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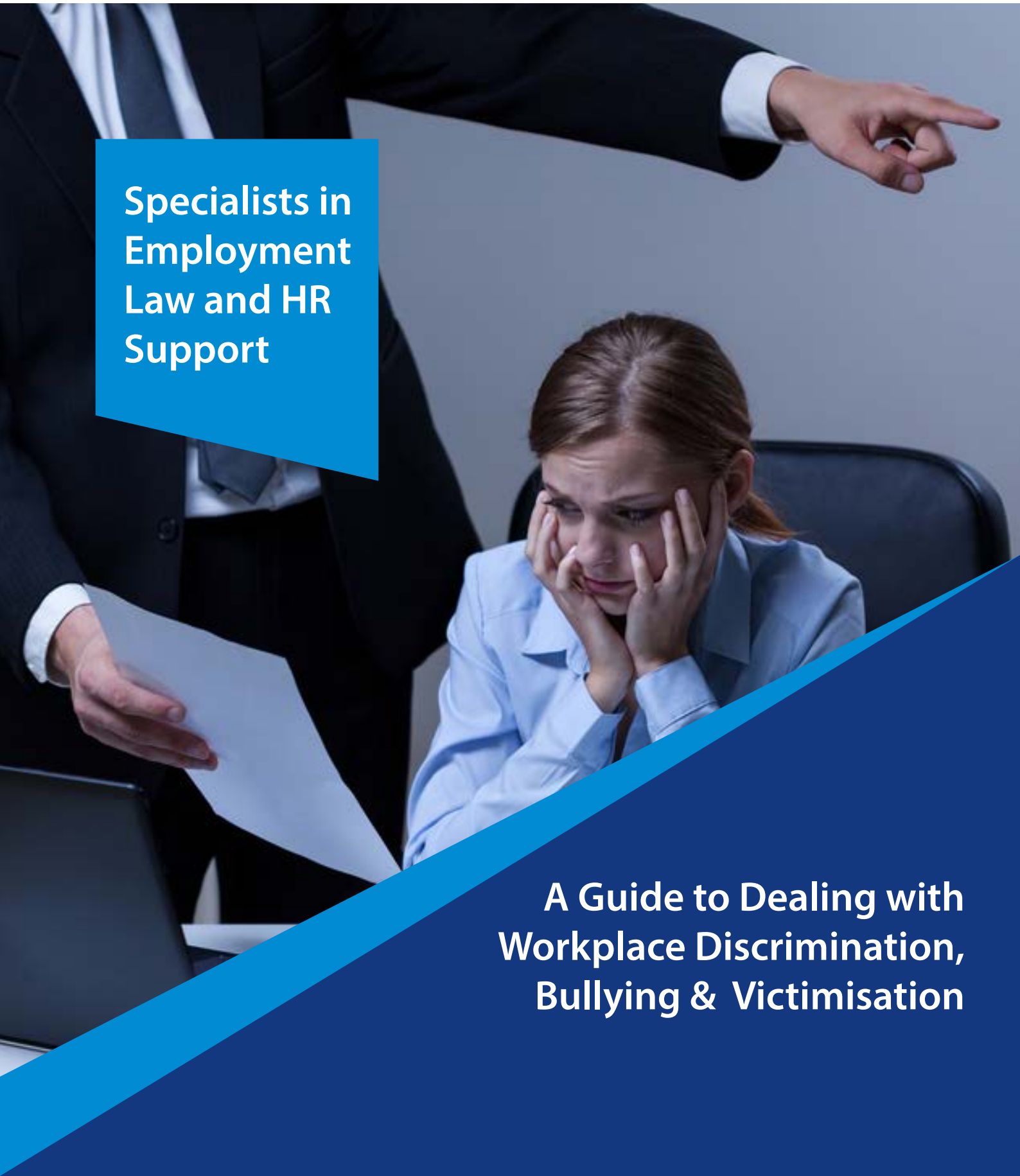

