



Sex Discrimination Law

The law says that a woman must not be treated less favourably than a man simply because she is a woman, or vice versa. It is also unlawful to set conditions which seem to apply equally to men and women, but which, in reality, exclude many more of one sex, unless you have a good business reason. You cannot treat someone less favourably on the grounds of his or her marital status in the workplace. Marital status includes being married and/or being in a civil partnership.

This section provides a summary of some of the main provisions of the Sex Discrimination Act 1975 and the Equal Pay Act 1970. It is not a definitive guide to the law. For a more detailed guide refer to the legislation and to the former Equal Opportunities Commission's Codes of Practice on Sex Discrimination and Equal Pay which you can find at www.equalityhumanrights.com.

Transgender

Transgender refers to a variety of individuals and behaviour where the gender identity of a person does not match the gender assigned to him or her at birth and/or by society. Transgender people may identify as heterosexual, homosexual, bisexual etc.

Discrimination against transgender people is unlawful where it constitutes discrimination on the grounds of sex, sexual orientation or gender reassignment.

The gender reassignment law protects someone in work or in vocational training from less favourable treatment and harassment because he or she intends to undergo, is undergoing or has undergone gender reassignment.

Equal Pay

The principle of equal pay means that men and women receive equal pay for the same work or work deemed to be of equal value. Pay means benefits in cash or kind and includes sick pay, occupational pensions, bonuses, travel concessions etc. See the Code of Practice on Equal Pay for more information. www.equalityhumanrights.com.

What is discrimination?

There are 7 types of discrimination forbidden by the sex discrimination law:

Direct discrimination

This is where a woman is, has been or would be treated less favourably than a man who is in the same or a similar position and this is because of her sex. Discrimination against a man in comparison to a woman is equally unlawful.

Example: A female candidate at a job interview is asked about her domestic and childcare arrangements while a male candidate is not. Subsequently, the male is appointed even though the woman is clearly the better applicant; as the employer based the decision on discriminatory assumptions about the impact of the woman's childcare responsibilities on her ability to carry out the job, this is unlawful sex discrimination.

Indirect discrimination

This type of discrimination is less obvious than direct discrimination. It happens when a provision, criterion or practice (formal or informal) which appears to have nothing to do with sex, applies equally to men and women, but has the effect of putting one sex at a disadvantage. If there is no good business reason for the provision then it will be unlawful indirect discrimination to apply it. If there is a good business reason, but the discrimination it causes is unnecessary or it outweighs the positive business impact, it may still amount to unlawful indirect discrimination.

Example: The company's occupational pension scheme requires part-time employees to have worked full-time for at least 15 years over a total period of 20 years, before they can join. This requirement disadvantages more women than men as they are more likely than their male colleagues to work part-time in order to also care for their family and children. This is unlawful indirect discrimination unless the company can show that the requirement is objectively justified.

Marriage Discrimination

It is also unlawful to discriminate either directly or indirectly, against married persons of either sex on the grounds of their marital or civil partnership status.

Example: Steve announces his forthcoming civil ceremony with his same sex partner. His line manager, who 'tolerated' Steve's sexuality as a single man, cannot cope with his openness and his new status and begins to distance himself from Steve at work. This behaviour results in Steve being excluded from important decision-making meetings and begins to undermine his confidence at work. This could amount to unlawful marriage discrimination.

Victimisation

Victimisation means treating someone less favourably than others because that person has made a complaint and/or brought a case against their employer under the sex discrimination or equal pay legislation or they have assisted someone else to do so.

Example: An employee is denied overtime because he acted as a witness for a colleague who brought a complaint of sex discrimination against their employer.

Pregnancy/Maternity discrimination

Discrimination on the grounds of pregnancy and maternity leave in employment and vocational training is unlawful. There is no need for a male comparator when claiming sex discrimination on the grounds of pregnancy or maternity leave.

Example: It is unlawful sex discrimination to dismiss a female employee because she is pregnant or to single her out for redundancy, or to take account of pregnancy-related sick leave to justify her dismissal.

Gender reassignment

It is unlawful in the workplace to harass or treat someone less favourably than another is, has been or would be treated on the ground that he or she intends to undergo, is undergoing or has undergone gender reassignment.

Harassment

Harassment is unwanted conduct on the grounds of the complainant's sex which has the purpose or effect of violating dignity, or creating an intimidating or hostile, degrading, humiliating or offensive environment for her/him. In deciding whether someone's conduct amounts to harassment, it is important to judge the conduct from the victim's point of view.

Sexual harassment is specifically outlawed as unwanted verbal, non-verbal or physical conduct which has the same purpose or effect; it also includes less favourable treatment because a woman rejected or submitted to such unwanted conduct. More information can be found in the Promoting a Productive and Harmonious Workplace section of the DWfL website.

What is covered about the law on sex discrimination?

It is unlawful to discriminate on the grounds of sex in employment and vocational training, and in the provision of goods, facilities and services.

