

Guidance Note

Employment Equality (Religion or Belief) Regulations December 2003

December 2nd 2003 saw the introduction of the new Employment Equality (Religion or Belief) Regulations come into effect. This means it is unlawful to discriminate against employees because of religion or similar belief. The implications of this far-reaching piece of legislation are varied.

Definition:

A religion or belief is defined as being:

- Any religion belief or similar philosophical belief
- It excludes any philosophical or political belief unless that belief is similar to a religious belief.

The regulations provide protections against discrimination and harassment, they do not establish entitlements.

Discrimination will be unlawful:

- During recruitment and selection
- In relation to terms of employment
- In relation to access to training, promotion, promotion transfer or other employee benefit

It is unlawful on the grounds of religion or belief to:

- discriminate directly against anyone. That is, to treat them less favourably than others because of their religion or belief;
- discriminate indirectly against anyone. That is, to apply a criterion, provision or practice which disadvantages people of a particular religion or belief without a good reason;
- subject someone to harassment. Harassment is unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them;
- victimise someone because they have made a complaint or allegation or have given evidence against someone else in relation to a complaint of discrimination on the grounds of religion or belief;
- discriminate against someone in some circumstances after the working relationship has ended.

The new legislation makes it unlawful for someone to directly or indirectly discriminate against someone on the basis of religion or belief:

Direct Discrimination:

Direct discrimination means that workers or job applicants must not be treated less favourably than others because they follow, are perceived to follow, or do not follow a particular (or any) religion or belief.

For example it is unlawful to:

- decide not to employ someone
- dismiss them
- refuse to provide them with training
- deny them promotion
- give them adverse terms and conditions

because they follow, or do not follow, a particular religion or belief.

Example: At interview it becomes apparent that a job applicant is Hindu. Although the applicant has all the skills and competences required of the job, the organization decides not to offer him the job because he is a Hindu. This is direct discrimination

Indirect Discrimination:

Indirect discrimination means that an organization must not have selection criteria, policies, employment rules or any other practices which although they are applied to all employees, have the effect of disadvantaging people of a particular religion or belief unless the practice can be justified. Indirect discrimination is unlawful whether it is intentional or not.

Example: An organisation has a dress code which states that men may not wear ponytails. This may indirectly disadvantage Hindu men many of whom wear a Shikha, (a small knotted tuft of hair worn at the back of the head, as a symbol of their belief). Such a policy could be discriminatory if it cannot be sufficiently justified.

In contrast to direct discrimination, indirect discrimination will not be unlawful if it can be sufficiently justified by the need to meet a proper business requirement, which cannot be achieved by some other means.

Example: A small finance company needs its staff to work late on a Friday afternoon to analyse stock prices in the American finance market. The figures arrive late on Friday because of the global time differences.

During the winter months some staff would like to be released early on Friday afternoon in order to be home before nightfall – a requirement of their religion. They propose to make the time up later during the remainder of the week. The company is not able to agree to this request because the American figures are necessary to the business, they need to be worked on immediately and the company is too small to have anyone else able to do the work.

The requirement to work on Friday afternoon is not unlawful discrimination as it meets a legitimate business aim and there is no alternative means available.

Exceptions:

Under the religion and belief regulations, any job may be restricted to people of a particular religion or belief, if one of these characteristics is a genuine occupational requirement (GOR) for the job or the context within which it is carried out. This means that employers may lawfully discriminate on these grounds in recruitment, promotion or transfer to a job, in dismissal from a post, and in training for a job.

Example: A Catholic school advertises for a religious education teacher to teach Catholicism

Harassment:

Harassment includes behaviour that is offensive, frightening or in any way distressing. It may be intentional bullying which is obvious or violent, but it can also be unintentional or subtle and insidious. It may involve nicknames, teasing, name calling or other behaviour, which may not be intended to be malicious but nevertheless is upsetting. It may be about the individual's religion or belief or it may be about the religion or belief of those with whom the individual associates.

Organisations are responsible for the actions of their staff as well as the individual staff being responsible for their own actions. If harassment takes place in the workplace the organisation may be vicariously liable and may be ordered to pay compensation unless it can show that it took reasonable steps to prevent harassment. Reasonable steps can include training, and effective dissemination of relevant policies and procedures. Individuals who harass may also be ordered to pay compensation.

