



equality regulations

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INTRODUCTION

The Employment Equality (Sexual Orientation) Regulations 2003 and the **Employment Equality (Religion or Belief) Regulations 2003** became law on 1st and 2nd December 2003, respectively.

They made discrimination on the grounds of **sexual orientation, religion and belief** illegal for the first time in the UK (The Regulations relating to belief do not apply in Northern Ireland), in the fields of **employment and vocational training**. They will protect **employees, contract workers, office-holders and partners in firms**.

They will prohibit discrimination by **employers, trade organisations, bodies conferring professional and trade qualifications, training providers, employment agencies and further and higher education institutions**.

DEFINITION OF RELIGION

The regulations define religion as meaning “**any religion, religious belief, or similar philosophical belief**”.

This will cover mainstream religions as well as lesser known religions such as paganism. It will also covers “**philosophical beliefs**” such as humanism and atheism. Whilst there is no exhaustive list of what is covered, the definition will develop over time with case law.

The Regulations are not intended to cover specific beliefs on solitary issues.

DEFINITION OF SEXUAL ORIENTATION

'Sexual orientation' is defined as sexual orientation towards persons of the same sex, persons of the opposite sex, or to both persons of the same sex and of the opposite sex.

It covers actual and perceived sexual orientation. Therefore if someone is wrongly discriminated against on the grounds of what the discriminator thinks their sexuality is (regardless of what it actually is), then such discrimination is covered by these regulations.

WHAT IS DISCRIMINATION?

There are several ways discrimination can occur, as recognised by the Regulations:

Direct Discrimination

This occurs where a person is directly treated less favourably than another on grounds of religion/belief or sexual orientation.

Indirect Discrimination

This occurs where criteria or a practice is applied generally, but puts persons of a particular religion/belief or sexual orientation at a disadvantage without good reason.

Harassment

This is where a person is subjected to unwanted conduct on grounds of religion/belief or sexual orientation with the purpose or effect of violating his/her dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

Victimisation

This occurs where a person receives less favourable treatment than others by reason of the fact that he/she has brought (or given evidence in) proceedings, made an allegation or otherwise done anything under or by reference to the regulations.

EXCEPTIONS TO THE REGULATIONS RELATING TO RELIGION/BELIEF

Under the Regulations differences of treatment related to national security and positive action, are not unlawful.

Regulation 26 is for the specific protection of Sikhs. It affords Sikhs (who normally wear turbans) as a religious group, a special exemption from having to wear protective headgear on a building site. It should also be noted that Sikhs are recognised as a race for the purposes of Race Discrimination Law, so are afforded further protection under that legislation, which is outside the remit of this booklet.

The regulations also provide an exception where being of a particular religion or belief is a genuine and determining occupational requirement for a post if it is proportionate to apply the requirement in that particular case.

Apart from these exceptions, in a normal working environment, a person cannot use their religion to discriminate against another on grounds of sexual orientation. **It is for an employer to clarify to employees that such discrimination will not be tolerated, although the individuals who discriminate can also be held accountable.**

There is also an exception for employers with an ethos based on religion or belief where being of a particular religion or belief is a genuine occupational requirement for a post and it is proportionate to apply the requirement in the particular case. This exception is likely to apply to religious organisations. **For example**, a Christian priest will not be able to claim discrimination under these regulations if he is discriminated against on the grounds of his religion, when applying for the role of priest at a Hindu temple!

ENFORCEMENT

If you are subject to unlawful discrimination, you can put your allegations to your employer via a questionnaire and internal grievance procedure, in order to seek an explanation.

If the outcome is not satisfactory, a case can be brought to the Employment Tribunal. Once an applicant establishes facts which suggest discrimination has taken place, a respondent must provide an adequate explanation to show that discrimination has not taken place. If an adequate explanation is not presented, a Tribunal will conclude that discrimination has taken place.

Such claims must be brought to the Tribunal within three months of the (last) act of discrimination complained about.

In successful cases, a Tribunal can make declarations and compensation awards relating to the discrimination as well as recommendations about how future discrimination can be prevented.

CONCLUSION

These new Regulations will go some way to outlaw discrimination on the grounds of sexual orientation and religion, in employment and training, so extending the scope of protection afforded by anti-discrimination law. However, there are exceptions as set out above which are being challenged by the TUC.

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