Employment

The sex discrimination laws apply to all employers in England, Scotland and Wales, whatever the size of their business. An employer must not discriminate on the grounds of sex against any worker irrespective of their length of service or the number of hours they work each week. Included in the protection against discrimination are job applicants and existing employees, casual workers, self-employed contractors, and workers hired through employment agencies. In certain circumstances, former employees will have rights under the sex discrimination laws. For example, it will be unlawful for an employer to refuse to provide a work reference for a former employee because she had complained of sex discrimination while with that employer.

Workplace discrimination in practice

The sex discrimination laws impact on all aspects of the employment relationship including:

- Advertisements
- Recruitment and selection
- Arrangements for offering employment
- Terms on which employment is offered
- Promotion
- Transfer
- Training
- Redundancy
- Dismissal
- Bullying and harassment
- Post employment discrimination

The law on equal pay covers pay and financial benefits. For more information on recruiting fairly and good practice in employment see the *Recruitment, promotion and development* section of the DWfL website.

Goods, facilities and services

The sex discrimination laws apply to anyone providing goods, facilities or services to the public. It is unlawful to refuse to serve a woman, or not to give her the same standard of service extended to men, simply because she is a woman, and vice versa. Examples of services include those provided (whether free or paid for) in hotels, shops, banks, insurance companies, financial services, cinemas, theatres, bars, restaurants, pubs, places of entertainment or refreshment, transport and travel services, and services provided by any profession or trade.

Positive action

The Act permits positive action in limited circumstances. If it reasonably appears to an employer that women (or men) are under-represented or absent during the last 12 months in a particular type of work in his or her company, then it is lawful to offer and direct specifically to women only (or men only) access to training facilities that enable them to do that work and offer encouragement to only women (or only men) to apply to take advantage of opportunities for doing that work.

For example, if women are under-represented among managers in the workplace, it is lawful to provide female employees with training to help them develop their management potential and improve their chances to compete for management jobs.

Where women are under-represented or absent in particular work it is also lawful for employers and training bodies to provide female employees and non-employees with access to training and with encouragement to apply for that work. For example, providing special training for women who have been absent from the work place because they have been bringing up a family or advertising vacancies through newspapers or magazines targeted at women readers.

Positive action means that you can encourage women to apply for, or give them the skills to apply for a particular job. Once they have applied, an objective assessment of all the

candidates is required; you cannot apply different rules to help them through the recruitment process or grade them more leniently. This could be positive discrimination and this is illegal.

Genuine occupational qualifications

Sex discrimination by an employer in recruitment, promotion, transfer and training is not unlawful where a person's sex is a genuine occupational qualification for a job.

For example, a woman or a man might be needed for a specific purpose such as a modeling or acting role, or where, for reasons of privacy or to preserve decency, it is essential to employ a woman (or man); other examples include where the job is in a single sex hospital or prison or where the post holder provides individuals with personal services promoting their welfare or education, or similar personal services, and those services can most effectively be provided by a woman or a man.

Other unlawful acts

Instructing someone to discriminate against a woman (or a man) for example, instructing staff to charge admittance to men, but to allow women entry into your discotheque without payment, is unlawful. It is also unlawful to publish discriminatory advertisements; for example, an advertisement in a newspaper for a 'smart young man' for a local company would be unlawful.

Employers' responsibility for acts of their employees

Employers may be held responsible for unlawful discriminatory acts committed by their employees in the course of their employment, whether or not they knew of the discriminatory acts or approved of them. For example, if an employee is sexually harassing a female colleague then the employer may well be liable for failing to ensure that this did not happen in the workplace.

When work continues outside the workplace or outside normal working hours, employers may be held responsible for the actions of employees who discriminate against or harass work colleagues at, for example, work related social events.

Employers can successfully defend such discrimination cases if they can show that they took steps to prevent the discrimination or harassment happening. It is very important that action is taken to ensure that all employees know about their responsibility not to discriminate against or harass colleagues or customers.

Consequences of unlawful discrimination

Anyone with a complaint of unlawful sex discrimination under the Sex Discrimination or Equal Pay legislation may bring a complaint against his or her employer, prospective employer or former employer to an employment tribunal; complaints against service providers are brought to the county court. If the complainant proves facts which persuade the tribunal that discrimination may have taken place, the burden of proof is on the

employer to show that there is an innocent reason for the treatment complained of and that it was not linked to sex discrimination.

If the tribunal finds in the complainant's favour, it can order the employer to pay compensation. It can also make a declaration about the rights of the parties, or a recommendation about steps to be taken to prevent discrimination in the future.

There is no limit to the amount a tribunal can order an employer to pay in compensation for unlawful discrimination. Compensation normally includes an award for injury to feelings, and an award to take into account any loss suffered, for example lost wages.

Employers should obtain and follow the Code of Practice on Sex Discrimination and the Code of Practice on Equal Pay and this will clarify his/her legal obligations. Following the Codes will help employers to avoid unlawful discrimination. However, if the employer fails to follow the Codes, it may count against him/her if an employee complains of sex discrimination or harassment during their employment.