

EQUALITY RIGHTS IN NORTHERN IRELAND



INTRODUCTION

The CWU Equal Opportunities Department are pleased to put this Northern Ireland Equality Laws Toolkit together for the benefit of our representatives in Northern Ireland to give them support when dealing with matters linked to equality in the workplace. This factsheet has been compiled with the aid of information sourced from Morgan McManus Solicitors, CBI, Pinsent Masons, Equality Commission Northern Ireland and NI Business. The following is a brief summary of the equality laws along with a comparison against wider UK legislation.

EQUAL PAY

There is an implied equality clause in each contract of employment whereby men and women should not be treated less favourably because of their gender and should have equality of terms where they are employed on like work, work rated as equal or work of equal value.

Enforcement is before the Industrial Tribunal and cases must be brought within the time limit of six months from the date on which it was known that there was less favourable treatment.

The tribunal can award damages of up to six years arrears of pay.

LAW IN GREAT BRITAIN

There is an implied equality clause in each contract of employment whereby men and women should not be treated less favourably because of their gender and should have equality of terms where they are employed on like work, work rated as equal or work of equal value.

Enforcement is before the Employment Tribunal and cases must be brought within the time limit of six months from the date on which it was known that there was less favourable treatment. The tribunal can award damages of up to six years arrears of pay.

SEX DISCRIMINATION

The Sex Discrimination (Northern Ireland) Order 1976 (as amended) prohibits direct and indirect discrimination, harassment or victimisation on the grounds of sex, marital or civil partnership status, family status, gender reassignment and maternity or pregnancy.

It covers conduct of employers, employment agencies, trade unions and training/qualifications bodies. It protects employees, office holders, partnerships and contract workers.

It applies to employment, education, the provision of goods, service or facilities and premises.

Enforcement in employment cases is the Industrial Tribunal and there is a time limit of three months

From the date of the discriminatory act complained of or from the end of a continuing act. This can be extended where the tribunal believes it is just and equitable to do.

The burden of proof is on the employee to show a prima facie case of discrimination, following which the respondent must then prove that he/she did not commit the act or that there was justification in cases of indirect discrimination.

The remedies include:

- A declaration of rights
- Compensation – uncapped
- Recommendations to obviate or reduce the effect of discrimination
- Other actions by the Equality Commission.

There are also codes of practice for employers to follow.

Indirect discrimination is not lawful where this can be justified by the employer.

Rights are subject to genuine occupational requirements.

THE LAW IN GREAT BRITAIN

This is a protected characteristic under the Equality Act 2010. It prohibits direct and indirect discrimination, combined, associative and perceptive discrimination, harassment or victimisation on the grounds of sex, marital or civil partnership status, family status, gender reassignment and maternity or pregnancy.

DISABILITY DISCRIMINATION

The Disability Discrimination Act 1995 prohibits direct discrimination, disability related discrimination, harassment, victimisation and a failure to make reasonable adjustments. There is no concept of indirect discrimination except if under disability related discrimination or failure to make reasonable adjustments.

The comparator is the same as in other forms of discrimination except in disability related discrimination. In such cases the case of London Borough of Lewisham v Malcolm (2008) is still in force. A comparator should be a person who is not disabled but to whom the circumstances and the underlying reason for the treatment still applies.

Enforcement in employment cases is in the Industrial Tribunal (although the case can be taken to the County Court) and there is a time limit of 3 months from the date of the

discriminatory act complained of or from the end of a continuing act. This can be extended where the tribunal believes it is just and equitable to do.

The burden of proof is on the employee to show a prima facie case of discrimination, following which the respondent must then prove that he/she did not commit the act or that there was justification in cases of indirect discrimination.

The remedies include:

- a declaration of rights
- compensation – uncapped
- recommendations to obviate or reduce the effect of discrimination

Rights are subject to genuine occupational requirements and justification in cases of disability related discrimination and failure to make reasonable adjustments.

LAW IN GREAT BRITAIN

This is a protected characteristic under the Equality Act 2010. It prohibits direct and indirect discrimination as well as discrimination arising from disability and a failure to make reasonable adjustments, combined, associative and perceptive discrimination, harassment or victimisation on the grounds of disability.

RACE DISCRIMINATION

The Race Relations (Northern Ireland) Order 1997 prohibits direct and indirect discrimination, harassment or victimisation on the grounds of race, colour, nationality or ethnic or national origin.

The Irish Traveller community is specifically identified and protected under this Order.

It covers conduct by employers, employment agencies, trade unions and training/qualification bodies. It protects employees, office holders, partnerships and contract workers.

