



AEP Guide to Discrimination Law

The Equality Act came into law in October 2010 and provides a legal framework to protect the rights of individuals. The Equality Act applies to England, Scotland and Wales.

In Northern Ireland, equality law is still spread across a range of separate regulations which can be found by visiting: www.equalityni.org/Legislation

This guidance deals with discrimination in the workplace. It looks at your rights as an employee or worker and the steps you can take if you feel you are being treated unfairly or subject to discrimination.

Taking action, and how the AEP can help

If you are experiencing discrimination, you should firstly read your employer's dignity at work or harassment policy and speak to your line manager about your concerns. It may be helpful to read the sections below explaining the types of discrimination protected under the Equality Act. You may also wish to keep a diary of events to log actions or comments that are made, including details such as the people involved, what was said or done and how you felt.

Support from the AEP in Discrimination Claims

The AEP will usually support members in grievance procedures although we recommend that informal discussions take place at an early stage. If you are not satisfied with your manager's response, you should contact your local workplace representative or contact the AEP by emailing enquiries@aep.org.uk. It is important to get in touch with the AEP before you submit a grievance, so that appropriate support can be given.

Please see the AEP's [Guide to Support & Representation](#) to see how we can help you.

Please note that there are strict [time limits](#) for pursuing a claim in an Employment Tribunal (ET).

Protected Characteristics

The Act protects people from discrimination based on what are termed "protected characteristics" which are listed below:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity



- race
- religion or belief
- sex
- sexual orientation.

Under the Equality Act 2010, it is unlawful to discriminate against someone because of a protected characteristic. The Act covers the whole spectrum of employment including recruitment, training, promotion, terms and conditions, redundancy, discipline and dismissal. Individuals are protected from discrimination in a number of contexts including employment, access to goods and services, education and housing.

The principles also apply to ‘workers’ in general (rather than simply ‘employees’) meaning that you are protected from discrimination if you are a locum, agency worker or associate.

Types of discrimination

Direct discrimination

This is when you are treated less favourably on the grounds of your protected characteristic. For example, this could include not employing a person because of their race or sex. You will need to be able to show a link between the behaviour and the protected characteristic. This is best achieved by identifying comparators, either real or hypothetical.

Discrimination by association

Discrimination against someone because of their connection/association with someone with a protected characteristic is called discrimination by association. For example, someone is dismissed because they have had to take time off to care for a disabled relative, even though colleagues with similar or higher levels of absence have not been disciplined for taking time off.

Discrimination by perception

Discrimination against someone because they are perceived to possess a protected characteristic.

Indirect discrimination

Where a provision, criterion or practice, puts someone with a protected characteristic at a disadvantage, when compared to others who do not share the same characteristic. It may be possible for an employer to justify indirect discrimination on the grounds that the activity in question was objectively justifiable, as a proportionate means of achieving a legitimate aim.



Harassment

Harassment is unwanted conduct that is related to a relevant protected characteristic, and the conduct has the purpose or effect of violating a person's dignity or creating an intimidating, hostile or degrading, humiliating or offensive environment. For example, being subject to abuse because you are undergoing gender reassignment.

Victimisation

Where you are subject to detrimental treatment because you have undertaken a 'protected act.' This includes making a claim or complaint of discrimination under the Act or helping someone else to make a claim by giving evidence or information for example, during a disciplinary process.

Age

Under the Equality Act 2010, it can be unlawful for an employer to discriminate against a worker because of their age.

Direct and indirect discrimination can arise in several circumstances:

- how an employer selects new staff, for example, they cannot state in an advertisement that the post must be filled by a person of a particular age
- refusing to offer, or deliberately not offering, a person employment on the grounds of age
- the terms offered by an employer to a person in employment, on the grounds of age
- not giving a promotion, transfer, training or any other benefit on the grounds of age
- dismissing an employee or subjecting them to any other detriment on the grounds of age.

