

BULLETIN

Protection from Discrimination, Coercion and Misrepresentation

This information bulletin provides a guide in regard to the protection afforded under Part 6 of the *Work Health and Safety (National Uniform Legislation) Act 2011* (WHS Act). For further information please see the Interpretive Guideline on Discrimination, Coercion and Misleading Conduct which can be found on the NT WorkSafe website.

Part 6 Protections

The WHS Act protects people engaged in work health and safety activities from being discriminated against. The WHS Act prohibits discriminatory, coercive and misleading conduct in relation to work health and safety matters. The purpose of these protections is to encourage engagement in work health and safety activities and to stop action that may deter people exercising their rights under the WHS Act.

Discriminatory conduct

- It is an offence under the WHS Act to engage in discriminatory conduct, or to request, instruct, induce, encourage, authorise or assist a person to engage in such conduct, if the dominant reason for the discriminatory conduct is a prohibited reason.
- The WHS Act also provides civil remedies where a prohibited reason is a substantial motivation for discriminatory conduct.

What is discriminatory conduct?

- A person engages in discriminatory conduct if they:
 - dismiss a worker
 - terminate a contract for services with a worker
 - put a worker to their detriment in the engagement of the worker
 - alter the position of the worker to the worker's detriment
 - refuse to engage a prospective worker
 - treat a prospective worker less favourably than another in offering terms of engagement
 - terminate a commercial arrangement with another person, or
 - refuse or fail to enter into a commercial arrangement with another person.
- A person also engages in discriminatory conduct if they organise to take any of the actions above, or threaten to organise or take these actions.

Prohibited reasons for conduct

- Discriminatory conduct will only be unlawful if it is engaged in for a prohibited reason.
- Prohibited reasons are those which relate to a person:
 - being or exercising powers or performing functions as a health and safety representative (HSR) or as a member of a health and safety committee (HSC), or undertaking another role under the WHS Act

- exercising powers or performing a function under the WHS Act, or exercising powers or performing a function in a particular way, or refraining from exercising powers or performing a function
- assisting or proposing to assist, or giving or proposing to give information to, any person who is exercising a power or function under the WHS Act
- raising or proposing to raise an issue or concern about work health and safety with a person conducting a business or undertaking, an inspector, a work health and safety entry permit holder, a HSR, a member of a HSC or any other person who has a duty, or is exercising a power or function, under the WHS Act
- being involved in or proposing to be involved in resolving a work health and safety issue, or
- taking action or proposing to take action to seek compliance by any person with a duty of an obligation under the WHS Act.

Criminal and civil proceedings for discriminatory conduct

- Criminal proceedings for discriminatory conduct can be brought by the regulator against the person who engages in discriminatory conduct and any person that requests, instructs, induces, encourages, authorises or assists a person to engage in such conduct.
- In such cases an offence is committed only where the prohibited reason is the dominant reason for the discriminatory conduct. The defendant must prove that the prohibited reason was not the dominant reason for discrimination.
- In addition to imposing penalties, a court can make an order that the offender pay compensation to the affected person or that the affected person be reinstated or employed.
- The WHS Act also allows civil proceedings to be brought by a person affected by the discriminatory conduct, or their representative. Remedies may be available if the prohibited reason was a substantial reason for the conduct.

Coercion and inducement

- The WHS Act prohibits action taken, organised or threatened with the intent to induce or coerce a person to:
 - exercise or not exercise a power under the WHS Act, or do so in a particular way
 - perform or not perform a function, or do so in a particular way, or
 - refrain from seeking, or continuing to undertake, a role under the WHS Act.
- Reasonable directions given by an emergency services worker in an emergency are expressly excluded from the prohibition.
- The WHS Act allows civil proceedings to be brought by a person affected by the coercion or inducement, or their representative.

Misrepresentation

- It is an offence under the WHS Act to knowingly or recklessly make false or misleading representations to another person about his or her:
 - rights or obligations under the WHS Act
 - ability to initiate, or participate in, a process or proceeding under the WHS Act, or

- ability to make a complaint or enquiry to a person or body empowered to seek compliance with the WHS Act (e.g. an inspector or the regulator).

A person cannot bring multiple civil actions in relation to the one complaint

- The right to bring civil proceedings against another person under the WHS Act for discriminatory or coercive conduct is extinguished if a person has, in relation to the same matter, already:
 - commenced proceedings under another law and not withdrawn those proceedings,
 - made an application or complaint under another law and not withdrawn it,
 - recovered compensation under another law, or
 - has failed in a proceeding, application or complaint under another law, unless that proceeding, application or complaint related to workers' compensation.

For further information please contact NT WorkSafe on 1800 019 115 or go to www.worksafe.nt.gov.au