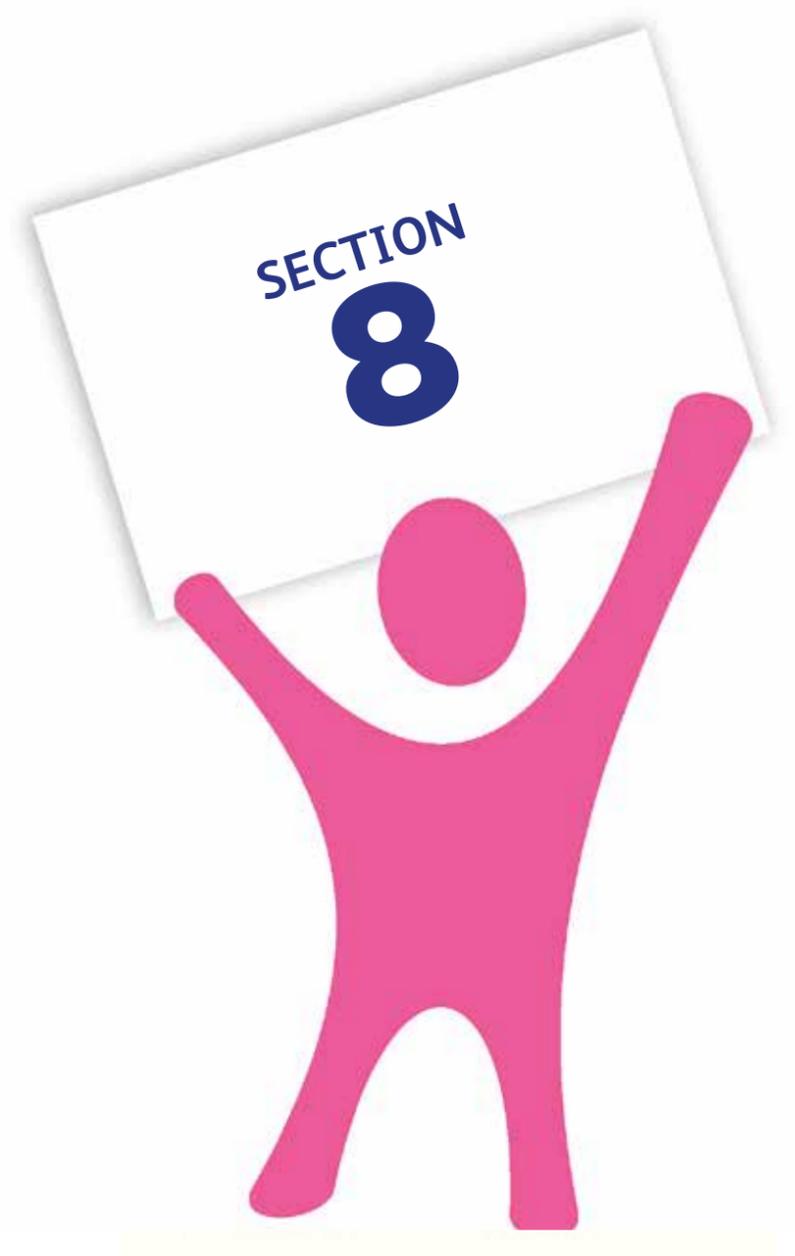




Religion and belief



A. EXTENT OF DISCRIMINATION

Two fifths of the population describe themselves as having no religion. Of the remainder, just over half are Christians (of which 27 % are C of E and 9 % Catholic), 3 % Muslim, 1.2 % Hindu, 0.8 % Jewish, 0.8 % Sikh and 0.3 % Buddhist. A survey about discrimination in employment found the following:

- 1 % of white respondents said their religion was the reason for being refused a job
- 2 % thought it was the reason for unfair treatment at work
- 10 % of Asian respondents said their religion was a reason for them being refused a job
- 16 % of Asian respondents thought it was a reason for unfair treatment at work