Example: A member of staff is devout in her belief. She continually refers to her colleagues as “heathens” and warns them of the consequences they may suffer as a result of their lack of belief. Distressed by her intimidating behaviour, her colleagues complain to their manager that they are being harassed

NB: The harassment is unlawful because it is directed at work colleagues because they have different beliefs or no beliefs.

Example: Mr ‘A’ is continually teased about his partner’s religious convictions. He finds being subjected to such teasing offensive and distressing and complains to his manager. His manager tells him not to be silly, that the teasing is only harmless workplace banter and is nothing to do with the organisation. This is harassment on the grounds of religion or belief even though it is not the victim’s own religion or belief that is the subject of the teasing.

Victimisation:

Where an employee is treated less favourably for using their workplace complaints procedures or exercising their legal rights in relation to these regulations.

Example: After giving evidence for a colleague who had brought an Employment Tribunal claim against the organisation on the grounds of religion or belief, a worker applies for promotion. Her application is rejected even though she shows that she has all the necessary skills and experience. Her manager says she is a ‘troublemaker’ because she has given evidence at the Tribunal and as a result should not be promoted. This would be victimisation.

Discrimination, harassment or victimisation following the end of a working relationship covers issues such as references either written or verbal.

Example: A manager is approached by someone from another organisation saying that Mr ‘Z’ has applied for a job and asks for a reference. The manager says that he cannot recommend the worker on the grounds that he did not ‘fit in’ because he refused to socialise in the pub with his colleagues (his religion forbade alcohol). This worker may have been discriminated against on the grounds of his religion after his working relationship with the organisation has ended.

A genuine occupational requirement:

In very limited circumstances it will be lawful for an employer to treat people differently if it is a genuine occupational requirement that the job holder must be of a particular religion or belief. When deciding if this applies it is necessary to consider the nature of the work and the context in which it is carried out. Jobs may change over time and organisations should periodically consider whether the requirement continues to apply, particularly when recruiting.

Some organisations have an ethos based on a religion or belief, for instance a care home managed by a religious charity. Where organisations can show that they are founded on such an ethos they may be able to apply a genuine occupational requirement to jobs where in other circumstances such a requirement would not apply. In these cases the need for a particular religion or belief may not be a 'decisive' factor for the job but organisations must still be able to show that it is a requirement of the job in order to adhere to the ethos of the organisation and that it is proportionate to apply the requirement. Such an organisation should not assume that it is able to apply a 'blanket' GOR to all posts as they may be required to show that each GOR is reasonable when considering the nature of the job and the context within which it is carried out.

Example: A faith based care home may be able to show that being of a particular faith is a genuine requirement of its carers because they are required to carry out their duties in a manner that fulfils both the physical and spiritual needs of its patients. However, they may not be able to justify a similar requirement for their maintenance or reception staff whose jobs do not require them to provide spiritual leadership or support to the patients.

Positive Action

Selection for recruitment or promotion must be on merit, irrespective of religion or belief. However, it is possible to take certain steps to redress the effects of previous inequality of opportunity. This is called positive action. Employers may give special encouragement to, or provide specific training for people from religions or beliefs who are in a minority in the workplace. Employers may wish to consider positive measures such as:

- training their own employees for work which has historically been the preserve of individuals from a particular religion or belief:
- advertisements, which encourage applications from a minority religion but making it clear that selection, will be on merit without reference to religion or belief.

Religious observance in the Workplace

The Regulations do not say that employers must provide time and facilities for religious or belief observance in the workplace. However, employers should consider whether their policies, rules and procedures indirectly discriminate against staff of particular religions or beliefs and if so whether reasonable changes might be made.

Many religions or beliefs have special festival or spiritual observance days. A worker may request holiday in order to celebrate festivals or attend ceremonies. Where it is reasonable and practical, and the employee has sufficient holiday entitlement in hand, the request should be granted. While it may be practical for one or a small number to be absent it might be difficult if several such requests are made. In these circumstances the employer should discuss the matter with the employees affected, and with any recognised trade union, with the aim of balancing the needs of the business and those of other employees with those of the employees making the requests.

Example: A small toyshop employing 4 staff may be unable to release an individual for a religious festival in the busy pre-Christmas period. It may be justifiable to refuse a request for such absence.

A large department store employing 250 staff would probably be unable to justify refusing the same absence for one person because it would not substantially impact on the business as other staff would be able to cover for the absence.

For an explanation of all the major religions in the UK please see the Oldham Council Publication Directory of Religions in Oldham

Source ACAS