

# A GUIDE TO EQUAL OPPORTUNITY REGULATIONS

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### Introduction

It has become a principle of employment law in the UK that your employees must not suffer discrimination on the grounds of their race, gender, disability, religious belief or sexual orientation. Also, since 1 October 2006, discrimination on the grounds of age has been outlawed.

A rolling programme of equal opportunity and anti-discrimination legislation is placing more and more obligations on business owners, so you need to know exactly what the law demands of you in terms of creating equal opportunities, and how to avoid situations where discrimination might take place.

This factsheet outlines the main equal opportunity regulations currently in force and describes what steps you can take to avoid accusations of discrimination.

### What counts as discrimination?

Bad business practice that could amount to unlawful discrimination can take two forms:

- Direct discrimination - this occurs if you treat an employee less favourably than his or her colleagues due to their personal attributes or their lifestyle. For example, refusing to offer a post to a woman because she is pregnant, or refusing to employ a person because of their religion, is direct discrimination.
- Indirect discrimination - this may be said to occur if your working practices inadvertently and unjustifiably favour one particular group over another. For example, advertising a job in a magazine that is read only by one section of the community is indirect discrimination.

In addition, legislation outlaws two forms of conduct between an employer and employee and between employees that amount to unlawful discrimination:

- Harassment - defined as unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for that person. Perhaps the most familiar example is sexual harassment, and such conduct is outlawed by the Sex Discrimination Acts. Harassment can occur with any form of discrimination, and you are liable for employees who harass others unless you can show you have taken all reasonable steps to prevent it.
- Victimisation - defined as treating a person less favourably because that person has brought proceedings for discrimination against you. For example, you may not transfer a person to another branch or office against their wishes because that person has complained of being harassed.

### Areas of discrimination covered by the law

The law says you must not discriminate on the following grounds:

- Race - the Race Relations Act 1976 outlaws racial discrimination in employment, vocational training, recruitment, terms and

conditions of employment, dismissal policies and similar related areas. Groups covered by the term 'race' are defined in the Act by their skin colour, nationality, ethnic or other national origin.

- Gender - the Sex Discrimination Acts 1975 and 1986, the Employment Act 1989 and the Employment Equality (Sex Discrimination) Regulations 2005 make it unlawful to discriminate on the grounds of gender or marital status. Recent amendments mean that people who have undergone sex-change surgery are also protected.
- Disability - the Disability Discrimination Act 1995 (as amended) outlaws discrimination on the grounds of disability, defined as a physical or mental impairment that has a substantial and long-term adverse effect on a person's ability to carry out normal daily activities. The Act further defines discrimination as being where a disabled person is treated less favourably than other people, and when an employer fails to comply with their duty to make reasonable adjustment in relation to the disabled person where that failure cannot be justified.
- Sexual orientation - the Employment Equality (Sexual Orientation) Regulations 2003 outlaw discrimination on the grounds of sexual orientation. The legislation includes heterosexual, homosexual and bisexual persons, but excludes certain sexual behaviours such as paedophilia.
- Religion - the Employment Equality (Religion or Belief) Regulations 2003 outlaw discrimination on the grounds of any religious or similar philosophical belief. This does not include political beliefs unless they can be proved to be similar to religious beliefs. The Act suggests tribunals may consider proofs of religious belief that include examples of collective worship, a clear system of ethics, and whether or not such a belief has a profound effect on how a person perceives the world.
- Age - the Employment Equality (Age) Regulations 2006 came into force on 1 October 2006 and prohibit unjustified direct and indirect age discrimination, and all harassment and victimisation on grounds of age.

### Who does the legislation apply to?

In general, all equal opportunities and anti-discrimination legislation applies to the following people regardless of length of service or status (that is, full or part-time):

- Applicants for jobs with your business.
- Permanent employees, both full- and part-time.
- Agency workers employed temporarily by your business.
- Self-employed people employed temporarily by your business (such as freelancers and subcontractors).
- Employees who have left your business.

The legislation also applies to people subject to false assumptions made by an employer. You would be guilty of discrimination if you failed to offer Sunday overtime to a devoutly Christian employee because you assumed that the employee would refuse it. The employee may indeed refuse to work on a Sunday but they must be given an equal opportunity to accept or refuse.

A person need not necessarily belong to a particular group in order to suffer discrimination or harassment. For example, where the white employee of a hire car firm is ordered not to hire vehicles to black or Asian customers, that employee is a victim of racial discrimination. Similarly, a person with a homosexual son who is subject to teasing and abuse about their son's sexuality is a victim of sexual orientation harassment.

### Exceptions to the rules on discrimination

There are a few examples where the anti-discrimination legislation may be waived or otherwise disregarded. These situations are strictly limited and, if in doubt, a tribunal will almost always err on the side of the party claiming discrimination.

- Positive action: where a group covered by the legislation is under-represented in a particular field of employment you may run training courses specifically aimed at that group to equip them with the necessary skills.
- Genuine occupational requirements: anti-discrimination legislation may be waived where there is a genuine occupational requirement. For example, the sex discrimination laws may be disregarded where a particular post requires a man or a woman for reasons of privacy or decency. Race discrimination laws may be waived where an acting role requires a specific ethnic background. Similar exclusions apply where a particular sexual orientation or religious belief is a genuine occupational requirement; it is perfectly legitimate to require that a post of hospital chaplain is filled by a member of a specified faith.

