

## Discrimination in the Workplace

### 1. Summary

1.1 The Equality Act 2010 (“the Act”) makes it unlawful to discriminate in the fields of employment and vocational training against a person because of a protected characteristic. The characteristics that are protected are: age, colour, race, nationality, ethnic or national origins, sex, marriage or civil partnership, pregnancy and maternity, sexual orientation, disability, gender reassignment, religious or similar philosophical belief. The protected characteristic can be the characteristic of the aggrieved person, or of a third party. This is called “associated discrimination”. For example, you cannot discriminate against a person because their child is disabled.

The protected characteristic can be perceived rather than real. This is called “perceptive” discrimination. For example, a Sikh person might bring a religious discrimination claim where they have been treated less favourably because it is wrongly believed that they are a Muslim.

Direct discrimination occurs where “because of a protected characteristic, X treats Y less favourably than X treats or would treat others”. An example of direct discrimination is to state that no disabled applicants will be considered or advertise a job description with sexist connotations such as waiter, salesgirl, postman or stewardess. i.e. the reason you do not want to appoint the person is because they are disabled/a woman.

Indirect discrimination is when a condition is applied equally to everyone but that condition, whether intentionally or not, adversely affects people with a protected characteristic (e.g. women) more than people without the protected characteristic (e.g. men). An example is a requirement for all workers to work full time. This requirement could disadvantage women, since women generally bear more childcare responsibilities than men and are more likely to need to work part time. Unless the need for a full-time worker to do the job can be justified, the requirement to work full time could be indirectly discriminatory against a woman with childcare responsibilities.

Victimisation occurs where person receives less favourable treatment because they have brought (or given evidence in) proceedings, made an allegation or otherwise done anything they are entitled to do under or by reference to the regulations.

Harassment occurs where a person is subjected to unwanted conduct which relates to their own or someone else’s protected characteristic with the purpose or effect of violating their dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person. Examples of this are ostracizing a co-worker because he is gay, or telling racist jokes that might offend colleagues (regardless of their race).

The Act also includes an obligation for work performed by a woman that is either (a) like work (b) work rated as equivalent or (c) work of equal value to work performed by a man working in the same establishment, to be recognised by equal pay. The Part Time Work Directive Regulations require part-timers and full-timers to be treated equally. The Rehabilitation of Offenders Act requires spent convictions to be ignored (except for exempted occupations e.g. child care).

1.2 Employment agencies and their employees (i.e. members of staff personally) are responsible both as employers and as suppliers of job applicants to other employers, to ensure unlawful discrimination is avoided and they should help job applicants achieve equal opportunity.

1.3 Candidates are to be interviewed, assessed and submitted to clients on the basis of skills and merit.

### 2. Disability

2.1 Disability defined as physical or mental impairment which has substantial and long-term adverse effect on person’s ability to carry out normal daily activities.

2.2 Someone with a progressive condition such as cancer, MS or HIV infection will be protected by the Act when condition begins to have substantial adverse effect on daily activities.

2.3 Where (a) a practice, criterion or provision or (b) a physical feature of (c) the absence of an auxiliary aid, puts a disabled person at a substantial disadvantage in comparison with those who are not disabled, there is a duty to make reasonable adjustments to avoid the disadvantage for that employee. An employer may be able to treat a disabled

person more favourably than a non-disabled person in order to “put them back on an even keel” e.g. different hours, working from home, providing a hearing aid.

### 3. Religion or Belief

3.1 Practical effects wide ranging, from dress codes e.g. allowing Muslim women to wear veils (subject to health and safety considerations), to, where practicable, allowing time off to meet religious obligations, and changing work practices to accommodate religious beliefs e.g. meat handling allocated to another worker.

### 4. Exceptions

#### 4.1 Race

4.1.1 Where acts or restrictions sanctioned under statutory authority.

4.1.2 A Genuine Occupational Qualification (“GOR”). A GOR must arise out of the “nature” of the job in question (and not merely the nature of the organisation). The exception only applies where the application of the GOR is a proportionate means of achieving a legitimate aim. This is a limited exception in practice.

4.1.3 Positive action (this will take effect in April 2011). If it is reasonably thought that people with a particular protected characteristic are disproportionately under-represented, it is possible to treat a person with the relevant characteristic more favourably than others in recruitment, as long as the person with the relevant characteristic is “as qualified as” those others (i.e. there is nothing else to separate the candidates). Otherwise, positive action cannot be applied.

4.1.4 Where act done for purposes of safeguarding national security.

#### 4.2 Sex

Positive action and national security (see 4.1.3 and 4.1.4)

Some exceptions where person’s sex may be Genuine Occupational Qualification (GOQ) but GOQ not automatic exception for whole category of jobs. Employers must show GOQ applies to particular job and that proportionate means of achieving legitimate aim. Examples are for reasons of authenticity e.g. acting or modelling role, or to preserve decency or privacy e.g. changing room attendant.

#### 4.3 Disability

As above for Sex.

#### 4.4 Age

As above for Sex, plus:

Service related benefits for service of up to five years (e.g. extra days’ holiday for each year of service). Service related benefits awarded for over five year’ service must fulfil a business need e.g. to encourage staff loyalty. Compliance with National Minimum Wage Legislation.

#### 4.5 Generally

In practice very few instances where employers are permitted to discriminate. If an employer claims particular vacancy falls within an exception, written statement must be obtained setting out precise details why vacancy not subject to discrimination legislation.

### 5. Trade Union membership

Unlawful for an employment agency to refuse its services to anyone because they are or are not trade union member.

## 6. Sikhs on construction sites

Since 1989 Sikhs on construction sites allowed to wear turbans instead of safety helmets, unless employer has reasonable grounds to believe Sikh would not wear turban at all times on site, and unlawful for non-Sikhs to complain about this special treatment afforded to Sikhs.

## 7. Equality and Diversity Monitoring

The Equality and Human Rights Commission suggests agencies should monitor to ensure no discrimination occurs in relation to the protected characteristics e.g. disability, race. Information gathered about candidates should only be used for the purposes of monitoring compliance with standards of equality.