It applies to employment, education, the provision of goods, services or facilities and premises. Enforcement in employment cases is in the

Industrial Tribunal and there is a time limit of three months from the date of the discriminatory act complained of or from the end of a continuing act. This can be extended where the tribunal believes it is just and equitable to do.

The burden of proof is on the employer to show a prima facie case of discrimination, following which the respondent must then prove that he did not commit the act or that there was justification in cases of indirect discrimination. The remedies include:

- A declaration of rights
- Compensation – uncapped
- Recommendations to obviate or reduce the effect of discrimination
- Other action by the Equality Commission

There are also codes of practice for employers to follow.

Indirect discrimination is not unlawful where this can be justified by the employer.

Rights are subject to genuine occupational requirements.

LAW IN GREAT BRITAIN

This is a protected characteristic under the Equality Act 2010. It prohibits direct and indirect discrimination, combined, associative and perceptive discrimination, harassment or victimisation on the grounds of sexual orientation.

The Traveller community is not specifically identified

RELIGIOUS BELIEF OR POLITICAL OPINION

The Fair Employment and Treatment (Northern Ireland) Order prohibits direct and indirect discrimination, harassment or victimisation on the grounds of religious belief or political opinion.

Religious belief has included Protestantism, Catholicism and other religions but also some organisations such as the Masonic Order.

Political opinion covers any opinion on matters relating to the state, its government and policy, public or civil affairs, to science or art of government. An acceptance of violence or the use of violence for political aims on the island of Ireland is excluded. This also includes trade union activities for which there is no maximum award, so union officials/shop stewards will bring claims under this legislation rather than the usual union rights claims.

It covers conduct by employers, employment agencies, trade unions and training/qualifications bodies. It includes protection for employees, office holders, partnerships and contract workers.

It applies to employment and education and the provision of goods, services or facilities and premises.

Enforcement in employment cases is in the Fair Employment Tribunal and there is a time limit of three months from the date of discriminatory act complained of or from the end of a continuing act. This can be extended where the tribunal believes it is just and equitable to do.

The burden of proof is on the employee to show a prima facie case of discrimination, following which the respondent must then prove that he did not commit the act or that there was justification in cases of indirect discrimination.

The remedies include:

- A declaration of rights
- Compensation – uncapped
- Recommendations to obviate or reduce the effect of discrimination
- Investigations by the ECNI.

Rights are subject to genuine occupational requirements and organised religions have certain exemptions.

LAW IN GREAT BRITAIN

This is a protected characteristic under the Equality Act 2010. It prohibits direct and indirect discrimination, combined, associative and perceptive discrimination, harassment or victimisation on the grounds of religion or belief. Case law has suggested that belief can mean “philosophical belief”. The European Court has clarified that political beliefs are covered and in GB the government is amending the law to allow such claims to be brought at any time.

Political opinion is not covered in GB at present but the interpretation of “belief” may eventually cover this.

SEXUAL ORIENTATION REGULATIONS

The Employment Equality (Sexual Orientation) Regulations (NI) 2003 came into force on 2 December 2003. These Regulations make it unlawful for employers and others to discriminate on grounds of sexual orientation in the areas of: employment; vocational training, including further and higher education.

Sexual orientation discrimination is discrimination against people because they either have, or are perceived to have, a particular sexual orientation. It is unlawful to discriminate against people because they are homosexual (gay, lesbian), bisexual or heterosexual (straight). The law also covers individuals who are treated less favourably than others based on incorrect assumptions about their sexual orientation and individuals who are treated less favourably because they are associated with people of a particular sexual orientation. The Regulations outline four types of discrimination: • Direct discrimination is where someone is treated less favourably than others in the same or similar circumstances and the reason for that treatment is sexual orientation. Example – the best candidate at interview is not offered a job because the employer suspects he is gay whilst a less able candidate, who the employer

believes to be straight, is offered the post. This is less favourable treatment and would constitute discrimination.

Example – a same-sex couple is asked to leave a restaurant because they are holding hands and the restaurant manager says their behaviour is making other customers uncomfortable. Heterosexual couples who are holding hands are not asked to leave. This is less favourable treatment and would constitute discrimination.

Indirect discrimination – there are two definitions of indirect discrimination:

- a) indirect discrimination exists where a provision, criterion or practice is applied which puts people of a particular sexual orientation at a disadvantage and which cannot be shown to be a proportionate means of achieving a legitimate aim.
- b) indirect discrimination occurs when a requirement or condition is applied which only a considerably smaller proportion of people of the same sexual orientation can comply with, which is not justifiable and which is to the complainant’s detriment because s/he cannot comply with it. Definition a) applies to employment, vocational training, further and higher education, the provision of goods, facilities or services, the management and disposal of land or premises and the provision of education.

