

PREVENTING DISCRIMINATION A PRACTICAL OVERVIEW of UK LEGISLATION

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1. DISCRIMINATION IN DAY-TO-DAY WORKING PRACTICES

Direct discrimination is generally easily recognisable, where someone is denied employment because of race, gender, sexual orientation, disability, etc.

Indirect discrimination, however, can be harder to detect and may often be unintentional.

If a person feels they are discriminated against unlawfully, they may take a case to an employment tribunal. This could lead to heavy penalties for the employer and, in the absence of an appropriate explanation, employment tribunals are required to infer that discrimination has occurred.

It is also important to bear in mind that anti-discrimination legislation applies equally to **part-time workers**. It's against the law to discriminate against part-time workers because of their part-time status.

Harassment – is unwanted conduct that violates people's dignity or creates an intimidating or offensive atmosphere. This can happen through comments, use of offensive pictures and touching

Victimization occurs when action is taken against a person who has asserted their rights e.g. made a formal complaint of discrimination or given evidence in a tribunal case) (or has pursued action against an employer covered by the provisions of the relevant act on discrimination.

Equal pay reviews

Many companies have instituted equal pay reviews which aim to ensure that all staff enjoy the same pay and conditions while doing similar types of work.

The reviews can help avoid reduce the pay get and ensure those doing the same, or broadly similar work or work of equal value are being the same. These reviews can also help make sure that an equal-pay policy is working.

Positive action

In the UK **positive discrimination** is unlawful but **positive action** is lawful. This means equality targets can be put in place as a way of eliminating historic imbalances in terms of gender, ethnicity, disability, sexual orientation and religion or belief.

2. AGE DISCRIMINATION ON THE GROUNDS OF AGE

Applicable Legislation The Employment Equality (Age) Regulations 2006 were laid before Parliament on 9 March. The Regulations require the approval of both Houses of Parliament. It is anticipated that the necessary debates will take place before the end of March. Subject to that approval, the Regulations will come into force on 1 October 2006. The government aims to have this legislation in place well before it comes into force to give businesses time to prepare.

Many assumptions about people - both organisations and old - are outdated and work against the interests of the individuals involved and the employer.

Ahead of this, best practice is to avoid discrimination on age grounds as much as possible.

Organisations should check there are no hidden **age barriers** in their selection and promotion processes - e.g. aim to place advertisements in publications read by a range of age groups. Organisations should also make sure that their redundancy procedures are based on business needs rather than age.

3. DISCRIMINATION AGAINST DISABLED PEOPLE

Applicable Legislation: The Disability Discrimination Act 1995 (DDA) The Disability Discrimination (Meaning of Disability) Regulations 1996 (SI 1996/1455) Disability Discrimination Act 2005

The [Disability Discrimination Act](#) covers discrimination against disabled people. It originally applied to employers with 15 or more employees, but recent changes implemented October 2004 mean that the Act now applies to most employers no matter how many members of staff.

Since 1 October 2004, it has been unlawful for any employer, regardless of size, with the exception of the armed forces, to directly discriminate against a disabled person because they are disabled. Also they must not discriminate against a disabled person for a reason related to their disability, unless this can be justified.

What counts as a disability?

The Disability Discrimination Act defines disability as a physical or mental impairment which has a substantial and long-term adverse effect on the ability to

carry out normal day-to-day activities. This doesn't include drug or alcohol abuse or a tendency to start fires, steal or physically abuse others, amongst other exclusions.

From 5 December 2005, the Disability Discrimination Act 2005 has widened this definition of disability, providing protection for people with cancer, HIV and multiple sclerosis, effectively from the point of diagnosis. The restriction that mental illness must be "clinically well-recognised" before it is judged to be a mental impairment has also been removed.

What employers must not do

An employer mustn't treat a disabled person less favourably than other members of staff. For instance, organisations shouldn't refuse to interview, employ, train or promote a disabled person, simply because of their disability. Since 1 October 2004, harassment on the grounds of disability has also been explicitly outlawed.

What employers must do

Employers have a duty to make **reasonable adjustments** to enable a disabled person to work or continue working. Reasonable adjustments often involve little or no cost to business.

Penalties for discrimination

Where an employment tribunal finds that disability discrimination has occurred, penalties can be high, since there is no limit on compensation.

There are no length-of-service or age requirements in bringing a claim and where the claimant is an employee, he or she does not need to have left that employment. However, the claim to an employment tribunal will generally have to be brought within three months of the alleged discriminatory act occurring.

