

Discriminatory action complaints

OHS information for employers and workers

Key information

- Discriminatory action (disciplinary action) is any action or threat of action that negatively affects a worker's employment circumstances.
- Workers are protected from discriminatory action when performing protected activities listed under section 35 of the *Occupational Health and Safety (OHS) Act*.
- Discriminatory action under OHS legislation is not the same as discrimination under the *Alberta Human Rights Act*.

Workers cannot be subjected to discriminatory action for taking part in protected activities.

Under section 36 of the *OHS Act*, a worker can file a discriminatory action complaint (DAC) if they have reasonable cause to believe they were subjected to discriminatory action because of their involvement in a protected activity, as described in section 35 of the Act.

Before filing a DAC, workers should consider approaching their employer to attempt resolution of the discriminatory action. Unionized workers may also reach out to their union for support.

Protected activities

Section 35 of the *OHS Act* lists the following as protected workplace activities:

- acting in compliance with OHS legislation
- being called to testify, intending to testify or testifying in a proceeding under the Act
- giving relevant information regarding work site conditions to an employer, joint work site health

and safety committee (HSC) member or health and safety (HS) representative, or to an OHS officer

- performing duties or exercising rights as a member of an HSC or as an HS representative
- assisting or having assisted with activities of an HSC or HS representative
- exercising their right to refuse dangerous work
- seeking to have an HSC established or have an HS representative designated
- being prevented from working because of an order under OHS legislation
- taking reasonable action to protect the health and safety of themselves or any other person

If a worker has reasonable cause to believe they have experienced discriminatory action because of their involvement in a protected activity, they can file a DAC with the OHS Contact Centre.



Discriminatory actions

Discriminatory actions are defined in section 1(m) of the *OHS Act* and include:

- adversely affecting an opportunity for promotion
- termination, layoff or suspension
- demotion or transfer
- discontinuation or elimination of a job
- change of a job location
- reduction in wages
- change in hours of work
- reprimand, coercion, intimidation or the imposition of any discipline or other penalty

Discriminatory action complaints

OHS DAC investigations

Complaints are made to the OHS Contact Centre. Upon review by an officer, a DAC intake form may be sent to the complainant. The intake form asks for specific information needed for an investigation.

DAC officers are neutral, objective and impartial throughout the investigation. In deciding if a discriminatory action occurred, the DAC investigating officer must consider the following:

- Was the worker engaged in a protected activity?
- Was the worker subjected to discriminatory action?
- If the worker was performing a protected activity and was subjected to discriminatory action, is the employer able to establish a reason for the disciplinary action other than the worker's participation in a protected activity?

If discriminatory action is confirmed

If all three of the above factors confirm that a worker experienced discriminatory action, OHS can require the employer to:

- stop the discriminatory action
- reinstate the worker to their former employment under the same terms and conditions
- pay the equivalent wages and benefits the worker would have earned if the discriminatory action did not happen
- remove the reprimand or other references to the matter from employment records
- take any other measure the officer considers necessary to prevent a recurrence

Appealing a decision

Once the DAC investigation is complete and a decision is made, either party (the employer or the worker) can appeal the decision with the Alberta Labour Relations Board (ALRB).

The appellant must send the Notice of Appeal to ALRB within 30 days of being given notice of the report from the officer. ALRB decisions are final (subject only to judicial review), become public information and are posted on the ALRB website.

When is it not a discriminatory action?

Discriminatory action complaints under the *OHS Act* strictly address cases where an employer takes disciplinary action against a worker because the worker took part in a protected activity.

Discrimination, wrongful dismissal and health and safety concerns are not addressed through a discriminatory action complaint.

Discrimination

Discriminatory actions under the *OHS Act* are not the same as acts of discrimination.

The *Alberta Human Rights Act* protects all Albertans from discrimination in the areas of employment.

Acts of discrimination, such as racism and unwelcome or offensive comments, are also included in the *OHS Act* definition of harassment and are addressed as a workplace hazard.

Wrongful dismissal

Employment Standards addresses non-OHS employment disputes. Visit the Employment standards web page on Alberta.ca for more information.

Health and safety concerns

Health and safety concerns are addressed separately during a workplace inspection and are not part of a DAC investigation.

Contact us

OHS Contact Centre

(Complaints, questions, reporting serious incidents)

Anywhere in Alberta

- 1-866-415-8690
- Edmonton & surrounding area

- 780-415-8690

Deaf or hearing impaired

- 1-800-232-7215 (Alberta)
- 780-427-9999 (Edmonton)

Online Reporting Service

(PSIs, mine or mine site incidents)

psi.labour.alberta.ca

Website

alberta.ca/OHS

For more information

Alberta Human Rights Act

www.qp.alberta.ca/documents/Acts/A25P5.pdf

Alberta Human Rights Commission

albertahumanrights.ab.ca

Alberta Labour Relations Board: OHS appeals

alrb.gov.ab.ca/ohs_appeals.html

Appeal an OHS action

alberta.ca/appeal-ohs-action.aspx

Employment standards

alberta.ca/employment-standards.aspx

Harassment and violence in the workplace (LI045)

ohs-pubstore.labour.alberta.ca/li045

Get copies of the *OHS Act*, Regulation and Code

Alberta Queen's Printer

qp.gov.ab.ca

Occupational Health and Safety

alberta.ca/ohs-act-regulation-code.aspx

© 2020 Government of Alberta

This material is for information only. The information provided in this material is solely for the user's information and convenience and, while thought to be accurate and functional, it is provided without warranty of any kind. The Crown, its agents, employees or contractors will not be liable to you for any damages, direct or indirect, arising out of your use of the information contained in this material. If in doubt with respect to any information contained within this material, or for confirmation of legal requirements, please refer to the current edition of the *Occupational Health and Safety Act*, Regulation and Code or other applicable legislation. Further, if there is any inconsistency or conflict between any of the information contained in this material and the applicable legislative requirement, the legislative requirement shall prevail. This material is current to January 2020. The law is constantly changing with new legislation, amendments to existing legislation, and decisions from the courts. It is important that you keep yourself informed of the current law. This material may be used, reproduced, stored or transmitted for non-commercial purposes. The source of this material must be acknowledged when publishing or issuing it to others. This material is not to be used, reproduced, stored or transmitted for commercial purposes without written permission from the Government of Alberta.

Discriminatory action complaints

©2020 Government of Alberta | Published: January 2020 | LI061

