

# Discrimination

DISCRIMINATION LAW IS found in the Equality Act 2010 (EA10). The EA10 lists nine protected characteristics:

- **Age**
- **Disability**
- **Gender reassignment**
- **Marriage and civil partnership**
- **Pregnancy and maternity**
- **Race**
- **Religion or belief**
- **Sex**
- **Sexual orientation**

The broad aim of the EA10 is to outlaw less favourable treatment that takes place because of one of these protected characteristics.

Discrimination can take one of four different forms:

## **Direct discrimination**

This is when because of a protected characteristic, a person treats another person less favourably than they treat or would treat others. Direct discrimination can include associative discrimination, where a person suffers less favourable treatment because of their association with an individual who has the protected characteristic, and perceptive discrimination where a person suffers less favourable treatment because of a mistaken belief that they have the protected characteristic, for example, less favourable treatment because of a mistaken belief that someone is gay.

## **Indirect discrimination**

This is where a practice engaged in by the employer impacts negatively on workers sharing the protected characteristic. For example, a requirement for all employees to work nights would disproportionately impact on women, as they are more likely to be carers.

### Legal disclaimer

The information contained within this article is not a complete or final statement of the law.

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If you are a Derbyshire UNISON member with a legal problem, please contact the branch office or your steward as soon as possible for advice.

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## **Victimisation**

This law aims to protect someone who suffers as a result, for example, of a complaint about discrimination having been made or for bringing discrimination proceedings.

Two recent cases have suggested that associative discrimination may also be possible in relation to indirect discrimination and victimisation. This is a developing area of law.

## **Harassment**

This is where someone suffers unwanted conduct because of a protected characteristic, with the purpose or effect of violating that person's dignity or creating an 'intimidating, hostile, degrading, humiliating or offensive' environment for them.

In the case of disability, the EA10 includes two further legal rights:

- The employer's duty to make reasonable adjustments where a provision criterion or practice puts a disabled person at a substantial disadvantage when compared with a non-disabled person; and
- The duty not to treat a disabled person unfavourably because of something arising as a consequence of their disability. There is a defence if the employer can show that the treatment is a proportionate means of achieving a legitimate aim.

An employer will not be liable for direct discrimination, or in the case of disability, for a failure to make reasonable adjustments, if they did not know and could not reasonably have known about the protected characteristic.

In addition, across all equality strands, the Public Sector Equality Duty requires public authorities to have due regard, when exercising their functions, to the need to eliminate discrimination, advance equality of opportunity and foster good relations.

As always in such circumstances, should you feel you are being discriminated against at work or just feeling unfairly treated, your first call is to UNISON! Our trained reps will be able to assess and assist and, should the issue be even more complicated, obtain further advice from our own professional and legal structures.

Similarly, if you experience a workmate being discriminated against, encourage them to join UNISON and seek confidential advice.