

**342 Meaning of *adverse action***

(1) The following table sets out circumstances in which a person takes *adverse action* against another person.

**Meaning of *adverse action***

<b>Item</b>	<b>Column 1 <i>Adverse action</i> is taken by ...</b>	<b>Column 2 if ...</b>
1	an employer against an employee	the employer: (a) dismisses the employee; or (b) injures the employee in his or her employment; or (c) alters the position of the employee to the employee's prejudice; or (d) discriminates between the employee and other employees of the employer.
2	a prospective employer against a prospective employee	the prospective employer: (a) refuses to employ the prospective employee; or (b) discriminates against the prospective employee in the terms or conditions on which the prospective employer offers to employ the prospective employee.
3	a person (the <i>principal</i> ) who has entered into a contract for services with an independent contractor against the independent contractor, or a person employed or engaged by the independent contractor	the principal: (a) terminates the contract; or (b) injures the independent contractor in relation to the terms and conditions of the contract; or (c) alters the position of the independent contractor to the independent contractor's prejudice; or (d) refuses to make use of, or agree to make use of, services offered by the independent contractor; or (e) refuses to supply, or agree to supply, goods or services to the independent contractor.
4	a person (the <i>principal</i> ) proposing to enter into a contract for services with an independent contractor against the independent contractor, or a person employed or engaged by the independent contractor	the principal: (a) refuses to engage the independent contractor; or (b) discriminates against the independent contractor in the terms or conditions on which the principal offers to engage the independent contractor; or (c) refuses to make use of, or agree to make use of, services offered by the independent contractor; or (d) refuses to supply, or agree to supply, goods or services to the independent contractor.
5	an employee against his or her employer	the employee:

		<p>(a) ceases work in the service of the employer; or</p> <p>(b) takes industrial action against the employer.</p>
6	an independent contractor against a person who has entered into a contract for services with the independent contractor	<p>the independent contractor:</p> <p>(a) ceases work under the contract; or</p> <p>(b) takes industrial action against the person.</p>
7	an industrial association, or an officer or member of an industrial association, against a person	<p>the industrial association, or the officer or member of the industrial association:</p> <p>(a) organises or takes industrial action against the person; or</p> <p>(b) takes action that has the effect, directly or indirectly, of prejudicing the person in the person's employment or prospective employment; or</p> <p>(c) if the person is an independent contractor—takes action that has the effect, directly or indirectly, of prejudicing the independent contractor in relation to a contract for services; or</p> <p>(d) if the person is a member of the association—imposes a penalty, forfeiture or disability of any kind on the member (other than in relation to money legally owed to the association by the member).</p>

(2) **Adverse action** includes:

- (a) threatening to take action covered by the table in subsection (1); and
- (b) organising such action.

(3) **Adverse action** does not include action that is authorised by or under:

- (a) this Act or any other law of the Commonwealth; or
- (b) a law of a State or Territory prescribed by the regulations.

(4) Without limiting subsection (3), **adverse action** does not include an employer standing down an employee who is:

- (a) engaged in protected industrial action; and
- (b) employed under a contract of employment that provides for the employer to stand down the employee in the circumstances.

(Fair Work Act 2009)

## Subdivision B—Other contraventions

### 372 Application for the FWC to deal with a non-dismissal dispute

If:

- (a) a person alleges a contravention of this Part; and
- (b) the person is not entitled to apply to the FWC under section 365 for the FWC to deal with the dispute;

the person may apply to the FWC under this section for the FWC to deal with the dispute.

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