

Employment Law Fact Sheet No. 21

PREVENTING DISCRIMINATION



Preventing Discrimination

It is unlawful to discriminate on grounds of sex (includes pregnancy and maternity), marital status (includes civil partnerships), gender reassignment, disability, race (includes colour, nationality or ethnic origin), age, sexual orientation and religion or belief. Collectively known as “protected characteristics”.

Types of discrimination

Direct discrimination: treating less favourably directly because of a characteristic listed above. Example: not giving the job to the most suitable candidate because she is a woman. Direct discrimination may also occur when someone is treated less favourably because of their association with someone who has a protected characteristic. For example, treating an employee less favourably because they have a disabled child.

Indirect discrimination: applying a rule that may disadvantage a particular group. Example: insisting all employees must work overtime in order to qualify for a bonus; could disadvantage women who are arguably more likely than men to have childcare responsibilities outside of working hours.

Harassment: unwanted conduct that has the purpose of violating a person's dignity or creating an offensive, intimidating or hostile environment. This will also amount to discrimination if it is related to any of the characteristics listed above.

Victimisation: treating someone less favourably because they have raised or intend to raise a grievance or claim related to discrimination.

Some examples of when discrimination can occur

- Pre employment: poorly worded job advertisements, discriminatory recruitment selection practices (see guide on recruitment issues);
- During employment: provisions for terms and conditions, benefits or promotions tainted by discrimination (may not be obvious – see indirect discrimination above), instances of bullying may amount to harassment and discrimination.
- Post termination: giving a discriminatory reference (e.g. negative comments regarding performance issues or absence that were due to a condition amounting to a disability).
- Reasonable adjustments: employers are expected to consider and where possible make reasonable adjustments for employees who have a condition which amounts to a disability if this will assist them in performing their role. Failure to do this may also amount to discrimination.

Vicarious liability

As an employer you are liable for the acts of your employees. This means that a claim could be brought against you for instances of bullying amounting to discrimination in the workplace. In defending any claim it will be important to demonstrate that you have at least taken some steps to prevent this - see action points below.

If an employment tribunal makes a finding of discrimination the financial consequences for an employer can be severe. Compensation for injury to feelings is awarded according to the level of seriousness and there is no maximum cap.

Mandatory Gender Pay Gap Reporting

Large private and voluntary sector employers (those with 250 or more employees) are required to publish annual information on their gender pay gap. After the suspension in 2020 of enforcement action against employers who did not report their gender pay gap information, reporting recommences this year.

The Employment Rights Bill (not yet law) promises to strengthen existing pay gap reporting measures when it is introduced into law.

Action points

- Train employees on the issues/ equality opportunity awareness.
- A recent Employment Appeal Tribunal case emphasised the importance of anti-harassment and diversity training being up to date and fit for purpose.
 - In this case, an employer's "stale" diversity training was not enough to defend a claim of harassment brought by an employee who had been subjected to racist comments by a colleague in the workplace.
 - Employers are normally responsible for any discriminatory or harassing acts committed by their employees. However, there is a defence under the Equality Act 2010, for an employer who would otherwise be responsible, if the employer can show that it took "all reasonable steps" to prevent the employee from doing that discriminatory act.
 - This case highlighted that having a policy and putting equal opportunities training in place is simply not enough – equal opportunity policies should be regularly reviewed, and refresher training provided as needed.
- Have policies in place that you are prepared to enforce if necessary: equal opportunities/anti bullying/harassment; grievance procedure. **See TBA Employment Law Sample Policy No. 6 - Prevention of Bullying and Harassment.**
- Give thought to possible indirect discrimination when applying, creating or enforcing a provision or rule.
- Consult with disabled employees about any necessary adjustments which can be made. The duty is to consider/ make "reasonable" adjustments only – contact the TBA if further assistance is required.

Further information can be found by following the link below:

[Bullying and discrimination](#)

Preventing Sexual Harassment

From October 2024 the [Worker Protection \(Amendment of Equality Act 2010\)](#) Bill strengthened the existing protection for workers against sexual harassment. There is now a duty on employers to take 'reasonable steps' to prevent sexual harassment. Tribunals have the power to increase compensation by up to 25% if they find an employer has breached this duty.

Key features of the Act include:

- The creation of a statutory duty requiring an employer to prevent sexual harassment of employees and workers.
- Where sexual harassment occurs, as well as enforcement by the Equality and Human Rights Commission, an employment tribunal will be entitled to increase compensation in an individual harassment case by up to 25%.
- Employers can be liable for the harassment committed by third parties, e.g., customers, service users and clients, and in an education setting.
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These are 'duties to prevent', meaning having a policy won't be enough. So, in addition to amending dignity at work policies, organisations must make clear what is unacceptable, enforce those standards and be able to demonstrate that action is taken to tackle these issues when they arise.

Be Aware!

The Employment Rights Bill (not yet law) promises to amend the 2024 legislation further, requiring employers to take 'all reasonable steps' to prevent the sexual harassment of their employees.

Separate regulations will set out what are to be regarded as the 'reasonable steps' that employers should take in order to comply with their duty to take all reasonable steps to prevent sexual harassment (including third party sexual harassment). This will include carrying out risk assessments, publishing policies, taking steps relating to the reporting of sexual harassment and steps relating to the employer's handling of complaints about sexual harassment.

The Bill will also amend existing legislation to provide that an employee reporting sexual harassment will be making a protected disclosure (meaning that the employee will be eligible for protection as a 'whistleblower').

These changes promise to be the enduring legacy of the #MeToo movement.

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