Specialists in Employment Law and HR Support

A Guide to Dealing with Workplace Discrimination, Bullying & Victimisation

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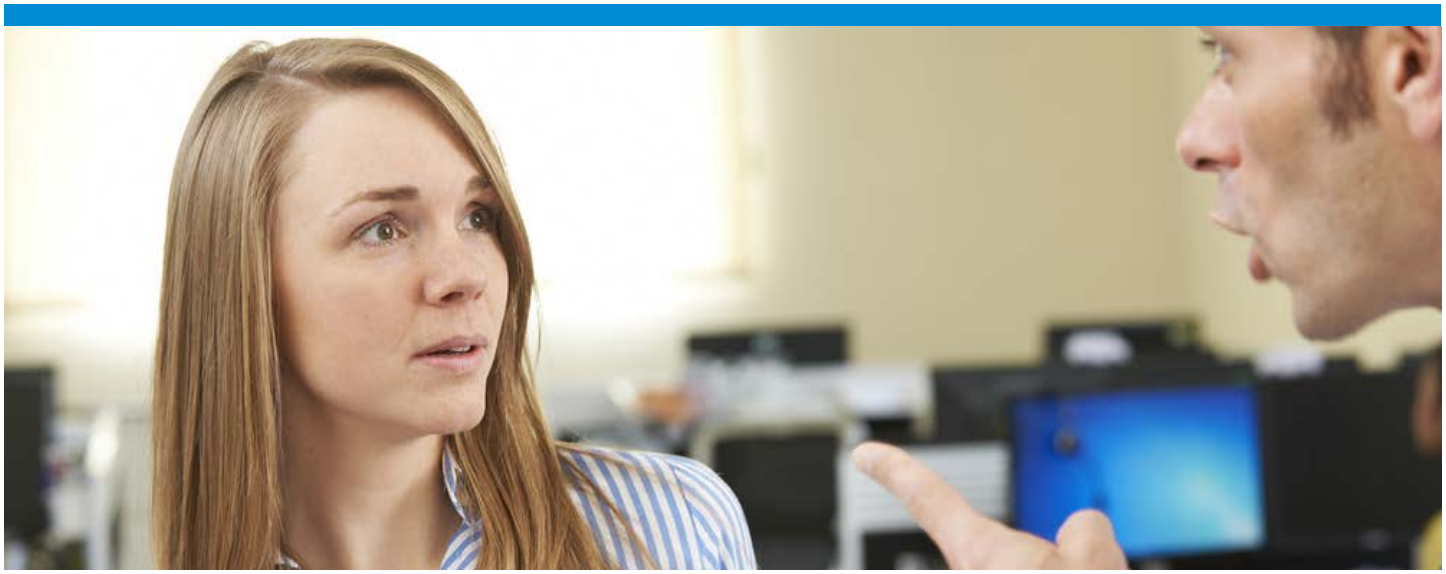

A Guide to Dealing with Workplace Discrimination, Bullying and Victimisation

Including valuable information on:

- **Age Discrimination**
- **Disability Discrimination**
- **Race Discrimination**
- **Religious Discrimination**
- **Sex Discrimination**
- **Sexual Orientation Discrimination**
- **Bullying**
- **Victimisation**

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A Guide to Dealing with Workplace Discrimination, Bullying and Victimisation

Age Discrimination

It is against the law for you as an employer, or potential employer, to discriminate against a person because of their age. The default retirement age has now been abolished, meaning that you can no longer dismiss employees on the grounds of retirement. If you treat a person less favourably because of their age, that will amount to unlawful discrimination under the Equality Act 2010.

Who is protected against age discrimination

The Equality Act 2010 protects all employees, job applicants, trainees, contract workers, office holders – including company directors and managers – those on secondment and self-employed people against age discrimination. You cannot select a person for redundancy because of their age.

It not only applies to older people but to younger people too and seeks to protect those in certain age ranges – such as people in their 20s and their 70s. The selection process for redundancy must be fair and balanced for all employees. Once a person reaches 65, you can no longer force them to retire.

What areas of employment are protected?

The Equality Act covers all areas of employment, including:

- Application forms.
- Interview arrangements.
- Aptitude or proficiency tests.
- Job offers.
- Terms of employment, including pay, benefits, promotion, transfer and training opportunities.
- Dismissal or redundancy.
- Discipline and grievances.

