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STANDING UP FOR YOU

Summary of the law
on religion or belief

Our pledge to you

Thompsons Solicitors has been standing up for the injured and mistreated since Harry Thompson founded the firm in 1921. We have fought for millions of people, won countless landmark cases and secured key legal reforms.

We have more experience of winning personal injury and employment claims than any other firm – and we use that experience solely for the injured and mistreated.

Thompsons will stand up for you by:

Staying true to our principles – regardless of how difficult our job is made by government, employers or the insurance industry

Remaining committed to the trade union movement, working closely with them and with professional associations for the benefit of working people everywhere

Thompsons pledge that we will:

Work solely for the injured or mistreated

Refuse to represent insurance companies and employers

Invest our specialist expertise in each and every case

Fight for the maximum compensation in the shortest possible time

standing up for you

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The Spirit of Brotherhood
by Bernard Meadows

About this booklet

This booklet sets out the basic employment rights to which workers are entitled under the religion or belief discrimination provisions of the Equality Act 2010.

These apply in England, Wales and Scotland (except where indicated) only.

- Protection and Liability.
- Discrimination.
- Harassment.
- Victimisation.
- Exceptions.
- Tribunal claims.
- Remedies.

What does the Equality Act cover?

The Act covers all forms of discrimination in the workplace, including; recruitment, terms and conditions, promotions, transfers, dismissals and training or any other detrimental treatment because of a person's religion or philosophical belief.

Although the concept of religion is not easily defined, in this context it means any religion e.g Buddhism, Baha'i faith, Hinduism, Islam, Jainism, Judaism, Rastafarianism and Sikhism. It also includes a lack of religion such as atheism.

In terms of philosophical belief, case law has held that the belief should have a certain level of cogency, seriousness, cohesion and importance which is worthy of respect in a democratic society, such as humanism.

Religious hate crimes are a criminal matter and are dealt with by the police.

Who is protected?

The Act covers all forms of employment and applies to apprentices, those working under a contract of employment and the self-employed working under a contract personally to do the work.

Ex-employees can also make a claim against a former employer if they are complaining about something that was closely connected to their employment.

Who is liable?

The employer is generally liable for acts of discrimination, harassment and victimisation in the workplace. However, individual employees may also be liable, for example, if they have subjected a colleague to harassment related to religion or belief.

When can religion or belief discrimination arise?

Discrimination because of someone's religion or belief can arise in relation to:

- The arrangements made for deciding who should be offered employment such as shortlisting and interviews.
- The terms upon which employment is offered.
- Refusing or deliberately omitting to offer employment.
- The ways in which access to opportunities for promotion, transfer, training or other benefits, facilities or services are offered.
- Dismissal or any other detriment.

What is the public sector equality duty?

Public bodies such as local government, the NHS and those carrying out public functions are under a duty to consider equality when making day-to-day decisions both in terms of service delivery and employment. This consists of a general duty and specific duties.

The general duty has three aims and requires public bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people from different groups.
- Foster good relations between people from different groups.

The specific duties are designed to help public bodies comply with the general duty.

The specific duties for devolved public authorities are different in England, Wales and Scotland. Trade unions should therefore check that the employer is complying accordingly.



What is positive action?

The Act allows employers to treat someone with a protected characteristic more favourably during the process of recruitment and promotion.

If they think that the person with a protected characteristic has a reasonable chance of being disadvantaged because of that characteristic (or there are fewer people with a particular protected characteristic employed), they can choose that person over someone who does not have the protected characteristic provided that:

- The person is as qualified as the other candidate.
- The employer does not have a recruitment or promotion policy of treating people of the underrepresented group more favourably.
- The more favourable treatment is a proportionate means of achieving a legitimate aim (the legitimate aim being encouraging participation and overcoming disadvantage).

These provisions are voluntary. An employee cannot bring a claim because the employer did not apply positive action during the recruitment or promotion process, although they may still be able to bring a claim if they were discriminated against during it.



What does the Act outlaw?

Direct discrimination

Direct discrimination occurs when an employer treats someone less favourably than someone else (or instructs someone to directly discriminate against them), because of religion or belief.

