

PREGNANCY IN THE WORKPLACE

Advantage Partnership Lawyers

General Rule

Australia protects against unlawful termination and discrimination against women in the workplace based on pregnancy and potential pregnancy under the *Sex Discrimination Act* (1984).

The general rule is that women should be able to continue working while pregnant, unless there are occupational health and safety issues which would impact adversely on their health or the baby's health. If this is the case, they should be offered alternative work with the same employer.

Discrimination

No matter how well intentioned an employer's actions may be, if an employee is pregnant, potentially pregnant, or maternity leave or returning to work from maternity leave, this cannot be used as a reason to discriminate against her:

- By refusing to employ her;
- By transferring or demoting her;
- By changing her full-time position to part-time, or vice versa;
- By making her a casual employee if she is a permanent employee;
- By reducing or increasing her hours of work;
- By altering her hours of work;
- By giving her less skilled or less demanding work;
- By denying her access or limiting her access to opportunities for promotion, transfer or training, or to any other benefits associated with employment;
- By dismissing her; or
- By subjecting her to any other detriment.

An employer is also usually responsible for the discriminatory acts of their employees.

Furthermore, a workplace agreement cannot contain terms which discriminate against an employee because of sex, family responsibilities or pregnancy.

HREOC

If an employee believes she has been unlawfully discriminated against she can seek advice from the Human Rights and Equal Opportunity Commission (HREOC). HREOC can also intervene if provisions that discriminate on the basis of sex are contained within collective agreements, awards, transitional awards, pre-reform certified agreements, preserved State agreements or notional agreement preserving State awards.

FWA

If an employee believes she has been unlawfully terminated for reasons related to pregnancy, she can lodge a complaint with Fair Work Australia within 60 days of the dismissal. After an application is made to the FWA, the following steps take place:

- FWA has a private conference with the employee and employer;
- If FWA finds that all reasonable attempts to fix the matter were, or are unlikely to be unsuccessful, they issue a certificate to that effect.
- The employee may use the certificate to apply to the court to resolve