



Born This Way: How to Deal with LGBTQIA+ Discrimination in the Workplace

All over the world, members of the LGBTQIA+ community continue to face discrimination in all aspects of their lives. One area where there is a particular risk of harassment and discrimination in the workplace. A report published by Stonewall in 2018 stated that 18% LGBTQIA+ staff had been the target of negative comments or conduct from work colleagues during the previous year, due to their gender identity or sexual orientation. Employers must ensure that there are measures in place to safeguard their LGBTQIA+ staff members whilst they are at work, as a failure to do so could have serious consequences.

In this blog, we will explore the steps employers can take to facilitate an environment where people of all genders and sexual orientations can thrive. We will also outline the options an employee has if they feel they are being discriminated against due to their gender or sexual orientation at work.

What is discrimination and how are employees protected?

Discrimination occurs when someone is treated differently due to one of the 9 characteristics protected by the Equality Act 2010. Included among these protected characteristics are gender reassignment, sex and sexual orientation, meaning that it is unlawful to treat someone less favourably due to having one of these characteristics.

The Gender Recognition Act 2004 also helps to protect employees from discrimination based on their gender. This piece of legislation enables transsexual people to apply to the Gender Recognition Panel to receive a Gender Recognition Certificate ("GRC"). From the date of the GRC, the applicant will be legally considered to be the acquired gender. As such both the Equality Act and Gender Recognition Act work together to offer protection to employees who have undergone or are undergoing a gender transition. It is important to note that the employee does not need to have had an operation in order to be protected.

Discrimination in the workplace can take many forms. The most common types in situations relating to gender or sexual orientation are direct discrimination and indirect discrimination both briefly explained as below:

- **Direct discrimination** – when someone is treated less favourably than other employees due to

gender identity or sexual orientation. For example, paying someone less than others, refusing them training or dismissing them, solely based on their gender identity, is direct discrimination.

- **Indirect discrimination** – this occurs when a workplace provision, criterion or practice puts people of a particular sexual orientation or gender identity at a particular disadvantage compared to other employees.
- **Harassment** – behaviour which violates someone’s dignity and creates a hostile environment is harassment. People who are harassed may be made to feel disrespected or threatened in the workplace.

All types of discrimination in the workplace are equally serious as all could be very damaging to the employee and their mental health. This is why it is so important for employers to ensure it is not tolerated.

How can employers ensure that they cultivate an inclusive workplace?

Employers have a duty of care to ensure employees feel safe and supported in the workplace. There are a number of ways an employer can go about fulfilling this duty of care, including taking the following steps:

- **Introducing inclusivity training** – ensure staff understand what discrimination looks like in practice, and how to avoid inadvertently discriminating against someone in the workplace. Training should include guidance about the use of pronouns, and line managers should be educated on LGBTQIA+ issues and how to identify discrimination and harassment.
- **Implementing anti-bullying and harassment policies** – develop policies that make it clear the business has a zero tolerance stance on bullying and harassment, with clear sanctions for those that breach the policy. There should also be an equality policy communicated to all staff, with information about what to do in the event that notices some form of discrimination.
- **Monitor staff diversity** – make a public commitment to diversity and develop clear policies around recruitment and promotion.

What can an employee do if they are being discriminated against on the basis of their gender or sexual orientation at work?

If an employee is being discriminated against or harassed at work due to their gender identity or sexual orientation, they may wish to firstly raise the issue informally with someone they feel comfortable talking to (e.g.

their manager or HR).

Should this approach not work, and if the discrimination continues, then the next step would be to raise a formal grievance. Employers have a duty of care to protect employees from harassment and discrimination whilst they are at work. As such, raising a formal grievance should mean that the issue is thoroughly investigated and dealt with appropriately. Employers should have written policies on how formal grievances are dealt with, and ensure they are followed each time a grievance is raised.

Should the formal grievance not resolve the matter, then the employee has the option of taking the complaint to the Employment Tribunal ("ET"). Firstly the employee will need to inform Acas of the claim, who will offer early conciliation to try and resolve the claim without the need to proceed to the ET. Any claim made to the ET should be brought within 3 months of the last act of discrimination.

In a successful ET claim, the ET can also if appropriate make the following orders, in addition to compensation:

- A declaration of the rights of the parties.
- An order that the respondent pays compensation to the claimant.
- An appropriate recommendation as to what steps the respondent should take to reduce the adverse effect of discrimination on the claimant.

Should you require more information or advice in relation to a discrimination issue in the workplace, please contact our specialist employment solicitors on 01202 786332 or email online.enquiries@LA-law.com.