In order to determine whether someone is directly discriminated against, a comparison has to be made with someone who is not of the same religion or belief but whose circumstances are the same or not materially different.

The definition is wide enough to cover those who are also discriminated against because they are perceived to be of a particular religion or belief or because they are associated with someone of a particular religion or belief.

Examples of direct discrimination include:

- Someone who is not promoted because they are a Rastafarian.
- Someone who is subject to harassment because of their association with another person of a particular religion.
- Someone who is prevented from attending training because they are thought to be a Muslim.

Indirect discrimination

Indirect discrimination arises where an employer applies a provision, criterion or practice (PCP) which puts those of a particular religion or belief at a particular disadvantage compared to those who do not share the same religion or belief and which the employer cannot justify.

Employers can only justify indirect discrimination if they can show that it was "a proportionate means of achieving a legitimate aim".

Examples of indirect discrimination might include a requirement for a hair stylist to display their hair at work or for an employee to work a particular shift system.

Harassment

This occurs when one person subjects someone else to unwanted conduct related to religion or belief that has the purpose or effect of violating a person's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment.

The definition of harassment also applies to those subject to unwanted conduct because of another person's religion or belief. So, for example, an employee who is subject to offensive comments about their daughter who is a Muslim will be protected under the Act.

Unwanted conduct includes the spoken or written word, jokes, graffiti or other behaviour.

In determining whether the conduct amounts to harassment, the Tribunal will take into account the perception of that person and whether it was reasonable for them to consider the comments or behaviour to be offensive.

Although the government repealed the provision whereby employers could be found liable for harassment by third parties in October 2013, it may still be possible to bring a claim under the general provisions on harassment.



Victimisation

This occurs when an employer subjects a person to a detriment because they have done or may do a protected act.

A protected act includes:

- Bringing proceedings under the Act or previous discrimination legislation.
- Making allegations of a breach of the Act or previous discrimination legislation.
- Giving evidence or information in connection with proceedings that someone else has brought in relation to the Act.
- Doing anything else such as raising a grievance or giving evidence in someone else's grievance in relation to the Act.

The person complaining of victimisation does not need to show they are of a particular religion or belief in order to bring a claim. However, they do have to have acted in good faith when doing a protected act. If it transpires that someone has knowingly made a false allegation, it will not be considered as a legitimate protected act.

Are there any exceptions?

There are a number of exceptions to the principle that people should not be discriminated against because of their religion or belief. Two of the most-commonly argued exceptions are:

- The "general" occupational requirement (OR)
- The "religious ethos" occupational requirement (OR)

Occupational requirement (OR)

Employers may rely on this exception if they can show that there is an occupational requirement to do with the nature of the job which means they need to recruit someone of a certain religion or belief. However, the employer must also show that the requirement is a proportionate means of achieving a legitimate aim.

The occupational requirement exception applies only to direct discrimination in recruitment, promotion, transfer and training and not to the way in which an employer affords access to benefits, facilities or services.

In practice the occupational requirement exception will only apply in very limited circumstances.

Religious ethos OR

The Act also says that employers whose ethos is based on religion or belief can rely on the OR exception provided the employer can show that being of a particular religion or belief is an occupational requirement.

The exception will apply provided that the employer can show that its application is a proportionate means of achieving a legitimate aim, and that the person concerned does not meet the requirement (or the employer has reasonable grounds for believing that they don't).



Can employers impose a dress code?

In general they can, although they have to be careful that a dress code does not give rise to claims of unlawful indirect discrimination. Employers cannot, however, impose a code if it seems to discriminate against someone on the grounds of their religion or belief, unless they can justify the requirement.

Take the case of *Azmi v Kirklees Metropolitan Borough Council*. Mrs Azmi claimed indirect discrimination when she was not allowed to wear a veil in class. The Employment Appeal Tribunal said the school was justified in its refusal because the children needed to see her facial expressions as part of the learning process.

If the employer can show that the refusal is a proportionate means of achieving a legitimate aim then, as in this case, the refusal may be justifiable. However, in general, it is good practice for employers to allow staff to wear clothing or other relevant items that reflects their religious convictions.