Are any situations exempt from age discrimination in the workplace?

Workplace-based age discrimination legislation does not apply to the following areas:

- Age-based methods for calculating statutory and enhanced redundancy payments and unfair dismissal payments.
- Length of service benefits.
- Loyalty reward schemes.

Age discrimination rules do not affect the age at which people can claim their state pension.

In what ways can someone be discriminated against?

Age discrimination in the workplace covers the following types of discrimination:

Direct discrimination occurs if you treat a person less favourably than another member of staff because of his or her age. For example, if you only selected people for redundancy who were aged over 50.

There is a defence of objective justification to a complaint of direct age discrimination, providing you can show there was a genuine occupational requirement – for example, it would not be reasonable to expect a television production company to employ a 70-year-old actor to play the part of a teenager.

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Direct discrimination can happen at any time in the workplace, for example it can occur:

- At a job interview
- In a contract of employment
- In promotion opportunities
- In dismissal or redundancy cases.

Discrimination by perception might arise if a person appears older or younger than they actually are, but you discriminate against them because of that misunderstanding.

Indirect discrimination occurs if you apply practices or procedures to all your staff, which put a person or people in a certain age group at a disadvantage.

For example, a job advertisement requiring "many years' experience" might indirectly discriminate against younger workers. It is irrelevant whether indirect discrimination is intentional or unintentional. You may have a defence if you can show that certain practices were justified, however.

Harassment is if you or a member of your staff behaves in an unwanted fashion – related to a person's age in this instance – that violates their dignity or creates an intimidating, degrading, humiliating or hostile environment for them.

For example, if a member of your staff makes offensive remarks about a colleague's age, gives them age-related nicknames, or if people from a certain age group are excluded from team meetings or social events, this could be deemed harassment.

Victimisation is if you treat a person less favourably as a result of them having made a complaint or raised a grievance, relating to an act or acts of age discrimination.

How is workplace discrimination identified?

Employment tribunals will usually compare the treatment of the person who has complained of age discrimination with that of a colleague – known as a "comparator" – who is in the same position as the complainant, but who falls into a different age group. A disparity of just a few years between the complainant and the comparator would not count.

For example, if you reject an older worker for a job as a receptionist because they do not have particular IT skills, the comparator would need to be a significantly younger person who also lacked these abilities. If there is no suitable comparator available, the tribunal can invent one – known as a "hypothetical comparator".

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Can I be held responsible for the actions of my staff?

You can be legally responsible for any acts of discrimination committed by your employees during the course of their employment, whether you were aware of their actions or not. This is known as vicarious liability.

You may be able to defend yourself against a finding of vicarious liability if you can show that you took "all reasonable steps" to prevent your member of staff from committing the discriminatory act(s).

What constitutes "all reasonable steps" may have to be decided by an employment tribunal, but examples can include:

- Implementing an Equal Opportunities Policy and ensuring your staff are aware of it.
- Providing equality training.
- Dealing effectively with staff complaints and grievances.

What legal action could be taken against me or my business?

Age discrimination claims can be brought against you personally, your business and/or any individual employees of your business. If an employment tribunal concludes that you, your business and/or any individual employees discriminated against the claimant, all can be ordered to pay substantial compensation.

It is not only employees who can make age discrimination claims in an employment tribunal – casual workers, agency workers, those on zero-hours contracts and some self-employed people can also case. There is no qualifying period, so workers do not have to work for any minimum amount of time before they can make an age discrimination claim.

If an employee suffers any detriment as a result of having made a complaint about age discrimination, they may have a victimisation claim. They might also decide to resign because they feel their position is untenable as a result of the sex discrimination they have suffered, in which case they may have a constructive dismissal claim.

There is no limit to the amount of compensation an employment tribunal can award in age discrimination cases, and very large sums of money have been awarded in some instances.
Compensation is calculated in line with complex guidelines that consider, amongst other things, the seriousness of the discrimination and the hurt felt by the individual.

Awards of up to £8,600 can be made for one-off acts of age discrimination – such as a refusal to offer a job, or a one-off incident of harassment. In more serious cases – such as dismissal of an employee because of their age – tribunals can award up to £25,700.

