



Discrimination at Work

People are different. There is an increasing diversity in the number and type of people who are in employment and the law seeks to ensure there is equality in the workplace by taking account of the fact that individuals are not the same.

In an effort to eliminate unfair discrimination there are legal rights to protect employees from certain kinds of discrimination, in terms of age, disability, gender, race, religion or belief and sexual orientation. Essentially, this means treating everyone equally by having regard to their individual differences, although it is important to recognise that some types of discrimination by employers can be justified in certain circumstances owing to unavoidable business needs.

The purpose of the law is to seek fairness by eliminating unlawful discrimination at work. Employees should therefore be treated on their own merits in relation to issues such as recruitment and selection, retention, access to training and promotion. Freedom from discrimination also means that men and women require to be paid equally for work of equal value. However, because there are differences in people there can be differences in how the law is applied.

The law defines two basic categories of discrimination - direct discrimination and indirect discrimination

Direct discrimination is when an employee is treated less favourably than others because of his or her age, disability, gender, race, religion or belief or sexual orientation. For example, if an employee was not promoted or was dismissed because she was a woman, this would amount to direct discrimination.

Indirect discrimination happens where an employer has rules, policies or work practices which are applied to the whole workforce and although not aimed personally at individual employees may nonetheless put some workers at a disadvantage, to such an extent that the rules, policies or practices cannot be justified in terms of doing the job.

The following is a brief outline of how the various strands of diversity are dealt with by the law relating to discrimination at work:

Age discrimination – This type of discrimination occurs when people are treated unfairly because of their age, as it is against the law to discriminate against employees for being too young or too old. This means that employers cannot impose rules or practices which put employees at a disadvantage, regardless of their age; unless it can be shown they are justified. An example of justified discrimination would relate to the non-employment of a young person under 18 years in a job that involves selling alcohol.

Disability – Specific rights are in place to protect disabled employees. The type of condition that amounts to a disability is described as being a physical or mental impairment which has a substantial and long-term negative effect on an employee's ability to carry out day-to-day activities. An impairment includes conditions associated with a lack of mobility, being unable to lift or carry objects, lack of physical co-ordination or the lack of ability to concentrate, learn or understand. However, the disability provisions do not cover a number of conditions, including addiction to alcohol or nicotine. Employees who have been diagnosed with cancer, HIV or multiple sclerosis are included within the scope of the law as are people who are certified as being blind or partially-sighted.

It is important is that disabled employees should be valued for what they can contribute as distinct from what they cannot do. The law therefore requires employers to make what are known as reasonable adjustments to the workplace to enable disabled workers to do their jobs, although this will depend on the essential requirements of the job as well as other factors such as the costs involved and the size of the business.

Gender – it is fundamental concept that men and women, as well as transgender people, should not be treated unfairly because of their gender, because they are married, because they are raising a family or because they are in a registered civil partnership. The legal provisions extend to people who intend to undergo, or have undergone, gender reassignment.

Race – it is against the law for an employer to treat someone less favourably than other employees because of:

- ◆ Their race
- ◆ Their colour
- ◆ Their nationality
- ◆ The country they came from originally
- ◆ Their ethnic origins

Religion and Belief – An employee's religion or belief should not interfere with his or her right to be treated fairly at work and an example of direct discrimination would be where an employer refused to employ someone because of their religion or belief. The definition of what is regarded as a religion or belief is wide and includes an organised religion such as Christianity, Judaism or Islam, and likewise extends to people who have no religion, for example if they are atheists.

Sexuality – It should not matter whether employees are gay, lesbian or bisexual in how they are dealt with at work. The law requires that employers should not treat employees less favourably than other workers because of their sexuality. For example, it would be direct discrimination if an employer was to refuse to employ someone because they were a lesbian. Similarly, it also against the law for an employer to have rules, policies or practices, which although not aimed at a particular worker, nonetheless puts that worker at a disadvantage because of his or her sexual orientation.

Harassment is another form of discrimination and can be said to be unwelcome or offensive behaviour towards an employee because of, for example, the race of that employee. Importantly, the intention of the person whose behaviour amounts to harassment is irrelevant as there does not need to be deliberate action by that person. What matters is how it feels to be the individual on the receiving end of the behaviour.

Similarly, victimisation at work can also be regarded as discrimination in circumstances where an employee is treated unfairly because they may have made a complaint, or may have supported someone else who is taking action against their employer, for example by acting as a witness in a discrimination case.

It is generally accepted that good employers will give a commitment to create an environment in which individual differences and the contributions by all members of staff are recognised and valued. Every employee is entitled to a working environment that promotes dignity and respect to all and where no form of unfair or unjustified discrimination will be tolerated. The purpose of the law is clear and recent developments reflect the desire to achieve equality for each and every employee in a changing and diverse workplace.

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