

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

A significant new 'duty to prevent' sexual harassment came into force in October 2024 which was upgraded by changes to whistleblowing legislation; and will be upgraded further in October 2026. Awards may be increased by up to 25% if an employer has failed to prevent sexual harassment:

- Employers must take "all reasonable steps" (an upgrade from the current "reasonable steps" standard) stop prevent sexual harassment of employees, **including by third parties** such as clients, customers, and contractors. Think of the notices in the doctors/in trains. Employers need to prove there were **genuinely no further steps** they could have reasonably taken to prevent the harassment,
- This means employers will be expected to **proactively** assess risks, implement robust anti-harassment policies, provide regular training, foster a respectful culture, and respond promptly and effectively to incidents or complaints.

Employers will need to ensure that a clear "zero tolerance" approach is embedded across the workforce, whether this is by carrying out risk assessments, reviewing their harassment policies, enhancing reporting procedures or delivering training. This needs to be much more than a tick box exercise - it needs to be ultra clear to everyone at your place of work that sexual harassment is not tolerated by anyone and action will be taken against perpetrators.

The Act amended 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 are the enduring legacy of the #metoo movement.

Be Aware!

New criminal offence of intentional harassment, alarm or distress carried out because of a person's sex, or presumed sex: For the offence to occur, the perpetrator must have intended to cause harassment, alarm or distress because of the victim's sex or presumed sex.

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