In the most severe cases – where a member of staff has suffered a long campaign of discrimination or harassment – awards of up to £42,900 can be made. Although if a discrimination claim was made before 6th April 2018, the potential levels of compensation for injury to feelings will be lower.

Delphi can work with you on age discrimination matters. If an age discrimination claim has been brought against you, your business or one or more employees in your company – or if you need advice or training on discrimination issues and equal opportunities policies – **Delphi can help.**

We specialise in employment law and with many years of experience, we are highly qualified to assist with any discrimination issues you might have. **Contact us today on 0113 867 2815.**

Disability Discrimination

Disability discrimination is the unequal treatment of a person because of their disability, their perceived disability or because they are associated with someone who has a disability, such as a close family member. It is against the law for an employer – or potential employer – to discriminate against a person because of a disability under the Equality Act 2010.

What constitutes a disability?
The Equality Act defines disability as a physical and/or mental impairment which has a substantial, long-term – of 12 months or more – adverse effect on a person's ability to carry out normal day-to-day activities.

This can include mobility, manual dexterity, physical co-ordination, continence and the ability to lift or carry everyday objects, etc.

Who is protected?
The Equality Act 2010 protects all employees, job applicants, trainees, contract workers, office holders – including company directors and managers – those on secondment and self-employed people against disability discrimination.

A person is automatically protected if they have cancer, HIV, multiple sclerosis or a visual impairment, but conditions such as alcohol or drug addiction are specifically excluded from being defined as a disability.

What is protected?

The Equality Act covers all areas of employment, including:

- Application forms
- Interview arrangements
- Aptitude or proficiency tests
- Job offers
- Terms of employment, including pay, promotion, transfer and training opportunities
- Dismissal or redundancy
- Discipline and grievances.

You cannot select an employee for redundancy because they have a disability. The selection process for redundancy must be fair and balanced for all employees. If an employee becomes disabled, you cannot force them to retire.

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Can I ask an applicant about disability at a job interview?

It is unlawful to ask a job applicant about their health or disability on a job application form or at an interview, but there are the following limited exceptions:

- To decide if they can carry out a task that is essential to the job
- To help decide if reasonable adjustments need to be made for them in a selection process
- To monitor the diversity of job applicants
- To increase the number of disabled people employed in the organisation.

In what ways can someone be discriminated against?

Disability discrimination in the workplace covers the following six types of discrimination:

Direct discrimination is when you treat a person less favourably because of their disability than a non-disabled person.

You cannot justify direct discrimination except in certain situations, known as 'occupational requirements'. For example, it would not be reasonable to expect an airline to employ a visually impaired person to work as a pilot.

Direct discrimination can happen at any time including at a job interview, in a contract of employment, in promotion opportunities, or in dismissals or redundancies.

Claims of direct discrimination can also be made based on 'association or perception' – for instance, it is unlawful to discriminate against a person because their child has a disability. Discrimination by perception might additionally arise if a person is not actually disabled but you think you are, and discriminate against them because of that misunderstanding.

Indirect discrimination is when you apply practices or procedures to everyone that put a person at an unfair disadvantage because of their disability. An example could be if staff are required to walk to regular team meetings in another office in a minimal time period during the working day, which might disadvantage a person with a mobility-based disability.

This could be remedied if you make reasonable adjustments (see below) – although you may be able to show that certain practices were justified.

Discrimination arising from a disability occurs if you treat a person less favourably because of something connected with their disability. For instance, if you dismiss a person because they have arthritis and cannot type as fast as a non-disabled colleague, this would be discrimination arising from something connected with their disability rather than the disability itself. For this to be unlawful discrimination, you must know that the person has a disability and you may have a defence if you can show that your actions were justified.

Failure to make reasonable adjustments – You should make 'reasonable adjustments' to avoid putting a person at a disadvantage compared with their non-disabled colleagues, and a failure to do so may count as discrimination. For example, if a person is partially sighted, extra lighting and a magnifying computer screen might help them to do their job.

