

Discriminatory action complaints

OHS information for employers and workers

This bulletin explains the complaint process for discriminatory (disciplinary) actions that took place **prior to December 1, 2021**. It references *Occupational Health and Safety (OHS) Act* SA 2017 cO-2.1. To file a complaint, call the OHS Contact Centre at 1-866-415-8690.

For disciplinary actions that occurred **on or after December 1, 2021**, see [Disciplinary action complaints](#) for the process and how to file a complaint.

Key information

- Discriminatory (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.



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 OHS.

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.

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- 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.

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.

DAC investigations

A worker can file a DAC by calling the OHS Contact Centre at 1-866-415-8690.

After a worker files a DAC with OHS, the complaint is assigned to a DAC officer. The officer will review the complaint and if necessary, contact the worker or other parties named in the DAC to get more information.

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.
- Reinstatement of 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 the 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.

Out of scope

DACs 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 DAC.

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.

For more information

Alberta Human Rights Act

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

Contact us

OHS Contact Centre

Anywhere in Alberta

- 1-866-415-8690
- Edmonton and surrounding area
- 780-415-8690
- Deaf or hard of hearing (TTY)
- 1-800-232-7215 (Alberta)
 - 780-427-9999 (Edmonton)

Notify OHS of health and safety concerns

alberta.ca/file-complaint-online.aspx

Report a workplace incident to OHS

alberta.ca/ohs-complaints-incident.aspx

Website

alberta.ca/OHS

Get copies of the OHS Act, Regulation and Code

Alberta Queen's Printer

qp.gov.ab.ca

OHS

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

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