# Speaking to your employer about discrimination

This document was prepared by the Equality Law Program. We are a specialised team of lawyers at Victoria Legal Aid providing advice and representation to eligible people experiencing discrimination, sexual harassment and victimisation.

If you think that someone at work is treating you badly for an unlawful reason (such as your race, religion, sex, disability, age or pregnancy), or if you are being subjected to sexual harassment, then you might consider speaking to your employer or manager.

### Before you speak to your employer

* Consider raising your concern directly with the person involved if it is safe and appropriate to do so
* Find out whether your employer has a formal complaint or dispute policy and consider the first steps in that policy
* If you’re a member of a Union consider speaking to your delegate.

### What to expect from your employer

* Your employer has an obligation to, as far as possible, provide you with a work environment which is safe and without risks to your health. This means that your employer must investigate any genuine complaints about bullying, harassment or other risks to health and safety in the workplace.
* Your employer has an obligation to comply with anti-discrimination laws. Your employer can be held responsible if any of its employees treat you badly for an unlawful reason. This means that your employer should take complaints of discrimination seriously and take action to stop its employees from discriminating against you.
* Be mindful that you may not have control over the steps your employer takes to resolve the problem once you have raised it. Because your employer has an obligation to provide a safe work environment it may decide to investigate the complaint even if you don’t want it to.

### Speaking to your employer

* Tell your employer about the issue, what impact it has had on you, and what you would like your employer to do to make you feel safe or resolve the issue.
* Ask your employer if you can have a support person present at any meetings. Ideally this person will not be someone who is also employed at your work.
* If you need adjustments because of a disability or parental/carer responsibilities it is best to briefly outline what adjustments you need and why, and outline how it is possible to keep doing your job with these adjustments. Take note of existing policies of your employer or industry that may support your need to make adjustments and refer to these.
* If you need adjustments for a disability it is best to give medical evidence about what adjustments are required and how long they will be required. Your employer may also ask that you be assessed by an independent doctor of their choice.
* Consider writing a letter or email to your employer outlining the above so that you have a record of raising the issue with your employer.

### If you have been injured or you are unwell

* If you need some time off work because of the discrimination, make sure you provide notice to your employer as soon as possible and preferably before you are supposed to start work. If you’re unwell you should comply with your employer’s rules about providing a medical certificate. It is best to provide it within 24 hours of taking leave.
* If you’ve been injured because of discrimination, including a mental injury, you should get advice about making a workers compensation claim. You should get advice within 30 days of the work related injury or illness occurring.
* Make sure you retain copies of all medical records and reports about the nature and extent of the injury, as well as the receipts for medical costs.

### What if I’m penalised for speaking up?

It is unlawful for your employer or anyone else to treat you unfavourably because you have made a complaint of discrimination or because they believe that you may do so. If you are treated badly for this reason, you may have an additional claim of:

* Victimisation under discrimination law, or;
* Adverse action under the *Fair Work Act 2009* (Cth).

### Keep track of what happens

* Keep records of incidents and conversations that take place, including who said what and who was present at the time. This could be in a diary. It is best if these records are made as close to the event as possible, and signed and dated.
* If you have received emails, text messages or social media posts containing discriminatory material, retain copies as evidence for your complaint. You may wish to screenshot any relevant texts or posts. Make sure that you notify your employer if you receive messages that may breach workplace policies (for example offensive material of a sexual nature).
* Keep in mind that the law does not prevent you from secretly recording conversations but only if you are *in* the conversation. Be mindful that if your employer finds out that you are secretly recording conversations it may still be grounds for dismissal or disciplinary action. You should not disclose recordings to anyone without obtaining legal advice.
* Keep a record of the names and contact details of any witnesses.
* Keep a record of any letters, emails, text messages or other communications between you and your employer or others about the discrimination.

### What if my complaint is not resolved?

You should seek legal advice immediately if:

* Your employer isn’t properly investigating your complaint or isn’t addressing it.
* The discrimination or sexual harassment hasn’t stopped or you are being treated unfairly since reporting it.
* If you’re considering resigning because of the discrimination or sexual harassment. You can take sick leave if you are too unwell or too stressed to keep going to work while you seek advice and consider your options.

## Where to get help

Contact our Legal Help telephone information service for free information about the law and how we can help you. It’s open Monday to Friday, 8.45 am to 5.15 pm. Call us on 1300 792 387.

If we can’t help you with your legal problem, we may be able to refer you to other organisations that can.

You can also contact the Victorian Equal Opportunity and Human Rights Commission, the Fair Work Ombudsman, or the Australian Human Rights Commission for more information.