Harassment is when someone behaves in an unwanted fashion, related to a person's disability that violates their dignity or creates an intimidating, degrading, humiliating or hostile environment for them. For example, a colleague making offensive remarks about a person's disability, or people with disabilities being excluded from meetings or social events, could be deemed harassment.

Victimisation is when you treat a person less favourably as a result of them having made a complaint or raised a grievance relating to an act, or acts, of disability discrimination.

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How is workplace discrimination identified?

Employment tribunals will usually compare the treatment of the person who has complained of disability discrimination with that of a colleague – known as a "comparator" – who is in the same position as the complainant, but does not have a disability. For example, if you reject a person for a job as a manual labourer because their disability prevents them from lifting heavy weights, the comparator would need to be a non-disabled person who couldn't lift heavy weights – perhaps because of lack of physical strength. If there is no suitable comparator available, the tribunal can invent one – known as a "hypothetical comparator".

Can I be held responsible for the actions of my staff?

You can be legally responsible for any acts of discrimination committed by your employees during the course of their employment, whether you were aware of their actions or not. This is known as vicarious liability.

You may be able to defend yourself against a finding of vicarious liability if you can show that you took "all reasonable steps" to prevent your member of staff from committing the discriminatory act(s).

What constitutes "all reasonable steps" may have to be decided by an employment tribunal, but examples can include:

- Implementing an Equal Opportunities Policy and ensuring your staff are aware of it
- Providing equality training
- Dealing effectively with staff complaints and grievances.

What legal action could be taken against me or my business?

Disability discrimination claims can be brought against you personally, your business and/or any individual employees of your business. If an employment tribunal concludes that you, your business and/or any individual employees discriminated against the claimant, all can be ordered to pay substantial compensation.

It is not only employees who can make discrimination claims in an employment tribunal – casual workers, agency workers, those on zero-hours contracts and some self-employed people can also claim. There is no qualifying period, so workers do not have to work for any minimum amount of time before they can make a disability discrimination claim.

If an employee suffers any detriment as a result of having made a complaint about disability discrimination, they may have a victimisation claim. They might also decide to resign because they feel their position is untenable as a result of the discrimination they have suffered, in which case they may have a constructive dismissal claim.

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There is no limit to the amount of compensation an employment tribunal can award in discrimination cases, and very large sums of money have been awarded in some instances. Compensation is calculated in line with complex guidelines that consider, amongst other things, the seriousness of the discrimination and the hurt felt by the individual.

Awards of up to £8,600 can be made for one-off acts of discrimination – such as a refusal to offer a job, or a one-off incident of harassment. In more serious cases – such as dismissal of an employee because of their disability – tribunals can award up to £25,700. In the most severe cases – where a member of staff has suffered a long campaign of discrimination or harassment – awards of up to £42,900 can be made. Although if a discrimination claim was made before 6th April 2018, the potential levels of compensation for injury to feelings will be lower.

Delphi can work with you on disability discrimination matters. If a disability discrimination claim has been brought against you, your business or one or more employees in your company – or if you need advice or training on discrimination issues and equal opportunities policies – **Delphi can help.**

We specialise in employment law and with many years of experience, we are highly qualified to assist with any discrimination issues you might have. **Contact us today on 0113 867 2815.**

Race Discrimination

It is against the law for you, as an employer, or potential employer, to discriminate against a person because of their race.
If you treat a person less favourably because of their race, that will amount to unlawful race discrimination under the Equality Act 2010.

How is race defined?

The Equality Act defines race as including colour, nationality and ethnic or national origins. A person may be protected if they fall within a particular racial group which can be made up of two or more distinct racial groups – for example, 'Black African' is a combination of colour and nationality. Alternatively, a person might be a British national of Indian origin and have an Indian name, so they may identify as 'British Indian'.

Who is protected from race discrimination?

The Equality Act 2010 protects all employees, job applicants, trainees, contract workers, office holders – including company directors and managers – those on secondment and self-employed people against race discrimination.
A person must belong to an ethnic group as defined by law to make a race discrimination claim. The concept of an ethnic group is not easy to identify but it must be a distinct and separate community.

What areas of employment are protected?

