

People Matters:

Unlawful Discrimination



Unlawful Discrimination - The New Law from December 2003

Sexual Orientation

From the 1st December 2003 it is unlawful for employers or their employees to discriminate against or harass a person on the grounds of their sexual orientation.

Sexual orientation

Means a sexual orientation towards persons of the same or opposite sex or persons of the same and opposite sex. People are protected whatever their sexual orientation. NB This does not include paedophiles or sexual practices such as sado-masochism.

Who is protected?

The rules apply to job applicants, employees, workers and the self-employed.

Direct discrimination

Is where A treats B less favourably than he treats or would treat another person e.g. A refuses to appoint B because he is gay.

Indirect discrimination

A applies to B a provision, criteria or practice which A applies equally to people of a different sexual orientation but which places B due to his sexual orientation at a disadvantage e.g. a brewery advertise for a married couple to run a pub. It is not indirect discrimination if an employer can show that their action was a proportionate means of achieving a legitimate aim.

Harassment

Unwanted conduct which violates a person's dignity and creates an intimidating, hostile, degrading, humiliating or offensive environment.

Victimisation

Employers will be penalised if they are shown to have victimised employees who have tried to invoke the new regulations.

Acts of employees

Employers will be liable for any acts of discrimination or harassment in the workplace by employees unless they can show they have taken reasonable steps to prevent them.

Enforcement and penalties

Claims must be brought in the Employment Tribunal within three months of the act complained of. There is no limit on the compensation that can be awarded.

Prevention of claims

Employers must have in place an equal opportunities policy, which is backed by the management and supplemented by training programmes and disciplinary sanctions.

Religious Belief

From the 2nd December it is unlawful for employers or their employees to discriminate against or harass a person on the grounds of their religion or belief.

Religious belief

Means any religion, religious belief or similar philosophical belief. While members of established religions such as Catholics, Jews or Muslims will be protected the position of less mainstream beliefs such as Druidism are less clear.

Factors to be considered.

The DTI has suggested that a Tribunal should look at factors such as collective worship, a clear belief system, or a profound belief affecting way of life or view of the world.

Political beliefs

Philosophical belief doesn't include any philosophical or political belief unless it is similar to a religious belief.

Non-believers

As the rules are designed to protect people with religious beliefs, it seems discrimination may be possible against someone who holds no such beliefs.

Who is protected?

The rules apply to job applicants, employees, workers and the self-employed.

Discrimination, Harassment and Victimization

Discrimination can be direct and indirect and the criteria for assessing this are similar to those for sexual orientation. Similar provisions also apply in the case of harassment or victimization.

Genuine occupational requirement ('GOR')

An employer can treat job applicants differently where being a member of a religion is a genuine occupational requirement. A Christian school may be able to show that there is a requirement for teachers to be Christians. Similar principles may not be applicable to ancillary staff however.

Implementation in the workplace

Accommodation of religious or belief observance will depend on what is reasonable or practical. Greater latitude will be expected from larger employers than smaller ones. Employers will need to consider issues such as dress code, time off for religious observance etc.

Acts of employees, Enforcement and penalties

The provisions are as for sexual orientation.

Prevention of claims

Employers must have taken reasonable steps to prevent discrimination.

We hope that this general guide, which Reasonable People have written for [The Food Club](#) in collaboration with [George and Co Solicitors](#), will be helpful in understanding the requirements of this new law.

These Notes are for general guidance only. Legal advice should be taken on any particular problem.

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