

Breastfeeding & Work: Your rights at work

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 with the amendments is that breastfeeding is now a separate, stand-alone ground of discrimination, rather than a subset of sex discrimination.

Under both the Federal and all 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 or accommodate an employee's breastfeeding needs (including expressing).

However, the onus is on the individual employee to negotiate with their employer around their individual breastfeeding needs and the organisational needs of the employer. Employers are obligated by the above legislation to take reasonable measures to accommodate these needs and must show that what an employee is requesting is 'unreasonable' if they refuse to accommodate these needs. Of course 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 or potential employees may face direct and indirect discrimination. Direct discrimination is where someone with a personal characteristic is treated unfairly because of that 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 and 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 states 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 supportive of employees who are breastfeeding. 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.

Australian employees are protected by national legislation and by State and Territory 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 own needs and the organisational needs of their 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.

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 is often dependent 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 will 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 previously planned.

Who can I contact for help?

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

State	Legislation	Agency	Website/Phone
ACT	Discrimination Act 1991	ACT Human Rights Commission	hrc.act.gov.au 02 6205 2222
NSW	Anti-Discrimination Act 1977	Anti-Discrimination Board	lawlink.nsw.gov.au/adb 1800 670 812
NT	Anti-Discrimination Act 2011	Northern Territory Anti-Discrimination Commission	nt.gov.au/justice/adc/index.htm 1800 813 846
Qld	Anti-Discrimination Act 1991	Anti-Discrimination Commission Queensland	adcq.qld.gov.au 1300 130 670
SA	South Australia Equal Opportunity Act 1984	Legal Services Commission of South Australia	eoc.sa.gov.au
Tas	Anti-Discrimination Act 1998	Office of the Anti-Discrimination Commissioner	antidiscrimination.tas.gov.au 1300 305 062
Vic	Equal Opportunity Act 2010	Victorian Equal Opportunity and Human Rights Commission	humanrightscommission.vic.gov.au 1300 891 848
WA	Anti-Discrimination Act 1984 (Commonwealth)	Western Australian Equal Opportunity Commission	eoc.wa.gov.au 08 9216 3900
ALL	Sex Discrimination Act 1984 Workplace Gender Equality Act 2012 Fair Work Act 2009	Australian Human Rights Commission Fair Work Ombudsman	humanrights.gov.au 1300 656 419 fairwork.gov.au 13 13 94

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

For information that you can give your workplace about the type of support they can provide you visit: www.breastfeedingfriendly.com.au