

DIVERSITY IN THE WORKPLACE: RELIGION AND BELIEF

The Equality Act 2010 provides protection for employees against discrimination and harassment because of their religion or beliefs. The Act also applies to job applicants, leavers (in connection with references) and contract workers.

Under the Act discrimination (whether direct or indirect) is unlawful:-

- during recruitment and selection
- in relation to terms and conditions of employment
- in relation to access to training, promotion (including on transfer) or other employee benefit.

Direct discrimination may occur based on the fact of the belief itself; indirect discrimination may occur based on the way in which the employee's belief has manifested itself in the workplace. In relation to indirect discrimination an employer may argue that any such discrimination was a "proportionate means of achieving a legitimate aim". For example if an employee's beliefs prevent them from performing a certain key aspect of their job.

Harassment is unlawful and defined as:

is unwanted conduct related to a relevant protected characteristic as defined in the Equality Act (see Section A3 of the Employment Code), which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

It does not have to be the person's own religion/belief which is the subject of a harassment complaint; it can be because of someone else's religion/beliefs.

Victimisation occurs when someone is treated less favourably because they have previously made or supported a complaint or because they are suspected of doing so. Protection against victimisation is not provided if the complaint is made maliciously or those supporting the complaint know it to be untrue or malicious.

What is meant by 'Religion or Belief'?

- religion means any religion
- belief means any religious or philosophical belief
- a reference to religion includes a reference to lack of religion and a reference to belief includes a reference to lack of belief
- excludes political beliefs

Protection under the Act applies to perceived as well as actual religion/belief and by association. For example, someone is treated less favourably because of their association with a person who has a particular religious belief.

A number of factors apply when deciding what is a 'religion or belief' e.g. collective worship, clear belief system or a profound belief affecting a way of life or view of the world (philosophical belief). The definition is deliberately not precise and it will ultimately be for tribunals to define what does and does not count as a religion or belief. For example, when determining whether a philosophical belief can be protected under the Act, Employment tribunals will consider the following principles:

- the belief must be genuinely held

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

It should be noted that political beliefs are expressly excluded from protection. ACAS advise that the following religions or beliefs are covered by the legislation:-

- Muslims
- Christians
- Hindus
- Jews
- Sikhs
- Buddhists
- Jains
- Rastafarians
- Baha'is
- Druids
- Pagans
- Wiccans
- Zorastrains
- Humanists
- Atheists.

Implications for us as colleagues

- Everyone has a personal responsibility to behave in a way which protects and respects the dignity of others, on religious, belief or other grounds. This includes respecting those who have a lack of belief and religion and employees must therefore ensure they do not contravene the Equality Act if they seek to espouse a particular faith.
- Failure to do this may result in disciplinary action being taken, up to and including dismissal. Unacceptable conduct includes sending and downloading inappropriate electronic material. Colleagues must also be aware that religious discrimination at work-related social gatherings is a disciplinary offence.
- Liability for religious discrimination falls both to the employer and the employee.
- Under the Human Rights Act 1998 individuals have the right to freedom of thought, conscience or religion. The right to manifest beliefs is however subject to for example, interests of public safety and the protection of rights of others. Individuals also have the right to freedom of expression (e.g. dress). However, the employer can justify restrictions e.g. on grounds of health and safety, reputation of business.

Implications for us as managers

- BBSRC has a legal responsibility to protect employees from discrimination and harassment.
- An individual complaint cannot be dismissed because another employee's reaction to the same experience was or might be different. Any complaint should be dealt with using the formal BBSRC Grievance Procedure, as set out Section A12c of the Employment Code.
- It is not appropriate to ask an employee for proof of their stated religion or beliefs.

- If any health and safety or other implications arise as a result of dress code requirements on religious grounds, these should be dealt with on an individual and reasonable basis by the local Safety Officer/HR Manager/HR & Corporate Services Group.
- Specific dietary requirements should be anticipated and accommodated as far as is reasonably possible.
- Employees of certain faiths may require bereavement leave at short notice, due to burial requirements. Each case must be dealt with on an individual and reasonable basis. It may be appropriate to grant unpaid/paid leave or to allow employees to make up their hours.
- There are a small number of days during a year on which it is against certain religious beliefs to work/attend for interview etc. Employers must try to minimise the impact of changes to working hours on employees who hold strong religious beliefs (for example by offering alternative jobs where they can.) Employers should also consider religious festival days when organising meetings.
Suggested measures include:-
 - Familiarising yourself with a religious observance calendar; The BBC website @ <http://www.bbc.co.uk/religion/tools/calendar/> contains useful information about many of the significant dates in the calendar for the main religions in the UK.
 - Prior to organising any formal interaction with others (e.g. induction/assessment days/interviews/appraisals, etc.) check if the date conflicts with a major religious observance obligation. If it does, the date should be re-arranged
- Employee requests for annual leave on religious holidays will be assessed on reasonable and objective grounds. A refusal to grant leave must be backed up by a legitimate business need.
- If an employee asks to stop working on a particular day on the grounds of their religion or belief, the employer should consider whether the requirement is a legitimate business need and whether it is fair to allow one individual to stop working when others are required to work.

RELIGIOUS OBSERVANCES IN THE WORKPLACE

BBSRC establishments are encouraged to provide facilities such as multi-faith prayer rooms. An employee may request time off or time away from their work duties in order to observe religious requirements or to celebrate festivals/attend ceremonies.

All requests should be considered and met as far as is reasonably practicable. Employers may be justified in refusing such a request if, for example, it conflicts with legitimate business needs which they are unable to meet in any other way.

SOURCES OF FURTHER ADVICE:

Your local HR Manager or HR & Corporate Services Group, BBSRC Office

Department for Business, Innovation & Skills

<http://www.berr.gov.uk/employment/discrimination/religion-belief/index.html>

DirectGov

http://www.direct.gov.uk/en/Employment/Employees/DiscriminationAtWork/DG_10026449