

## **EMPLOYMENT LAW BULLETIN 18 November 2016**

### **Discrimination and harassment: business development briefing**

This business development briefing sets out the different types of discrimination that can occur within the workplace and highlights practical steps a business can take to help avoid breaching discrimination law.

#### **Why is it important to know about discrimination laws?**

Discrimination law is designed to:

- Ensure equality of opportunity at work.
- Protect employees' dignity.
- Ensure that complaints can be raised without fear of reprisal.

#### **What are the penalties for failing to comply with discrimination laws?**

##### **High compensation payments**

There is no limit on the amount of compensation that can be awarded.

##### **Expensive litigation**

Litigation can involve significant management time and legal costs, which are not usually recoverable.

##### **Damaging publicity**

Allegations of discrimination or harassment are likely to create bad publicity for a business. It is better to avoid giving rise to a claim, than to manage a crisis after a claim has been made.

##### **Negative impact on staff morale**

Discrimination and harassment issues can be highly emotive and the process may have a negative impact on staff morale.

#### **What areas of working life are covered?**

Discrimination law covers all areas of employment, including:

- Job adverts and the recruitment process.
- Conduct during employment.
- Work social events.
- Job references.

## What types of discrimination are prohibited?

Businesses must not discriminate against employees on the basis of:

- Sex (for example, a business must not offer a male candidate a more attractive health care package than a female candidate for the same post).
- Gender reassignment.
- Being pregnant or on maternity leave (for example, a business should not delay the promotion of a female employee because she is on maternity leave).
- Being married or in a civil partnership.
- Race (including ethnic or national origin, nationality and colour). For example, it could be unlawful to refuse to promote an employee on the basis that English is not their first language.
- Disability (for example, a business cannot dismiss a disabled employee simply for taking substantial periods of sick leave, if they are off work because of their disability).
- Sexual orientation (for example, if a business invites employees' partners to a social function, the invitation should be extended to same-sex partners).
- Religion or belief (for example, it may be unlawful to prohibit headwear at work, as this may discriminate against Sikhs who wear turbans for religious reasons).
- Age (for example, choosing not to interview a candidate because their application suggests they are nearing retirement age is discriminatory).

## Protection from harassment

- Harassment is any unwanted conduct that has the purpose or effect of:
  - violating a person's dignity; or
  - creating a hostile, degrading, humiliating or offensive environment.
- It is discriminatory if it is related to any of the characteristics listed above. For example, it is important to make sure more junior staff are not belittled or humiliated due to their lack of experience.

## Protection from victimisation

A business must not discipline an employee who either:

- Brings a discrimination claim against the business.
- Gives evidence on behalf of a colleague in an employment tribunal.

## What are the main defences to a discrimination claim?

### Justification

In limited circumstances, an employee's treatment may not be discriminatory, if it can be objectively justified. For example, a requirement to have excellent written English skills may indirectly discriminate against non-British job applicants, unless the business can show that the aims of the job in question cannot reasonably be met without that requirement.

## Occupational requirements

It may be lawful to discriminate if having a particular characteristic is an occupational requirement. For example, a Catholic school may require its religious education teacher to be a Catholic.

## The law requires the business to discriminate

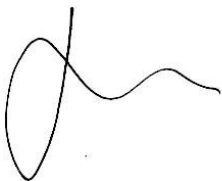
There are some instances in which a business may be required by law to do something discriminatory. For example, immigration legislation may require the business to refuse to employ a non-EU job applicant on the grounds of their nationality, even if they are the best qualified person for the job.

## Practical steps to take to help avoid breaching discrimination law

- Provide staff with employment handbooks (including policies on equal opportunities and harassment) setting out what constitutes acceptable behaviour and what does not.
- Provide training on equal opportunities and harassment. This may help managers:
  - avoid inappropriate questions at interviews; and
  - recognise and deal with harassment at an early stage.
- Set up clear procedures for staff to:
  - raise concerns and complaints, and
  - deal with complaints.
- Ensure discriminatory behaviour by staff is not tolerated and is dealt with through proper disciplinary measures.
- Review employment contracts, policies and employee share schemes to ensure they comply with the law.
- Make reasonable adjustments where this will alleviate difficulties suffered by a disabled employee in the workplace (for example, by installing wheelchair ramps).
- Where possible, accommodate workers' different cultures and religious beliefs (for example, requests for time off to pray should be allowed, unless a refusal can be justified).
- Try to accommodate requests for family-friendly hours by employees with childcare or other family commitments, unless a refusal can be justified.
- Undertake equal opportunities monitoring, but do not use the forms as part of recruitment or other decision making.

If you have any questions about the content of this e-mail, please contact me using the details below or if you would like information about other legal services we offer, please visit our [website](#).

Kind regards



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