Retirement

There is no longer a default retirement age, and it is only possible for employers to operate a compulsory retirement age if this can be objectively justified as a proportionate means of achieving a legitimate aim.

Justifying age discrimination

It may be possible for an employer to justify both direct and indirect age discrimination, on the grounds that the activity in question was objectively justifiable as a proportionate means of achieving a legitimate aim. It can be difficult to show that discrimination is justifiable, and employers should take care in making judgements about someone's ability to do a job based on their age.

Please refer to [ACAS](#) guidance on this area.

If you are experiencing age discrimination, you should refer to your employer's policies relating to dignity at work or harassment and speak to your line manager about your



concerns. If you are unsatisfied with the response, you should contact your local workplace representative or contact the AEP, as you may wish to follow your employer's grievance procedure with AEP support at enquiries@aep.org.uk.

Disability

Under the Equality Act 2010, it is unlawful for an employer to discriminate against a worker because they have a disability. The Equality Act bars employers from discriminating against someone because the individual has a disability, they are connected to someone who has a disability or the employer thinks they have a disability.

What conditions count as disability under the law?

The Equality Act defines disability as 'a physical or a mental condition which has a substantial and long-term impact on your ability to do normal day-to-day activities'.

Substantial means 'more than minor or trivial'; 'long-term' means it has lasted, or is likely to last, 12 months or will last for the rest of the person's life.

Certain conditions, such as cancer and multiple sclerosis, are automatically covered.

Individuals may not be protected from discrimination at work if their employer does not know, or could not have reasonably been expected to know, about their disability.

What actions count as disability discrimination in law?

There are six broad types of employer conduct that count as disability discrimination under the law.

Direct discrimination is when the employer treats a disabled person less favourably than they would someone who is non-disabled. An example could be rejecting an applicant for a promotion just because they have a history of depression.

Indirect discrimination is where an employer has a way of operating that works to the disadvantage of disabled people. An example could be specifying that applicants for a post must have a driving licence if this is not justifiable for the job.

Failure to make reasonable adjustments is also unlawful disability discrimination. An example might be if an employer refuses to consider home working or paying for taxis for an employee who is not allowed to drive due to a disability.

Discrimination arising from disability is where people are treated unfavourably because of something connected to their disability, such as having an assistance dog.

Harassment of a disabled person is unlawful discrimination.

Victimisation describes a type of unlawful discrimination where an employer treats someone differently because they have previously complained about disability discrimination.



Access to Work

The government's Access to Work scheme provides money and practical help to overcome barriers that prevent disabled people from working. To get help from Access to Work, you must have a disability or health condition (physical or mental) that makes it hard for you to do parts of your job or to get to and from work.

Help provided has included adaptations to premises and equipment, training for a team or personalised coaching to develop strategies, provision of a support worker and cash for travel to work.

ACAS have further detailed [guidance](#) on discrimination because of disability.

If you are subject to disability discrimination, you should refer to your employer's policies relating to dignity at work or harassment and speak to your line manager about your concerns. If you are unsatisfied with the response, you should contact your local workplace representative or contact the AEP as you may wish to follow your employer's grievance procedure with AEP support at enquiries@aep.org.uk.

Gender reassignment

The Equality Act covers those individuals who are proposing to undergo, are undergoing, or have undergone a process or part of a process for the purpose of reassigning the person's sex by changing physiological or other attributes of sex. It is not necessary for persons to be under medical supervision to affect their gender reassignment in order to be protected.

People diagnosed with gender dysphoria or gender identity disorder may also be protected under the disability discrimination provisions of the Act, as those conditions may have a substantial and long-term adverse impact on their ability to carry out normal day-to-day activities.

Please also see the [EHRC guidance](#).

If you are experiencing discrimination, on the grounds of gender reassignment, you should refer to your employer's policies relating to dignity at work or harassment and speak to your line manager about your concerns. If you are unsatisfied with the response, you should contact your local workplace representative or contact the AEP by emailing enquiries@aep.org.uk, as you may wish to follow your employer's grievance procedure with AEP support.