Victimisation and Harassment is also covered under all of the relevant characteristics.

THE LAW IN GREAT BRITAIN

This is a protected characteristic under the Equality Act 2010. It prohibits direct and indirect discrimination, combined, associative and perceptive discrimination, harassment or victimisation on the grounds of sexual orientation.

AGE DISCRIMINATION

The main forms are:

- Direct discrimination is where you are treated worse than others because of your age. For example: A 50 year old applicant, despite being the best candidate for the job, is not appointed because the employer feels that they would not “fit in” with other staff members who are younger.
- Indirect discrimination is where an organisation unjustifiably operates a rule or policy that looks the same for everyone but in effect places people from a particular age group at a disadvantage. For example: A job advertisement for a post of assistant solicitor states that a minimum of five years post degree qualification experience is required for a vacancy. This criterion is applied to all applicants, however given the time that it takes to get the relevant qualification and experience, applicants under 26 years of age are unable to apply for the post. By placing this criterion on the job (minimum experience requirement which cannot be objectively justified) persons aged 26 and under are placed at a disadvantage compared to other persons (those over 26 years).
- Harassment is where a person behaves in a way, on grounds of age, which violates your dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment. For example: A young manager, recently appointed in a company receives comments from older employees such as ‘you are wet behind the ears’ and ‘will need to work harder and faster to compensate for your age’.
- Victimisation is where you have made a complaint of age discrimination, in good faith or helped someone else with a complaint under the age law, and suffered as a result. For example: An older employee complains to management that she has been subjected to ‘ageist’ remarks from younger colleagues. A short time after the initial complaint she is disciplined for poor performance and believes this is directly linked to her complaint as there have never been any problems with her work before.

THE LAW IN GREAT BRITAIN

This is a protected characteristic under the Equality Act 2010. It prohibits direct and indirect discrimination, combined, associative and perceptible discrimination, harassment or victimisation on the grounds of Age. Indirect discrimination is possible under the law in Great Britain but it must meet tight objective justification means, where the discrimination must be a proportionate means of reaching a legitimate aim.

FLEXIBLE WORKING REGULATIONS

Certain employees have the statutory right to make a flexible working request. To be eligible a person must:

- be an employee
- have worked for you continuously for at least 26 weeks on the date they make their request
- not have made another statutory request during the past 12 months. In addition, under the Parental Leave (EU Directive) (Flexible Working) Regulations (Northern Ireland) 2013, which came into force on 8 March 2013, employed agency workers who are returning to work from a period of parental leave are now also extended the right to request flexible working.

The frequency of flexible working requests

Employees can make one application every 12 months. A year runs from the date the first application was made.

Before making a subsequent request, the employee must still meet the eligibility criteria.

Advantages of flexible working

Introducing a flexible working policy can benefit you as well as your employees.

In terms of maximising the prospect of a successful application for flexible working it is important that any application is able to clearly demonstrate that by promoting flexible working it makes good business sense and brings the following improvements:

- More job satisfaction and better staff morale.
- Reduced levels of sickness absence.

- Greater continuity as staff, who might otherwise have left, are offered hours they can manage. A better work-life balance has a positive impact on staff retention, and on employee relations, motivation and commitment. High rates of retention means that you keep experienced staff who can often offer a better overall service.
- Increased customer satisfaction and loyalty as a result of the above.

An employee's application should set out their desired working pattern and how they think the Employer can accommodate it.

In order for a flexible working application to be valid, it must:

- be dated and in writing (a letter type submission)
- state that it is being made under the statutory right to make a flexible working request
- specify the flexible working pattern applied for
- explain what effect the proposed change may have on your business and how you can deal with any such effect
- state the date on which they want the change to start
- state whether they have made any applications to you before and, if so, when

The employee should allow plenty of time between the date of the application and the date they expect the flexible working arrangement to start. This will allow time to look at their application and assess whether or not you can accommodate it.

Flexible working requests and the contract of employment

If an employee's flexible working request is accepted, this will be a permanent change to their contractual terms and conditions unless it is expressly referred to otherwise in the agreement.

If you are met with a negative response at the meeting it may be worth considering asking your employer if the flexible working can be arranged over a trial period so you can demonstrate that the arrangement can work.

THE LAW IN GREAT BRITAIN

The law is broadly mirrored in Great Britain.

Source: Morgan McManus Solicitors, CBI, Pinsent Masons & Equality Commission Northern Ireland, NI Business

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