

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*

Item	Column 1 <i>Adverse action is taken by ...</i>	Column 2 <i>if ...</i>
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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