

# Sexual Orientation

## Sexual Orientation Discrimination

### Employees can now sue for Sexual Orientation Discrimination

Until 1 December 2003 UK law did not protect those discriminated against on grounds of sexual orientation. This has now changed in the employment field. The Employment Equality (Sexual Orientation) Regulations 2003 [SI 2003/1661] makes such discrimination unlawful. The Regulations also cover discrimination on grounds of perceived orientation. For example to treat an employee less favourably because it is thought they are gay, whether or not they actually are, would also be covered. The Regulations follow the same basic principles as set out in the existing Sex & Race Discrimination statutes.

#### Who is covered?

The Regulations include within their ambit protection in respect of gay, lesbian and bisexual persons. The Regulations do not cover other sexual practices or preferences such as sadomasochism or paedophilia.

The Regulations will apply to persons working in Great Britain where the work is all or mainly carried out in Great Britain.

#### Direct discrimination

It will be unlawful to treat a person less favourably on grounds of sexual orientation. The legislation covers the whole employment relationship from recruitment, to contractual terms and conditions (with some exceptions), and includes reasons for dismissal and post employment discrimination. So for example, an employer will be in breach of the Regulations where a decision is made not to recruit, or to dismiss someone because they are gay or appear gay or have gay friends.

#### Indirect discrimination

Where an employer treats a person less favourably by applying a provision, criterion or practice which puts a person at a particular disadvantage when compared with other persons, the employer has indirectly discriminated against that person where they cannot show it to be a proportionate means of achieving a legitimate aim.

#### Harassment

The Regulations includes specific protection from harassment. This can include nicknames, teasing, name-calling, or other behaviour which can be upsetting. It is not necessary to prove that the person committing the harassment is malicious in order for this complaint to be made out.

#### Victimisation

It is unlawful to treat a person less favourably because they have made a complaint of discrimination. This covers the situation where an employee makes a complaint that they have been discriminated against on grounds of their sexual orientation and is later discriminated against because they brought a complaint.

#### Post-termination discrimination

Once an employee has left, the employer must still not discriminate against the ex-employee by reason of sexual orientation. An example of this would be in the writing of a reference. Where an employer refuse to write a reference for a member of staff because they are gay, that would be unlawful.

#### Genuine occupational requirements

An employer is permitted to make use of exceptions within the Regulations where there are genuine occupational requirements. For example if an employer believes that a particular job function can only be carried out by a heterosexual then the employer must prove that there is a genuine reason for invoking this exception. The circumstances where this would apply are likely to be rare.

#### What to do if you are discriminated against?

A claim of sexual orientation discrimination needs to be lodged at the Employment Tribunal within 3 months from the date of the act complained of. Increasingly, Employment Tribunals expect that employees attempt to resolve grievances internally before lodging in the Employment Tribunal.

#### Remedies

The Employment Tribunal has the power to make a financial award to an employee if the claim is successful. Alternatively, the Employment Tribunal can make an order of reinstatement (your old job back) or re-engagement (a new job with your ex employer). There is no upper financial limit to the award that can be made by the Tribunal.

## To find out more

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