

DISCRIMINATION FAQ

What is workplace discrimination?

Workplace discrimination occurs when an employee suffers unfavourable or unfair treatment. The law protects employees from discrimination on the grounds of sex, marital status, race, sexual orientation, disability, religion, belief, age or a combination of these. In addition, in certain circumstances, employers cannot treat workers less favourably on the basis that they work part-time or are employed on a fixed term contract.

When is discrimination prohibited?

In every stage of employment. This includes advertising job vacancies, interviewing and selecting candidates, terms and benefits of employment, promotion and other opportunities as well as dismissal.

Do employers have a defence?

An employer can sometimes justify a discriminatory act, for example, if sex was a real requirement of the job, e.g. to keep decency or privacy when there is physical contact. An employer will not be vicariously liable for the discriminatory acts of its employees if the employer proves that he took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of his employment acts of that description.

What is direct discrimination?

Direct discrimination occurs when, on grounds of sex/disability/religion/sexual orientation etc, A treats B less favourably than he treats or would treat other persons.

What is indirect discrimination?

Indirect discrimination will occur where A applies a provision, criteria or practice to people of different sexes/ages/religions/sexual orientations etc which: -

- puts people of B's religion/sexual orientation etc at a particular disadvantage;
- puts B at that disadvantage; and
- cannot be shown to be a proportionate means of achieving a legitimate aim.

I think I am being discriminated against at work. What can I do?

If you think you are being discriminated against at work, there are a number of steps that can be taken: -

- Speak informally with other colleagues to see if they are receiving similar treatment or if they have noticed that you are being discriminated against;
- If possible, try speaking personally to the person discriminating against you and ask them to stop or warn them that you will complain officially;
- If matters cannot be resolved, raise a written grievance with your employer outlining events, dates and times of the discriminatory behaviour. The grievance should be signed and dated, and you should keep a copy.

If this still does not resolve matters, the final step could be to take the case to an Employment Tribunal. If you wish to do this you must apply to a Tribunal within three months of the discriminatory act complained of, although this time limit may be extended in certain circumstances. You should seek employment law advice as early as possible if you believe that you have suffered discrimination. You may also be able to serve a discrimination questionnaire on your employer.

The sorts of steps that are appropriate will depend very much on the facts of each individual case.

Do men and women have the right to receive the same pay?

Under the Equal Pay Act 1970 it is unlawful to offer different pay and conditions where women and men are doing the same or like work or work rated as equivalent. Pay is interpreted widely by the courts, e.g. access to pensions or 'perks'. It is also unlawful to offer unequal pay for work of equal value in terms of demands made under such headings as effort, skill and decision making. This applies even where two posts look apparently dissimilar.

Under the Equal Pay Act 1970, a person is entitled to write to his or her employer asking for information that will help establish whether he or she has received equal pay and, if not, what the reasons are. An equal pay questionnaire has been devised so that the employee can send questions to the employer. It is intended to help individuals who believe they may not have received equal pay for "equal work" to request key information from their employers to establish whether this is the case and, if so, the reasons why. In the questionnaire, the term "equal work" is used to describe work that is the same or broadly similar (known as "like work"); work that has been rated as equivalent under a job evaluation study; or work of equal value.

What is a disability?

By law, you are disabled if you have a 'physical or mental impairment which has a substantial and long-term adverse effect on your ability to carry out normal day-to-day activities'. This includes people who use wheelchairs, blind and partially sighted people, deaf people, people with arthritis, people with long-term illnesses and people with learning disabilities. The Act also covers people with severe disfigurements and, in certain circumstances, people who have had a disability in the past - for example, someone who had severe depression, but has since recovered.

What does the Disability Discrimination Act do?

The Disability Discrimination Act 1995 makes it unlawful for employers to discriminate against current or prospective workers who have a disability or who have had a disability in the past. The Act applies to all employers irrespective of size. The employer also has a duty under the Disability Discrimination Act to make reasonable adjustments to either the workplace, workstation or working environment to help the disabled person cope with their disability.

What do 'sexual orientation' and 'religion or belief' mean?

Sexual orientation is defined as sexual orientation towards people of the same or the opposite sex, or towards people of either sex. Employees are protected against discrimination on grounds of their sexual orientation, whether they are heterosexual, homosexual or bisexual.

Religion or belief is defined as 'any religion, religious belief or philosophical belief'. The width of the definition will mean that both well recognised religions such as Islam or Christianity and other beliefs such as Humanism will be recognised.

What is race discrimination?

Under the Race Relations Act 1976 it is unlawful in employment to discriminate, either directly or indirectly, on the grounds of race, colour, nationality or ethnic origins.

What is age discrimination?

Under the Employment Equality (Age) Discrimination Regulations 2006 age discrimination in the workplace has been outlawed by. It is now unlawful to discriminate on the basis of age in relation to recruitment, promotion and training and there is a ban on all retirement ages under 65 unless the retirement age is objectively justified. Employers have to inform employees in writing of their intended retirement dates at least six months in advance. The upper qualifying age for unfair dismissal and redundancy has also been removed and there is a duty on employers to consider any requests to continue to work beyond the retirement age. For further information, please see the Age Discrimination – Key Points factsheet.

What is the Equality Bill?

The Equality Bill is a new piece of legislation aimed at simplifying and extending existing discrimination laws. It is due to be enacted in Autumn 2010.

Where can I get discrimination and employment law advice?

Although all of the solicitors in our Employment Team are experienced at advising both employers and employees in relation to discrimination matters, Duncan Murray, a partner in the Team, is an expert in the field of discrimination and has been involved in some ground breaking discrimination cases. For example, he was instructing solicitor for the Ministry Of Defence in MacDonal v MOD which was appealed to the House of Lords.

Duncan is assisted by Pamela McKay, Carrie Mitchell and Jillian Paton who also specialise in discrimination law.

As well as advising on bringing and defending discrimination cases before Employment Tribunals we are also able to offer:-

- discrimination audit/health check
- compliance training for managers and supervisors
- training on avoiding harassment claims
- advice on drafting and implementing an adequate equal opportunity policy

Given that there is no limit to the amount that a Tribunal can award in discrimination cases it is critical that employers ensure that their policies are adequate and their staff suitably trained.

Additional useful information can be found on the following website: -

Equality and Human Rights Commission

<http://www.equalityhumanrights.com/>

For more information please contact our experienced employment law solicitors in Edinburgh, Glasgow and London.

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