The Equality Act covers all areas of employment, including:

- Application forms.
- Interview arrangements.
- Aptitude or proficiency tests.
- Job offers.
- Terms of employment, including pay, benefits, promotion, transfer and training opportunities.
- Dismissal or redundancy.
- Discipline and grievances.

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In what ways can a person be a victim of race discrimination?

Race discrimination in the workplace covers the following types of discrimination:

1. **Direct discrimination** – Direct discrimination occurs if you treat a person less favourably because of their race. You might be able to rely on a defence of objective justification, providing you can show there was a genuine occupational requirement – for example, it might not be reasonable to expect a television production company to employ a black actor to play the part of Queen Elizabeth II. Direct discrimination can happen at any time in the workplace,

for example it can occur:

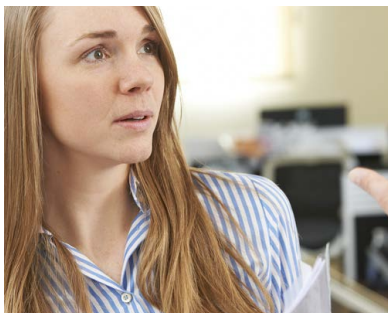
- At a job interview
- In a contract of employment
- In promotion opportunities
- In dismissal or redundancy cases.

Discrimination by perception might arise if a person appears to be a member of one racial group (even though they are not) but you discriminate against them because of that misunderstanding.

2. **Indirect discrimination** – Indirect discrimination occurs if you apply practices or procedures to all your staff, which puts people of a certain group at a disadvantage because of their race. For example, a job advertisement requiring all job applicants to have blonde hair might indirectly discriminate against those of African or Indian nationalities. You may have a defence if you can show that certain practices were justified, however.

3. **Harassment** – Harassment is if you, or a member of your staff behaves in an unwanted fashion – related to a person's race – that violates their dignity or creates an intimidating, degrading, humiliating or hostile environment. For example, if a member of your staff makes racist jokes or uses racist nicknames, or if people of a particular racial group are excluded from team meetings or social events, this could be deemed harassment.

4. **Victimisation** – Victimisation is if you treat a person less favourably as a result of them having made a complaint or raised a grievance, relating to an act or acts of race discrimination.



How is discrimination in the workplace identified?

Employment tribunals will usually compare the treatment of the person who has complained about race discrimination with that of a colleague who is in a similar position but is of a different race or nationality.

The colleague is known as a comparator. For example, if you reject a person for a promotion because they lacked particular IT skills, the comparator would need to be a person of a different race or nationality who also lacked those skills. If there is no suitable comparator available, the tribunal can invent one, known as a hypothetical comparator.

Can I be held responsible for the actions of my staff?

You can be legally responsible for any acts of discrimination committed by your employees during the course of their employment, whether you were aware of their actions or not. This is known as vicarious liability.

You may be able to defend yourself against a finding of vicarious liability if you can show that you took all reasonable steps to prevent your member of staff from committing a discriminatory act.

Ultimately, what constitutes 'all reasonable steps' may have to be decided by an employment tribunal, but examples can include:

- Implementing an Equal Opportunities Policy and being able to demonstrate that your staff were aware of it and had received appropriate equality training
- Dealing effectively with staff complaints and grievances.

What legal action could be taken against me and my business?

Race discrimination claims can be brought against you personally, your business and/or members of staff. If an employment tribunal concludes that you, your business and/or employees of that business discriminated against a person on the grounds of their race, any one or all of you can be ordered to pay substantial compensation.

If an employee suffers any detriment as a result of having made a complaint about discrimination, they may have a victimisation claim. They might also decide to resign because they feel their position is untenable as a result of the discrimination they have suffered, in which case they might also have a constructive dismissal claim. It is not only employees who can make discrimination claims in an employment tribunal. Casual workers, agency workers, those on zero-hours contracts and some self-employed people can also claim.

There is no qualifying period for bringing claims, so a person does not have to work for any minimum period of time before they can make a discrimination claim. There is no limit to the amount of compensation an employment tribunal can award in race discrimination cases, and very large sums of money have been awarded in some instances.

