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SOLICITORS



Guide to Discrimination

A guide by Burton & Dyson



Introduction

Anti-discrimination law applies to all aspects of employment and makes it illegal for employers to make employment-related decisions or treat employees or prospective employees less favourably on the grounds of:

- age
- gender
- religion or beliefs
- disability
- race
- sexual orientation

By putting policies in place that are designed to prevent discrimination, businesses are taking sensible steps to stay within the law and make their businesses places where diversity is accepted and welcomed.

This guide provides an overview of some of the key points involved in discrimination but this is a complex issue where expert legal advice is essential.

What is discrimination?

Discrimination means giving different treatment to different people or groups of people. It is illegal where a group of people protected by the law is treated differently from other people or groups.

The law sets out several different types of discrimination. The most common are:

- direct discrimination
- indirect discrimination
- harassment
- victimisation

Other types of discrimination are:

- instructions and pressure to discriminate
- not making reasonable adjustments
- segregation

Direct discrimination

Direct discrimination occurs when an employer treats an employee less favourably than other employees because of their age, disability, gender, race, religion or beliefs or sexual orientation.

For example, it would be direct discrimination to advertise the job of a nanny and say that applications would only be accepted from women.

Indirect discrimination

Indirect discrimination is when a working condition or rule puts one group of people at a disadvantage. For example, it would be indirect discrimination if only women were placed on a rota to make tea and to wash up in an office where both men and women were employed.



Harassment

Harassment is commonly defined as “unwanted conduct that has the purpose or effect of violating people’s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment.”

Examples of harassment include making critical or insulting remarks about someone, either in person or by email, phone or text message; making jokes about particular groups of people, for example because of their religion or sexual orientation; unwelcome sexual advances; and actual or threatened violence.

Victimisation

Victimisation occurs when someone is treated less favourably because:

- they have made, or intend to make, a complaint about discrimination or harassment
- they have acted, or intend to act, as a witness or to give evidence in support of someone else relating to a complaint about discrimination or harassment

Examples of victimisation include having requests for time off refused, not being considered for training or promotion, being ignored by managers or colleagues, having work criticised continually or having shift arrangements or work allocation changed frequently or at short notice.

Instructions or pressure to discriminate

This occurs when an employer tells someone to behave in a discriminatory way or puts pressure on them to do so, for example, if the owner of a hairdressing salon told their receptionist not to accept any bookings from Asian women.

Not making reasonable adjustments

Under the Disability Discrimination Act, employers are required to make adjustments to working practices and working environments so that people with disabilities are not disadvantaged.

Not making reasonable adjustments could include not providing a toilet designed for use by disabled people or failing to provide written material in a larger type or in Braille for someone with a visual impairment.

Segregation

Segregation means that people are physically separated from others because of their age, disability, gender, race, religion or beliefs or race. For example, it would be discriminatory if a workplace were to make non-white employees use a separate canteen from their white colleagues.



Employers' responsibilities

As an employer, you will be held liable for the discriminatory behaviour of your employees in the course of their employment, even if you were not aware that discrimination was taking place, unless you can demonstrate you took all reasonably practicable steps to prevent the discrimination from occurring.

Failure to take all reasonable steps can be extremely costly as employment tribunal awards for employees in discrimination claims are currently unlimited. Awards can include compensation for loss of earnings and for injury to feelings.

Reasonable steps that an employer might take to prevent discrimination include:

- Putting in place anti-discrimination policies and procedures for dealing with discriminatory behaviour and making sure that the contents of these are brought to the attention of all employees
- Making sure employees know what behaviour is acceptable and unacceptable in the workplace
- Ensuring that they and their managers set a good example to the workforce
- Taking complaints of discrimination seriously and dealing with them promptly and fairly, using both informal and more formal

Lawful discrimination

There are some circumstances in which certain types of discrimination can be justified.

For example, it is likely that it would be lawful discrimination if a care home for older Hindu people advertised for Hindu care staff because those people would understand the residents' cultural and religious needs in a way that non-Hindus would not.

In any situation where it appears that an exception to anti-discrimination law might arise, it would be wise to seek professional legal advice.

Conclusion

Employers must ensure that they are aware of their anti-discrimination responsibilities.

Seeking legal advice is a sensible step in taking all reasonable steps to eliminate discrimination within their workforces, which includes ensuring that anti-discrimination policies are up to date and legally compliant.

Legal advice is also essential in any situation where it appears discrimination may have occurred within the workplace or when an employer wishes to ensure that something they wish to do will not be regarded as discriminatory.

To find out more about how we can help you, please contact us:

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