Do employers have to observe religious holidays?

If an employee wants to take a day off in observance of a religious holiday or festival, employers should try to accommodate this when it does not interfere with their business. Otherwise, a refusal may amount to unjustified indirect discrimination.

All organisations (big and small) should have clear procedures in place for handling leave requests, which should be applied equally to all staff. For their part, staff should give as much notice as possible of a holiday request and be aware that the employer may not always be able to accommodate it.

Do employers have to provide prayer facilities?

There is no explicit requirement under the Act to provide facilities such as a prayer room for workers who want to practise their religion.

However, if employees ask for a quiet place to pray and the premises can accommodate the request without adversely impacting on the business or other staff, then it is hard to see how a refusal by an employer could be justified.

There may also be issues about the time that workers take in order to practise their religion. However, if the time off is restricted to the normal tea, coffee or smoking breaks taken by others, then the workers are not being treated any more favourably than anyone else in the workplace.

Is it easy to prove a claim?

A person complaining of discrimination has to prove, on the balance of probabilities, that their employer discriminated against them because of their religion or belief.

Tribunals are aware that it can be difficult for claimants to provide clear evidence of discrimination, so once an employee has established facts from which a Tribunal could conclude that there had been discrimination, then the burden may shift to the employer to show that they did not discriminate against them. This is known as the reversal of the burden of proof.

How do claimants gather information from their employer?

Workers can currently request information from their employer about their complaint. There are standard forms for asking and answering questions (the questionnaire procedure), as well as guidance which explains how the procedure works.

A questionnaire can be sent to the employer any time before a claim is lodged at the Tribunal or within 28 days of a Tribunal claim being lodged.

If the employer fails to answer the questions within eight weeks, a Tribunal may use this fact to draw an inference of unlawful discrimination.

However, the government has said it will repeal this provision in Spring 2014.

In most cases, it is important that claimants submit a written grievance in order to comply with the ACAS code of practice on disciplinary and grievances.



What time limits apply?

Claims must be brought within three months less one day of the act of discrimination that the person is complaining about. In exceptional circumstances, the three month time limit may be extended if a Tribunal believes that it is just and equitable to do so.

When discrimination has occurred over a long period of time, this may amount to a continuing act extending over a period. A claim must then be brought within three months less one day of the last act in the series of acts.

What remedies are available?

There are three remedies available to a Tribunal:

- Declaration.
- Compensation.
- Recommendations.

Declaration

A declaration is a statement of the rights at the end of a claim, for instance that a worker has been subject to direct discrimination.

Compensation

Compensation can be awarded for injury to feelings and financial losses, if there are any. This will vary from case to case and depends on the individual circumstances. There is no limit to the amount of compensation which can include; loss of earnings (past and future), loss of pension, interest and any other outlays associated with the discrimination. The amount of compensation for injury to feelings can vary enormously. The person's age and vulnerability may be considered, and also the severity of the discrimination.

Aggravated damages (not applicable in Scotland) can also be awarded if the Tribunal is satisfied that the employer has behaved in a high-handed, malicious or insulting way which has aggravated the injury to the claimant's feelings.

Claimants can also ask for compensation for personal injury if they have been seriously affected by the discrimination, particularly in harassment cases, which can lead to illness and depression. If so, claimants need to produce a medical report to support their claim.

Recommendations

The Tribunal can make recommendations for the purpose of preventing or reducing the effect of the discrimination on the claimant or any other person even though they were not a party to the claim.

Examples of recommendations Tribunals can make include requiring an employer to:

- Introduce an equal opportunities policy.
- Ensure their harassment policy is more effectively implemented.
- Set up a review panel to deal with equal opportunities and harassment/grievance procedures.
- Re-train staff.
- Make public the selection criteria used for the transfer or promotion of staff.

A Tribunal cannot recommend that a person be given a job in a case where an employee successfully claimed they were discriminated against in a promotion exercise, for example.

If the employer fails to comply with a recommendation, then currently the Tribunal may order the compensation to be increased.

However, the government announced in May 2013 that it plans to repeal this provision, though has not yet said when this will happen.



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Published January 2014

TH13-358

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