



Fact Sheet

## Adverse Action

To view the webinar associated with this fact sheet, visit  
<https://www.youtube.com/watch?v=QWmFf77xJ2g>

### What is adverse action?

This is action taken by a person or industrial association that is deemed unlawful under the general protections provisions of the Fair Work Act. Adverse action includes dismissing or refusing to employ a person, and also includes discriminating against a person or otherwise injuring a person in their employment. Adverse action also includes action against an employee because he or she is engaging in a lawful industrial activity, and the dismissal of an employee who is temporarily absent from work due to illness or injury.

### What are adverse action claims?

In order to make a general protections claim under the Fair Work Act employees need to allege they were 'adversely affected' by a management decision made because of their workplace rights, or because they possessed a discriminatory attribute, e.g. race, sex, age, etc.

An example would be where an employee alleged her employment had been terminated because she was pregnant. From that point, a 'reverse onus or proof' would apply and an employer must then prove the decision-making process that followed was not for that reason, but for an acceptable reason, such as continued and well documented under-performance combined with a lack of improvement.

### Why are adverse action claims so significant?

Adverse action claims present considerable risks for employers for a number of reasons. Firstly, they are open to prospective and current employees as well as contractors and other workers. When compared with the minimum employment period needed to be served before having access to unfair dismissal remedies, general protections are accessible by a wider range of people and provide broader remedies including injunctions. Time limits for lodging claims are the same as unfair dismissal claims, damages are uncapped and the reverse onus of proof means the employer is effectively guilty until proven otherwise.

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