### Granting time off for religious observance

The legislation makes no specific requirements for you to grant employees time off for religious observance, neither does it require you to create special 'prayer rooms' and other areas to facilitate worship. There is an implied onus on you to grant reasonable religious requests where they do not conflict with the execution of an employee's duties.

### The Equal Pay Acts

The Equal Pay Act 1970 and the Equal Pay (Amendment) Regulations 1983 state that a man and woman must be given equal remuneration where they perform similar tasks, or different tasks of an equal value.

### Rights of your pregnant employees

The Sex Discrimination Acts 1975 and 1986 render it unlawful to discriminate for reasons connected with pregnancy or maternity. Every pregnant employee, without exception, is also entitled to reasonable paid time off for antenatal care, plus 39 weeks' ordinary maternity leave (OML) and sick leave on full pay if there are medical reasons why she cannot continue in her previous job and you cannot find alternative work for her.

Female employees also have rights to additional maternity leave (AML) and statutory maternity pay (SMP). See BIF 91 A Guide to Your Employees' Maternity and Paternity Rights for more information.

In addition, recent legislation makes it a requirement that you consider any reasonable request an employee makes for flexible working hours in order to organise childcare. The employee has no right to insist that you grant such a request, but you should be mindful that a resignation following a refusal to grant a reasonable request might be construed by an industrial tribunal as constructive, and hence unfair, dismissal.

## What must you do to comply with the legislation?

Although each discrimination case brought to an industrial tribunal will be treated on its individual merits, the Government's guidelines state that good equal opportunities practice means employers must:

- Treat everyone fairly and without bias or prejudice.
- Recognise, accept and value people's differences.
- Promote a harmonious working environment.
- Encourage and develop all available talent.
- Ensure all staff are valued.

The Government's guidelines add that good equal opportunities practice means employers should not:

- Disadvantage anyone.
- Give certain groups an unfair advantage.
- Lower standards.
- Ignore differences between people and groups of people.

Following these guidelines will help to prevent your business falling foul of anti-discrimination/equal opportunity legislation. You should examine all your business practices to ensure that none contradict the above principles.

### Hints and tips

- There is no foolproof strategy to avoid the consequences of breaching the anti-discrimination legislation, but tribunals will take into account measures you have taken to comply with the law.
- Your job advertising appeals to as diverse an audience as possible. For example, you can no longer advertise for a 'husband and wife' to act as stewards of a social club as this discriminates against same sex couples.
- When recruiting, you should differentiate between those skills needed for the post and those whose desirability merely reflect your personal preferences.
- Take care that your interview and selection procedures and your working practices do not include unnecessary practices that alienate certain sectors of the community. You cannot, for example, insist on a dress code that forbids a Sikh wearing his turban.
- During an interview or application process do not ask personal questions about an applicant's private life that are irrelevant to the post.
- Take care with wording on job application forms and advertisements to avoid terms that are offensive to minority groups.
- Draw up an equality policy with guidelines on what happens when this is contravened. Make sure the new anti-discrimination legislation on sexual orientation and religion is included (Acas can help with this).
- There is no legal requirement to keep records on the make up of your staff with regards to gender, disability, race, sexual orientation and so forth, but if you do you should remember such records may be subject to the Data Protection Act 1998.

## Further information

For practical start up and small business tips, ideas, know-how and news, go to:

Website: [www.enterprisequest.com](http://www.enterprisequest.com)

To access hundreds of practical factsheets, market reports and small business guides, go to:

Website: [www.scavenger.net](http://www.scavenger.net)

- BIF 14 A Guide to Dealing with Employee Grievances
- BIF 91 A Guide to Your Employees' Maternity and Paternity Rights
- BIF 136 An Introduction to Employment Regulations
- BIF 191 A Guide to Employing People with Disabilities
- BIF 276 A Guide to the Disability Discrimination Act 1995
- BIF 336 A Guide to Employing a Person from Outside the UK
- BIF 374 A Guide to Flexible Working Regulations
- BIF 393 A Guide to Common Commencement Changes in Employment Law
- BIF 447 A Guide to the Employment Equality (Age) Regulations 2006

Acas

Tel: 0845 747 4747

Website: [www.acas.org.uk](http://www.acas.org.uk)

Department for Business, Enterprise and Regulatory Reform (BERR)

Tel: (020) 7215 5000

Website: [www.berr.gov.uk/employment](http://www.berr.gov.uk/employment)

Equality Direct

Tel: 0845 600 3444 (helpline)

Website: [www.equalitydirect.org.uk](http://www.equalitydirect.org.uk)

Equality and Human Rights Commission

Tel: (020) 3117 0235

Website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

Equality Commission for Northern Ireland

Tel: (028) 9050 0600

Website: [www.equalityni.org](http://www.equalityni.org)

**CONTACT-**

**for further information.**

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