Compensation is calculated in line with complex guidelines that consider the seriousness of the discrimination and the hurt the claimant suffered. Awards of up to £8,600 can be made for one-off acts of discrimination, such as a refusal to offer a job, or a standalone incident of harassment – though if a claim relates to an incident before 6th April 2018, the potential level of compensation for injury to feelings will be lower due to changes in the law. In more serious cases, such as the dismissal of a person because of their race, tribunals can award up to £25,700. In the most severe instances, if a person has suffered a long campaign of discrimination and harassment, awards of up to £42,900 or more can be made.

Delphi can work with you on race discrimination matters. If a race discrimination claim has been brought against you, your business or one or more employees in your company – or if you need advice or training on discrimination issues and equal opportunities policies – **Delphi can help.**

We specialise in employment law and with many years of experience, we are highly qualified to assist with any discrimination issues you might have. **Contact us today on 0113 867 2815**

Religion and Belief Discrimination

It is against the law for you, as an employer – or potential employer – to discriminate against a person because of their religion or belief. This includes philosophical beliefs, or a lack of religion or belief. If you treat a person less favourably because of their religion or belief, that will amount to unlawful discrimination under the Equality Act 2010.

How are religion and belief defined?

The Equality Act states that 'religion' means any religious belief system, which expressly includes a lack of religion. A person's religion doesn't need to be mainstream or well-known, but it must have a clear structure and belief system. Denominations or sects within religions – such as Methodist within Christianity, or Sunni within Islam – may be considered a religion by the Equality Act.

'Belief' is defined as any religious or philosophical belief – such as atheism or humanism – and also includes a lack of belief.

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Who is protected from religion or belief discrimination?

The Equality Act protects all employees, job applicants, trainees, contract workers, office holders (including company directors and managers), those on secondment and the self-employed against discrimination.

For a philosophical belief to be protected, it must:

- Be genuinely held
- Be a belief and not an opinion or viewpoint
- Be a belief as to an important and significant aspect of human life and behaviour
- Be worthy of respect in a democratic society, compatible with human dignity and not conflicting with the fundamental rights of others.

The final condition ensures that such radical philosophies as racial or gender superiority, for instance, do not qualify for legal protection.

A person is unlikely to qualify for protection under the Equality Act because they are a passionate football supporter or believe in the supremacy of the fictional Jedi knights as seen in Star Wars movies, as it is highly doubtful that an employment tribunal would regard such ideologies as true philosophical beliefs.

What areas of employment are protected by the Equality Act?

The Equality Act covers all areas of employment, including:

- Application forms.
- Interview arrangements.
- Aptitude or proficiency tests.
- Job offers.
- Terms of employment, including pay, benefits, promotion, transfer and training opportunities.
- Dismissal or redundancy.
- Discipline and grievances.

In what ways can a person be a victim of religion or belief discrimination?

Religion or belief discrimination in the workplace covers the following areas:

Direct discrimination is when you treat a person less favourably than a colleague because of their religion or belief, apparent religion or belief, or the religion or belief of someone with whom they are associated, such as a close family member.

The less favourable treatment could include a decision not to employ them, to dismiss them, withhold promotion or training opportunities, offer worse terms and conditions or deny contractual benefits because of their religion or belief. There is no defence in a direct discrimination case, but an exemption does apply if being of a particular religion or belief is an occupational requirement.

For example, it would be unreasonable to expect the Church of England to employ someone of another religion as a vicar.

Direct discrimination can happen at any time in the workplace, for example it can occur:

- At a job interview.
- In a contract of employment.
- In promotion opportunities.
- If you're dismissed or made redundant.

Discrimination by perception might arise if, for example, you wrongly assume a person to be a Muslim and discriminate against them on the basis of that misunderstanding.

Indirect discrimination is when you apply practices or procedures to everyone that put a particular person or group of people at an unfair disadvantage because of their religion or belief.
Harassment is when you or one of your employees behaves in an unwanted fashion related to a person's religion or belief, which violates their dignity or creates an intimidating, degrading, humiliating or hostile environment for them. For example, if a colleague makes offensive jokes or comments about a person's religion or belief. This could be spoken, written or with images, etc.

