In other circumstances it may be easier for the mother to access flexible work conditions that enable her to go to the infant off site to breastfeed.

Who can I contact for help?

If you are experiencing discrimination in the workplace, the following list provides contact details for the appropriate agency in your state.

State	Legislation	Agency	Website/Phone
ACT	Discrimination Act 1991	ACT Human Rights Commission	https://hrc.act.gov.au/ 02 6205 2222
NSW	Anti-Discrimination Act 1977	Anti-Discrimination NSW	https://antidiscrimination.nsw.gov.au/ 1800 670 812

NT	Anti-Discrimination Act 2011	Northern Territory Anti-Discrimination Commission	https://adc.nt.gov.au/ 1800 813 843
QLD	Anti-Discrimination Act 1991	Anti-Discrimination Commission Queensland	https://www.qhrc.qld.gov.au/ 1300 130 670
SA	South Australia Equal Opportunity Act 1984	Equal Opportunity	https://www.equalopportunity.sa.gov.au/ 08 7322 7070
TAS	Anti-Discrimination Act 1998	Office of Anti-Discrimination Commissioner	https://equalopportunity.tas.gov.au/ 1300 305 062
VIC	Equal Opportunity Act 2010	Victorian Equal Opportunity and Human Rights Commission	https://www.humanrights.vic.gov.au/ 1300 891 848
WA	Anti-Discrimination Act 1984 (Commonwealth)	Western Australian Equal Opportunity Commission	https://www.wa.gov.au/organisation/equal-opportunity-commission 08 9216 3900
ALL	Sex Discrimination Act 1984 Workplace Gender Equality Act 2012 Fair Work Act 2009	Australian Human Rights Commission Fair Work Ombudsman	https://humanrights.gov.au/ 1300 656 419 https://www.fairwork.gov.au/ 13 13 94

For information on combining breastfeeding and working contact a breastfeeding counsellor 1800 686 268 or for email counselling visit <http://www.breastfeeding.asn.au>