

# Discrimination and harassment



## 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.

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## 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 would like any further information about our specialist employment law and HR services, please contact a member of the team.

## KEY CONTACTS



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Catharine is a very experienced employment lawyer and HR advisor. She advises clients on a wide range of matters, providing sound and practical support as needed. Catharine is commercially focussed and helps to position clients so they achieve the best results for their organisation. She adopts a proactive approach as she guides her clients on daily legal and HR matters – from positive initiatives to more formal issues usually arising from disciplinary and grievances. As Head of HR, Catharine brings hands-on experience and can deal with disciplinarys, redundancies and training within our clients' businesses. She also acts for clients in the Employment Tribunal. Catharine is praised highly for her in-depth knowledge, timely and straight forward responses.



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Kevin is experienced in all aspects of employment law, both claimant and respondent, from drafting contracts and procedures, through to providing representation before tribunals in cases involving multiple claimants, and advising on dismissal and re-engagement procedures in relation to contract variations for 500 plus employees. He has worked across the public and private sectors, for high street practices, local authorities and RSLs. This diverse range of experience has given him a very good understanding of the different pressures and considerations that apply when providing advice to individuals, businesses and public bodies. Kevin is admired for his pragmatic approach to most problems, and for finding solutions which minimise both cost and risk to clients.

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