



MWR Solicitors
A legal guide

EMPLOYMENT LAW:
Equality regulations



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INTRODUCTION

The UK now has a wide range of legislation promoting equality within the workplace. Following a wave of legislation, the following key categories of discrimination have been established in law:

- Sex
- Sexual orientation
- Race
- Religion and belief
- Age
- Disability

WHO IS COVERED BY THE LEGISLATION

It would be wrong to presume that it is just employees that are covered by the UK equality regulations. The following people are also covered by the regulations:

- Job applicants
- Workers
- Former workers/employees

WHAT IS DISCRIMINATION?

There are several ways discrimination can occur:

Direct Discrimination

This occurs where a person is directly treated less favourably than another on the grounds of their:-

- Sex
- Sexual orientation
- Race
- Religion and belief
- Age
- Disability

Indirect Discrimination

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

Harassment

This is where a person is subjected to unwanted conduct on the grounds of sex, sexual orientation, race, religion, belief, age or disability 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.

BASIC POINTS TO NOTE

Sex discrimination - Sex Discrimination Act 1975

As would be expected, this type of discrimination involves being treated detrimentally or less favourably as a result of a persons gender (ie because they are male/female).

Both males and females are protected by sex discrimination laws. However, there are a couple of instances of discrimination that are specific to each sex including discrimination on the grounds of:

- Pregnancy
- Childbirth
- Maternity leave
- Paternity leave

Discrimination on the grounds of marital status, some flexible working issues and discrimination based on gender reassignment will also fall under the sex discrimination category.

Sexual Orientation - Employment Equality (Sexual Orientation) Regulations 2003

The category of discrimination involves suffering less favourable treatment or detrimental acts as a result of a person's sexual orientation.

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.

Race - Race Relations Act 1975

Discrimination on "racial grounds" includes discrimination based on a person's:

- Colour
- Race
- Nationality
- Ethnic origins
- National origins

Religion and belief - Employment Equality (Religion and Belief) Regulations 2003

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, atheism and even a belief in man-made climate change. Whilst there is no exhaustive list of what is covered, the definition will develop over time with case law.

Interestingly, the definition includes a person's lack of religion or belief too.

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

Age

This category of discrimination is fairly self explanatory. A person should not be treated less favourably or be treated detrimentally because of their age.

Disability

For the purpose of disability discrimination, a person can be categorised as “disabled” under the law if they fulfil the following criteria:

1. they suffer from a physical or mental impairment AND;
2. that impairment has lasted or is likely to last more than 12 months AND;
3. that impairment has a substantial adverse effect on their ability to carry out day to day activities.

The trickiest hurdle of the three criteria above is considering whether impairment has a substantial adverse effect on a person’s ability to carry out normal day to day activities. Whether this is the case is often a matter of medical evidence but the legislation prescribes that certain day to day activities should be considered in this regard eg ability to lift or carry and a person’s mobility.

EXCEPTIONS

Each category of discrimination has its own exceptions and employers may be able to justify discrimination under the law.

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.

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