4. DISCRIMINATION ON THE GROUNDS OF RACE, COLOUR, ETHNICITY, NATIONALITY

Applicable Legislation: The Race Relations Act (1976) as amended

The Race Relations Act covers people from all racial groups and makes no distinction on the grounds of race, colour, nationality (including citizenship), or ethnic or national origin. The Act was amended in 2000 - the Race Relations (Amendment) Act 2000. The amendment means that the Act now includes public functions, even if those functions are carried out by a private business; and it also places a general duty on listed public authorities to promote race equality. It's unlawful to discriminate against someone, either directly or indirectly, on the grounds of race, colour, nationality - including citizenship - or ethnic origins, under the Race Relations Act 1976.

Racial harassment is defined as a form of discrimination.

As with other forms of discrimination, it can be either direct or indirect on the grounds of race.

Direct discrimination may include treating somebody less favourably on the grounds of their race, colour, ethnicity or national origin.

Indirect discrimination can occur when an employer applies an apparently general rule that in practice disadvantages people of a particular race, colour, ethnicity or national origin and that cannot be justified.

This form of discrimination applies to the way organisations recruit, train, promote and select people for dismissal on grounds of redundancy, or, after they have left, if organisations refuse to provide a reference because they have a discrimination claim against organisations.

From 22 November 2005, a revised Code of Practice on Racial Equality in Employment became available. This is intended to help employers draw up an equal opportunities policy to prevent unlawful racial discrimination. The code will not place any legal duties on employers until 6 April 2006 when it becomes statutory, but it may be taken as evidence in legal proceedings.

The penalties for race discrimination can be high, both for organisations and individuals, since there is no limit on compensation.

There are no length-of-service or age requirements in bringing a claim and where the claimant is an employee, they do not need to have left their employment.

5. DISCRIMINATION ON THE GROUNDS OF RELIGION OR BELIEF

Applicable Legislation: Employment Equality (Religion or Belief) Regulations 2003

Discrimination against an employee or job candidate on the grounds of their religion or belief became unlawful from December 2003 under the Employment Equality (Religion or Belief) Regulations.

The regulations apply to discrimination on grounds of religion, religious belief or similar philosophical belief. They cover discrimination on grounds of perceived as well as actual religion or belief and the religion or belief of someone with whom the person associates.

As with other forms of discrimination, the new legislation recognises both direct and indirect discrimination on the grounds of religion or belief.

Direct discrimination may occur in areas such as recruitment, selection, training, promotion, and selection for redundancy or dismissal when someone is treated less favourably than another because of their actual or perceived religion, religious or philosophical beliefs. An example of this would be where an employee is dismissed on grounds of misconduct for taking leave for a religious occasion.

Indirect discrimination occurs when an employer applies a provision, criterion or practice which disadvantages people of a particular religion or of particular religious or philosophical beliefs and which cannot be justified.

The regulations also outlaw:

- harassment - unwanted conduct that violates people's dignity or creates an intimidating or offensive atmosphere
- victimization - treating people less favourably because of something they have done under or in connection with the regulations, e.g. made a formal complaint of discrimination or given evidence in a tribunal case

There are no length-of-service or age requirements in bringing a claim and where the claimant is an employee, they do not need to have left their employment.

6. DISCRIMINATION ON THE GROUNDS OF SEX, MARITAL STATUS

Applicable Legislation (Sex Discrimination Act 1975 (as amended) Gender Recognition Act 2004; Civil Partnership Act 2004

As with other strands of discrimination, sex discrimination can be direct - treating somebody less favourably on the grounds of their sex; or indirect - applying an apparently general rule which in practice disadvantages one sex and which cannot be justified. It includes the way organisations recruit, train, promote and dismiss people. Former employees retain the right to bring action against an employer if they discover, after leaving their employment, that they suffered discrimination while in that employer's organisations employment.

The penalties for sex discrimination can be high, both for organisations and individuals, since there is no limit on compensation.

There are no length-of-service or age requirements in bringing a claim and claimants who are employees do not need to have left the organisations employment.

From 1 October 2005, the law is explicit that less favourable treatment of women on the grounds of pregnancy or maternity leave counts as unlawful sex discrimination.

Also from 1 October 2005, new regulations make sexual harassment - and harassment on the ground of sex - explicitly unlawful in employment or vocational training. Sexual harassment can include insensitive jokes, displays of sexually explicit material, sexual innuendos or lewd comments or gestures.

It's unlawful to discriminate against a person on grounds that they have undergone, are undergoing or intend to undergo **gender reassignment**, with limited exceptions in recruitment. It is also unlawful to treat a person undergoing gender reassignment less favourably than a person who is off sick for another reason and similar period.

