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Discrimination

It is unlawful to discriminate against an employee on the grounds of race, sex, disability, religion, sexual orientation or age. Discrimination can be either direct, indirect or by way of victimisation. Harassment on discriminatory grounds is also unlawful. It is important to prove that the treatment is causally linked to and “on the grounds of” sex, race etc. An employee who tries to prevent another employee from being discriminated against and is punished as a result, can also bring a claim.

Direct Discrimination

Generally speaking, if an employee is treated “less favourably” due to their race, sex etc., this will be seen as “direct” discrimination. This might take place in a number of ways such as harassment (possibly even by other employees or even clients), less favourable terms under the contract, abusive language, a failure to investigate relevant complaints, or even dismissal.

Indirect

Where an employer imposes a provision, criterion or practice which adversely impacts on one sex, race etc., there may be a case for “indirect” discrimination. This might happen, for example, with unjustifiable clothing restrictions which prevent a person of a particular race or sex from complying and effectively from taking or keeping their job. Indirect discrimination can be justified by the employer if they prove that the provision, criterion or practice is a proportionate means of achieving a legitimate aim.

Victimisation

This very specific term applies to an employee who is treated less favourably, or “picked on”, because they have relied on their rights under the Discrimination legislation by, for example, bringing a claim in a tribunal or making a complaint.

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Sexual Harassment

Generally sexual harassment is unwanted, uninvited and un-reciprocated conduct of a sexual nature. It includes physical, verbal and non-verbal conduct and can take many forms such as:-

- Comments about appearance/body/clothes
- Leering and staring at a person's body
- Abusive, degrading, patronising or belittling remarks or behaviour; sexist remarks or jokes
- Unwelcome sexual invitations or pressure
- Promise or threats concerning employment conditions in exchange for sexual favours
- Display of sexually explicit material.
- Touching, caressing, hugging, even indecent assault or rape.

Disability Discrimination

A successful disability discrimination case depends on establishing that the claimant meets the definition of a disabled person within the law. There must be a mental or physical condition which has a substantial and long term effect on the employee's ability to carry out normal, day to day activities. The condition must last – or be likely to last – more than 12 months and affect the employee's in one or more of the following ways:-

- Mobility
- Manual dexterity
- Physical co-ordination
- Continence
- Ability to lift, carry, or otherwise move everyday objects
- Speech, hearing or eyesight
- Memory or ability to concentrate, learn or understand
- Understanding of the risk of physical danger

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Types of Discrimination

Direct Discrimination - where an employer treats an employee “less favourably” than a non-disabled employee by, for example, the opportunities offered or even by dismissal.

Duty to make Reasonable Adjustments - employers are expected to make reasonable adjustments to accommodate disabled persons. What is reasonable will depend on many things including the size of the employer and the resources available.

Victimisation - an employer is liable for discrimination against an employee for asserting a right under the DDA

Harassment

An employer is under a duty to protect employees from violence or bullying at work under the Health and Safety at Work Act. The Protection from Harassment Act also protects employees, and where severe harassment is taking place, an employee can apply for an injunction in the County Court which, if broken, could result in the offender – not necessarily the employer - being imprisoned. A victim can also be awarded damages from the County Court, which the employer - rather than the offender - could be ordered to pay.

Harassment is also a criminal offence, and if serious the police should prosecute. Racially aggravated harassment is a separate and more serious offence.