B. ARGUING FOR EQUALITY

The Equality Act 2010 means that employers have to allow staff to promote their religious views freely in the workplace – it could end up being a real free for all

It's good practice when trying to create an inclusive workplace to accommodate the particular needs of people from faith communities, for example in the company's catering services, uniform design and dress codes, or in setting aside facilities for religious observance. However, trying to convert colleagues in the workplace could cause offence to others. If harassment has been explained to staff, they should be able to distinguish between reasonable discussion and offensive behaviour. Staff should be aware that if their discussions cause offence then this may be considered to be harassment and therefore unlawful. Similarly, employers who follow a particular religion must take care not to discriminate against those who are not of that particular faith.

Muslims are going to get special treatment and get given a prayer room, while the rest of the staff will get nothing

The Equality Act does not require employers to provide a prayer room. However, if employees request access to a quiet place in which to meet their religious obligations and such a place is available without it having any adverse impact on the business or other staff, then an employer may be acting in a discriminatory way if they refuse such a request. However, they have the same obligation to respond to requests from any religious groups, so in the case of multiple requests, staff from different groups would be required to share the quiet room.

The ACAS guidance to employers also stipulates that other staff should not be disadvantaged, for example if there is only one room

available for use as a staff rest room, this room should not be converted for use as the quiet room/prayer room.

Religious people will get preferential treatment regarding time off for prayer and religious festivals

Organisations do not have to release staff for prayer outside normal rest breaks or holiday periods. Staff may request that their rest break coincide with their religious obligations to pray at certain times of the day. 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. Similarly, staff may request annual leave to coincide with religious festivals. Refusal to grant such leave may be discriminatory if it cannot be justified by a legitimate business need that cannot be met by any other reasonable means.

These new rights around religion will mean that some religious staff will refuse to work with gay and lesbian colleagues

Some religions do have strong views concerning sexual orientation but most do not advocate persecution of people because of their sexual orientation. Everyone has the right to be treated with dignity and respect in the workplace whatever their sex, race, colour, disability, age, religion, civil partnership or marriage status, or sexual orientation. Your employer's Equality Policy should incorporate this principle, and your employer must ensure that all staff treat each other professionally.

C. ISSUES IN THE WORKPLACE

Dress codes

There are no rules about dress codes. However a dress code which impacted on a particular religious group might well amount to indirect discrimination requiring justification if it is to be lawful. Within the NHS, specific clothing is required for health or safety or hygiene reasons, for example in the case of theatre staff. That might justify asking a Christian employee who wears a cross to remove it.

Employers need to be aware of the risks of discrimination. When devising or reviewing a dress code, they should consider whether the dress code will require employees to dress in a way that contravenes their religion or belief. Codes may directly or indirectly restrict:

- The length of beards
- The wearing of headscarves
- The wearing of burkahs, hijabs and veils
- The wearing of jewellery or a piercing.

NHS Employers guidance stipulates that if the rule is likely to conflict with an employee's religion or belief then there must be clear evidence to demonstrate objective justification. This analysis may be required on a case-by-case basis.

Respecting religious observance

ACAS has produced useful guidance on the Equality Act setting out helpful advice on matters such as dress codes, dietary requirements, provision of space for prayers, and time off for religious holidays.

Monitoring

Employers are not required under the Equality Act to gather information about the religion or beliefs of their staff. However, if they want to improve the facilities offered to staff and ensure that their work practices are not indirectly discriminatory, they may need to have a better

understanding of the needs of their staff and that may require asking staff about their religious and other beliefs.

Equally there is no obligation on staff to provide information about their religion and beliefs to their employer. However, if employers explain why they want the information and how it will be used, staff might be inclined to provide it. To avoid contravening data protection laws and to maintain employee confidentiality, any survey should be anonymous.

Special rules apply in Northern Ireland. Here, all employers of more than ten employees must register with the Northern Ireland Equality Commission, provide a monitoring return each year and conduct a review every three years. The aim is to ensure that members of the Protestant and the Roman Catholic community are enjoying fair participation in employment.