Since 4 April 2005, a person recognised under the Gender Recognition Act 2004 has the right not to be discriminated against as a person of their acquired gender - limited exceptions apply in recruitment.

As of 5 December 2005, any employee who registers under the Civil Partnership Act 2004 will be protected from unlawful direct or indirect sex discrimination on grounds of being a civil partner.

Pay and conditions

Women and men are also entitled to **equal pay and conditions** for work of equal value. This may be different work from that of a colleague of the opposite sex but it is equal in terms of the demands of the job where they are doing the same or similar work, work rated as equivalent, or work of equal value.

As of 5 December 2005, employers will be required to treat married employees and civil partner employees in the same way. This means that any benefit such as

private health care that is available to the spouse of an employee, should also be made available to an employee's civil partner. .

Employees are entitled to request key information from organisations. While organisations are not obliged to provide any information if organisations choose not to, it can count against organisations in an employment tribunal, as can giving an evasive reply.

The gender equality duty for public bodies will come into force in April 2007. This duty places the onus on organisations to demonstrate fair treatment of women and men in the delivery of policy and services as well as in their employment.

(This means service providers and public sector employers will have to design employment and services with the different needs of women and men in mind. It will require public bodies to set their own gender equality goals in consultation with their service users and employers and to take action to achieve them. Public sector employers would also need to look at their employment practices and consider the needs of all their staff, including those that identify as transgender or transsexual. We should see increased childcare provision and more flexible working as public bodies respond to the needs of parents and carers).

7. DISCRIMINATION ON THE GROUNDS OF SEXUAL ORIENTATION

Employment Equality (Sexual Orientation) Regulations 2003 as amended to include the **Civil Partnership Act 2004**

The regulations protect everyone from direct and indirect discrimination, harassment and victimization in employment and training on the grounds of sexual orientation. Practical workplace guidance can be obtained from ACAS, Stonewall - a lesbian, gay and bisexual group ().

Discrimination against an employee or job candidate on the grounds of their sexual orientation became unlawful from **December 2003**.

The Sexual Orientation Regulations apply to discrimination on grounds of orientation towards persons of the same sex (lesbians or gays), the opposite sex (heterosexuals) and the same and opposite sex (bisexuals). They cover discrimination on grounds of perceived as well as actual sexual orientation and the sexual orientation of someone with whom the person associates.

As with other forms of discrimination, the legislation recognises both direct and indirect discrimination on the grounds of sexual orientation. From 5 December 2005, a person who is a civil partner in a registered civil partnership of a same-sex couple should not be treated less favourably than a married person in similar circumstances. If a civil partner is treated less favourably, they may be able to bring a claim for sexual orientation discrimination under the Sexual Orientation Regulations or a claim for sex discrimination.

Direct discrimination may occur in areas such as recruitment, selection, training, promotion, selection for redundancy or dismissal or in awarding employment-related benefits when someone is treated less favourably than another because they are - or are thought to be - lesbian, gay, bisexual or heterosexual.

Indirect discrimination occurs when an employer applies a provision, criterion or practice which disadvantages people of a particular sexual orientation and which cannot be justified.

From 5 December 2005, indirect discrimination could also occur where a civil partner is treated less favourably than a married employee on a range of employment rights and employee benefits including the right to:

- make a request for flexible working
- statutory paternity leave and pay for a newborn child or newly adopted child
- vocational training
- access to a benefit that is given to a married employee - such as a pension or private health care

The regulations also outlaw:

- harassment - unwanted conduct that violates people's dignity or creates an intimidating or offensive atmosphere
- victimisation - treating people less favourably because of something they have done under or in connection with the regulations, e.g. made a formal complaint of discrimination or given evidence in a tribunal case

There are no length-of-service or age requirements in bringing a claim and where the claimant is an employee, they do not need to have left their employment.

Primary Sources: Prevent Discrimination and Value Diversity (Business Link - <http://www.businesslink.gov.uk/bdotg/action/layer?r.s=sl&topicId=1074003268>)

<http://www.dti.gov.uk/er/equality/>

Equal Opportunities Commission- The Gender Equality Duty (<http://www.eoc.org.uk/>)

Useful contacts

Commission for Racial Equality (<http://cre.gov.uk/>)

Disability Rights Commission <http://www.drc.org.uk>

Equal Opportunities Commission (<http://www.eoc.org.uk/>)

DTI (<http://www.dti.gov.uk/er/equality/>)

Stonewall - www.stonewall.org.uk

CIPD- <http://www.cipd.co.uk/default.cipd>

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