Marriage and Civil Partnership

Under the Equality Act 2010, it is unlawful to discriminate against someone because they are married or in a civil partnership. This protection does not extend to persons who are not married or in a civil partnership or are single.



This specific protected characteristic does not attract the full range of protections as with other protected characteristics. For example, the act does not afford protection against discrimination by perception or association. There is also no protection from discrimination if a person is unmarried or single, cohabiting, widowed or divorced.

If you are experiencing discrimination, you should refer to your employer's policies relating to dignity at work or harassment and speak to your line manager about your concerns. If you are unsatisfied with the response, you should contact your local workplace representative or contact the AEP as you may wish to follow your employer's grievance procedure with AEP support at enquiries@aep.org.uk.

Pregnancy and Maternity

The Equality Act 2010 protects employees and prospective employees from unfavourable treatment on the grounds of pregnancy and taking maternity leave. The law applies regardless of how long a person has been employed by their employer, and protection continues until the end of maternity leave, including additional maternity leave.

Recruitment

You do not have to tell a prospective employer that you are pregnant. The fact that you are pregnant should not be considered when determining who gets the job as it would be viewed as discrimination.

Informing your employer of your pregnancy

You must ensure you follow the correct processes when notifying your employer of your pregnancy. Once you have taken steps to inform your employer of your pregnancy you should not be subject to unfavourable treatment.

Maternity leave

You will be entitled to maternity pay as provided for in your contract of employment and any salary increases that occur while on maternity leave. Your employer must also inform you of any promotion opportunities and changes to your terms and conditions, including reorganisations.

Returning from maternity leave

You have a right to return to the job you had previously, with the same terms and conditions, when returning during or at the end of ordinary maternity leave of 26 weeks.

Exceptions

It is important to note that whilst section 18 of Act prohibits direct discrimination relating to pregnancy and maternity, it does not include discrimination by association or discrimination by perception.



ACAS have further detailed guidance on discrimination because of [pregnancy and maternity](#).

If you are subject to pregnancy and maternity discrimination, you should refer to your employer's policies relating to dignity at work or harassment and speak to your line manager about your concerns. If you are unsatisfied with the response, you should contact your local workplace representative or contact the AEP as you may wish to follow your employer's grievance procedure with AEP support at enquiries@aep.org.uk.

Race

Under the Equality Act 2010 it is unlawful to discriminate on the grounds of race. The Act says race can mean your colour, nationality, ethnic or national origins.

It is unlawful for an employer to give discriminatory terms of employment, deny promotion, training or transfer or withhold benefits, facilities or services on the grounds of race. Prospective employees are also covered by the Act.

Racism in the workplace

The types of employer conduct that might be considered "race discrimination" under the law range from treating someone less favourably because of their race, colour or ethnic origins etc to procedures which indirectly disadvantage people of a certain ethnic background.

If an employer treats someone differently because they have previously complained about race discrimination, they may be guilty of unlawful discrimination in the form of victimisation.

If a colleague or service user demonstrates racist behaviour, then raise this issue with your line manager. Such behaviour is offensive and can create a hostile working environment.

The Equality and Human Rights Commission website (for England, Scotland and Wales) and Acas have further guidance: <https://www.equalityhumanrights.com/en/advice-and-guidance/race-discrimination> and <https://www.acas.org.uk/race-discrimination>

If you are experiencing race discrimination, you should refer to your employer's dignity at work or harassment policy and speak to your line manager about your concerns. If you are unsatisfied with the response, you should contact your local workplace representative or contact the AEP by emailing enquiries@aep.org.uk

Religion or belief

The Act makes it unlawful to discriminate against someone because of religion or belief.



Religion means any religion and a reference to religion includes a reference to a lack of religion. Belief means any religious or philosophical belief, including a lack of belief. However, if there is conflict between the philosophical belief and fundamental principles of human dignity, then it may not be protected.