D. EQUALITY ACT 2010

The Equality Act 2010 made it unlawful to discriminate against someone because of religion or belief, or because of a lack of religion or belief.

The Equality Act 2010 does not apply in Northern Ireland, where equality laws are still spread across different regulations, covering each of the protected characteristics. The individual regulations are available at **www.equalityni.org/Legislation**.

Northern Ireland also has additional specific laws to protect people from workplace discrimination based on their political beliefs, enforced by the Fair Employment Tribunal. Northern Ireland employers are also required to monitor the composition of their workforce to ensure that members of the Roman Catholic and Protestant community are getting fair access to employment and to report periodically to the Northern Ireland Equality Commission on the results of the monitoring. There is more information about this on the Commission's website.

As regards the rest of the UK, although the Equality Act does not specifically mention discrimination because of political opinions, the

term “philosophical belief” is probably wide enough to cover some political opinions.

The Equality Act applies to all aspects of employment and the provision of goods, services and education. It applies to all employers and service providers. In respect to employment the legislation applies to workers regardless of their length of service or their working hours. It applies to all stages of the employment relationship and can apply to discrimination after employment has ended, e.g. it prohibits employers from refusing to give a reference on the grounds of religion or belief. Equally, a job applicant can make a claim to an Employment Tribunal (ET) – it is not necessary for them to have been employed by the organisation to make a claim of discrimination under the Act.

Who and what is covered?

According to the EHRC’s report “Religion and belief: a guide to the law” the Equality Act says that ‘religion means any religion’, but doesn’t include a definition of religion. The courts have interpreted this as including any religion of sufficient seriousness which has a clear structure and belief system, such as Christianity, Judaism, Islam and Hinduism, as well as others such as Rastafarianism. A religion need not be mainstream or well known to be protected under the Act. The Equality Act also includes ‘a lack of religion’ and so atheists, humanists and secularists, are protected under the Act.

The Equality Act does not include a definition of belief other than ‘belief means any religious or philosophical belief’ and includes a lack of a particular belief. A belief must affect how a person lives their life or perceives the world. For a philosophical belief to be protected under the Act it must:

- be genuinely held
- be a belief and not just an opinion or viewpoint based on the present state of information available
- be about a weighty and substantial aspect of human life and behaviour
- attain a certain level of cogency, seriousness, cohesion and importance, and

- be worthy of respect in a democratic society, not incompatible with human dignity and not in conflict with fundamental rights of others. For example,

Holocaust denial is not protected

Examples of philosophical beliefs that have been given protection by the Equality Act include ethical veganism and a belief in man-made climate change.

There are four main types of discrimination:

Direct discrimination

Direct discrimination means treating people less favourably than others on the grounds of religion or belief (or instructing someone else to behave in this way). There is no defence available to an employer to a claim of direct discrimination. There are however exemptions in relation to genuine occupational requirements (see later).

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 organisation decides not to offer him the job because he is a Hindu. This is direct discrimination.

Indirect discrimination

Indirect discrimination means applying a provision, criterion or practice (whether intentionally or not) which disadvantages people of a particular religion or belief, unless it can be justified. To be able to justify it, employers have to show there is a real business need for the practice.

EXAMPLE: Disliking the baseball caps his delivery drivers like to wear, a Chief Executive applies a “no headwear” policy to all his staff. The policy, although applied to all employees, disadvantages his Sikh staff who wear turbans for religious reasons. This policy is indirect discrimination.

Harassment

Harassment is defined as subjecting someone to unwanted conduct that violates their dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment. The harassment does not have to be intentional – for instance it can be jokes or banter that someone finds offensive. 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.

EXAMPLE: Mr “A” is continually teased at work 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. Mr “A” is able to complain through an Employment Tribunal. His colleagues may have to pay compensation. The organisation may have to pay compensation because it has liability for the actions of its staff when at work, or when out of work hours but doing work-related activities (such as an office party).

