

The Legal Framework - Religion

This information is extracted from Religion or belief and the workplace - a guide for employers and employees by ACAS. Please note that the guidance on their website on the law gives a number of helpful examples.

These Regulations apply to vocational training and all facets of employment - including recruitment, terms and conditions, promotions, transfer, dismissals and training. They make it 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 unless it can be objectively justified;
- subject someone to harassment. Harassment is unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment having regard to all the circumstances and the perception of the victim;
- victimise someone because they have made or intend to make a complaint or allegation or have given or intend to give evidence in relation to a complaint or discrimination on the grounds of religion or belief;
- discriminate or harass someone in certain circumstances after the working relationship has ended.

Exceptions may be made in very limited circumstances if there is a genuine occupational requirement for the worker to be of a particular religion or belief in order to do the job or to comply with the religious or belief ethos of the organisation.

Religion or belief is not explicitly defined in the Regulations. In most applications to a tribunal it will be clear what is or is not a religion or a similar belief. It will be for the tribunals and higher courts to decide where the issue is disputed. They may consider a number of factors when deciding what is a religion or similar belief. It is likely that they will consider things such as collective worship, a clear belief system, a profound belief affecting the way or life or view of the world. Employers should be aware that these Regulations extend beyond the more well known religions and faiths to include beliefs such as Paganism and Humanism. The Regulations also cover those without religious or similar beliefs.

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.

Direct discrimination may only be justified in the very limited circumstances where a genuine occupational requirement can be shown to apply.

Indirect discrimination means that an organisation 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.

In contrast to direct discrimination, indirect discrimination will not be unlawful if it can be justified. To justify it, an employer must show that there is a legitimate aim, (ie a real business need) and that the practice is proportionate to that aim (ie necessary and there is no alternative means available).

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. It may not be targeted at an individual(s) but consist of a general culture which, for instance, appears to tolerate the telling of religious jokes.

Organisations may be held responsible for the actions of their staff as well as the staff being individually responsible for their own actions. If harassment takes place in the workplace or at a time and/or place associated with the workplace, for example a work related social gathering, the organisation may be liable and may be ordered to pay compensation unless it can show that it took reasonable steps to prevent harassment. Individuals who harass may also be ordered to pay compensation.

Employers should, where possible, also protect their workers from harassment by third parties such as service users and customers.

Employers investigating claims of harassment should consider all the circumstances before reaching a conclusion, and particularly the views of the person making the complaint; harassment is often subjective. Having gathered all the evidence, employers should ask themselves "could what has taken place be reasonably considered to have caused offence?"

A genuine occupational requirement (GOR). 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.

An occupational requirement on the grounds of religion or belief, as in the example overleaf, must not be used as a basis for discrimination on other grounds such as race or disability.

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.

Positive Action. Selection for recruitment or promotion must be on merit, irrespective of religion or belief. However, it is possible 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 existing 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.

There is a sound business case ...

... for eliminating discrimination in the workplace. Staff who are subjected to discrimination, harassment or victimisation may:

- be unhappy, less productive and de-motivated
- resign
- make a complaint to an Employment Tribunal.

If staff are subjected to discrimination, harassment or victimisation this may affect an organisation in terms of:

- damage to reputation both as a business and as an employer
- cost of staff leaving and consequent recruitment and training
- cost of compensation if they take a claim to an Employment Tribunal - there is no upper limit to the amount of compensation an organisation may be ordered to pay.