For a philosophical belief to be protected under the Act it must be:

- genuinely held
- not an opinion or viewpoint based on the present state of information available
- a weighty and substantial aspect of human life and behaviour
- attain a certain level of cogency, seriousness, cohesion and importance
- be worthy of respect in a democratic society, not incompatible with human dignity and not in conflict with the fundamental rights of others.

Time off for religious observance

Your employer would have to prove that allowing you time off would be detrimental to services provided. If your line manager refuses reasonable changes to your work pattern without objective justification, this may be considered discrimination. You should discuss this matter with your line manager or human resource department in the first instance. If you require support, please contact the AEP.

The [Equality and Human Rights Commission](#) website (for England, Scotland and Wales) has further guidance on religion or belief in the workplace.

If you are experiencing discrimination on the grounds of your religion or belief, you should refer to your employer's policies relating to dignity at work or harassment and speak to your line manager about your concerns. If you are unsatisfied with the response, you should contact your local workplace representative or contact the AEP as you may wish to follow your employer's grievance procedure with AEP support.

Sex

The Act makes it unlawful for employers to discriminate against someone because of their sex, whether male or female.

The types of employer conduct that might be considered sex discrimination under the law range from the more obvious – appointing a man to a post rather than a more qualified woman – to procedures which indirectly disadvantage one sex.

The most obvious form of unlawful sex discrimination is when the employer treats someone less favourably than they would someone of the opposite sex. This is direct discrimination.



Direct discrimination also covers women who are treated negatively because they are pregnant or on maternity leave.

But discrimination doesn't have to be so obvious to be unlawful. An employer might be guilty of indirect discrimination if it has a way of operating that works to the disadvantage of one sex.

An example would be to require an employee to work unsocial hours, which might be difficult for women with childcare commitments.

If an employer treats someone differently because they have previously complained about sex discrimination, they may be guilty of unlawful discrimination in the form of victimisation.

Harassment related to someone's sex is unlawful under the Equality Act.

Please also see Acas and EHRC guidance:

<http://www.acas.org.uk/index.aspx?articleid=6078> and

<https://www.equalityhumanrights.com/en/advice-and-guidance/sex-discrimination>

If you are experiencing discrimination on the grounds of your sex, you should refer to your employer's policies relating to dignity at work or harassment and speak to your line manager about your concerns. If you are unsatisfied with the response, you should contact your local workplace representative or contact the AEP as you may wish to follow your employer's grievance procedure with AEP support.

Sexual orientation

Under the Equality Act 2010, it is unlawful to discriminate against someone because of their sexual orientation which is defined as a person's sexual orientation towards:

- Persons of the same sex;
- Persons of the opposite sex; or
- Persons of either sex.

Homophobic abuse and jokes are not acceptable, and your employer must take steps to protect you from harassment or abuse.

Please also see the EHRC guidance: <https://www.equalityhumanrights.com/en/advice>.

If you are experiencing discrimination, you should refer to your employer's policies relating to dignity at work or harassment and speak to your line manager about your concerns. If you are unsatisfied with the response, you should contact your local workplace representative or contact the AEP as you may wish to follow your employer's grievance procedure with AEP support at enquiries@aep.org.uk.



Time Limits to pursue claims to the Employment Tribunal

All claims to an ET must be submitted no later than 3 months less one day from the date on which the alleged act of discrimination took place. The first (compulsory) step for any ET claim is to send an Acas Early Conciliation (EC) Notification Form to Acas. This step must be taken before the expiry of the claim deadline. Otherwise the claim is likely to be dismissed. There is information about Acas EC on the [Acas website](#). The equivalent body in Northern Ireland is the [Labour Relations Agency](#).

Further information

Visit the [Equality and Human Rights Commission](#).

Acas: <https://www.acas.org.uk/discrimination-bullying-and-harassment>