Victimisation

Victimisation means treating people less favourably because they made or intend to make an allegation about discrimination on the grounds of religion or belief, or because they have given or intend to give evidence under the Equality Act. It does not matter if the allegations turn out not to be true, providing they were made in good faith.

EXAMPLE: After giving evidence for a colleague who had brought an ET 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.

What positive action can employers and trade unions take?

Employers are allowed to take reasonable positive action in favor of people with a particular religion or belief, to help minimise disadvantage, meet their needs, or encourage greater participation at work.

Trade unions can do the same in relation to its members who hold a particular religion or belief, where it seems reasonable to them. For

example, if union members holding a particular religious faith are under-represented among union officials, the union could organise training or mentoring to help them achieve this.

Time limits

In some circumstances, it may be necessary to take a claim to an Employment Tribunal (ET). Claims must be lodged with the ET no later than 3 months minus one day after the act of discrimination that is the source of complaint.

The first step in the tribunal process is to submit an Acas Early Conciliation (EC) form to Acas. This step is compulsory and must be taken before the claim deadline expires. Otherwise the claim is likely to be dismissed. There is more information about Acas EC on the Acas website at: **www.acas.org.uk/early-conciliation**.

The equivalent body in Northern Ireland is the Labour Relations Agency: **www.lra.org.uk/early-conciliation**.

Please speak to your Senior Negotiating Officer as soon as possible if you think you have an ET claim.

Checklist for stewards

- Be clear on how you stand on behaviour that discriminates against individuals on grounds of religion or belief. Be prepared to challenge insulting remarks, jokes or behaviour as part of your steward's role
- Educate yourself about the issues so you are in a position to give at least some initial advice
- Educate members – organise speakers or a short training session for one of your meetings. Informal discussions can be a vital part of education and a short conversation with a member will be more effective than a long lecture!
- Distribute information and posters which advertise union and equality messages and events

- Challenge management – make sure there are equality policies and they have a firm commitment to putting them into practice
- Check all Trust policies to ensure that they do not discriminate on grounds of religion or belief, and if they need revising raise at the Joint Negotiating Committee
- Ensure there are anti-harassment, bullying and discrimination policies in place and they are widely publicized
- Put pressure on management to organise training and diversity courses
- Take up cases on behalf of members. These may be difficult, but the CSP Employment Relations and Union Services (ERUS) Department Officers will support you. This may involve using specific procedures or a more general grievance procedure. Occasionally the case may go as far as an Employment Tribunal, in which case the CSP's solicitors will be involved
- If you think you may have an ET case, be aware of time limits and discuss with your SNO at the outset

Checklist for managers

- Be clear on how you stand on behaviour that discriminates on grounds of religion or belief. Be prepared to challenge insulting remarks, jokes or behaviour. It is a manager's responsibility to ensure that all staff are treated equally and are not subjected to discrimination or harassment
- Ensure you are aware of your Trust's policies and procedures on harassment, bullying and discrimination
- Inform all staff that conduct which breaches the policy will not be tolerated and respond quickly and effectively to any such breaches
- Be prepared to deal with acts of discrimination by employees under disciplinary rules and procedures
- Organise training, information sessions and discussions on the issues.

- If you are not sure of your exact responsibilities or need more information and training contact the appropriate department
- Make use of the expertise and knowledge of relevant external organizations
- Monitor the implementation and effectiveness of your policy

E. EXERCISES FOR WORKPLACE MEETINGS: RELIGION OR BELIEF

The following case study is designed to help you initiate discussion at a staff meeting. The purpose is to raise awareness of issues around religious diversity and discrimination, and of how members can tackle discrimination and build a culture of respect and tolerance in the workplace.

CASE STUDY: Michael is a physiotherapist who recently started work in your trust. He is a committed Christian and on a number of occasions has approached staff in the physio department with leaflets and information about his religious beliefs, urging them to attend his church. Some staff have found the content of some of the leaflets offensive, particularly due to the nature of their comments on issues such as abortion and homosexuality. They want something done but are worried that if they complain they may appear to be discriminating on grounds of religion.

What do you think the staff should do about this situation?