Victimisation is when you treat a person less favourably as a result of them having made a complaint or raised a grievance, relating to an act or acts of religion or belief discrimination.

Can I ask a person about their religion or belief at a job interview?

You may ask a person about their religion or belief either for monitoring purposes or as part of an equal opportunities questionnaire, but they are not obliged to answer.

How is workplace religion or belief discrimination identified?

Employment tribunals will usually compare the treatment of the person who has complained of religion or belief discrimination, with that of a colleague who is in the same position as the complainant but of a different religion.

The colleague is known as a comparator. For example, if you are a Muslim and a prospective employer rejects you for a job as a receptionist because you do not have IT skills, the ideal comparator would be a non-Muslim who also lacked IT skills. If there is no suitable comparator available, the tribunal can invent one, known as a hypothetical comparator.

Are any areas of employment exempt from religion or belief discrimination legislation?

Generally, there is an exemption from the law governing religion and belief discrimination if being of a particular religion or belief is an occupational requirement for a particular position, such as the role of a religious minister. Steps taken to safeguard national security are also exempt, providing those actions are justified.

Can I be held responsible for the actions of my staff?

You can be legally responsible for any acts of discrimination committed by your employees during the course of their employment, whether you were aware of their actions or not. This is known as vicarious liability.

You may be able to defend yourself against a finding of vicarious liability if you can show that you took all reasonable steps to prevent your member of staff from committing a discriminatory act.

Ultimately, what constitutes 'all reasonable steps' may have to be decided by an employment tribunal, but examples can include:

- Implementing an Equal Opportunities Policy and being able to demonstrate that your staff were aware of it and had received appropriate equality training
- Dealing effectively with staff complaints and grievances.

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What legal action could be taken against me and my business?

Religion and belief discrimination claims can be brought against you personally, your business and/or members of staff. If an employment tribunal concludes that you, your business and/or employees of that business discriminated against a person on the grounds of their religion and belief, any one or all of you can be ordered to pay substantial compensation.

It is not only employees who can make religion and belief discrimination claims in an employment tribunal. Casual workers, agency workers, those on zero-hours contracts and some self-employed people can also claim. There is no qualifying period for bringing claims, so a person does not have to work for any minimum period of time before they can make a religion and belief discrimination claim.

If an employee suffers any detriment as a result of having made a complaint about religion and belief discrimination, they may have a victimisation claim. They might also decide to resign because they feel their position is untenable as a result of the discrimination they have suffered, in which case they might also have a constructive dismissal claim.

There is no limit to the amount of compensation an employment tribunal can award in religion and belief discrimination cases, and very large sums of money have been awarded in some instances. Compensation is calculated in line with complex guidelines that consider the seriousness of the discrimination and the hurt the claimant suffered.

Awards of up to £8,600 can be made for one-off acts of discrimination, such as a refusal to offer a job, or a standalone incident of harassment – though if a claim relates to an incident before 6th April 2018, the potential level of compensation for injury to feelings will be lower due to changes in the law. In more serious cases, such as the dismissal of a person because of their religion and belief, tribunals can award up to £25,700. In the most severe instances, if a person has suffered a long campaign of discrimination and harassment, awards of up to £42,900 can be made.

Delphi can work with you on religious or belief discrimination matters.
If a religion and belief discrimination claim has been brought against you, your business or one or more employees in your company – or if you need advice or training on discrimination issues and equal opportunities policies **– Delphi can help.**

We specialise in employment law and with many years of experience, we are highly qualified to assist with any discrimination issues you might have. **Contact us today on 0113 867 2815**

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Sex Discrimination

It is against the law for you, as an employer, or potential employer, to discriminate against a person because of their sex. If you treat a person less favourably because of their sex, that will amount to unlawful sex discrimination under the Equality Act 2010.

Who is protected from sex discrimination?

The Equality Act 2010 protects all employees, job applicants, trainees, contract workers, office holders – including company directors and managers – those on secondment and self-employed people against sex discrimination. It not only applies to women, but to men too.

What areas of employment are protected?

The Equality Act covers all areas of employment, including:

- Application forms
- Interview arrangements
- Aptitude or proficiency tests
- Job offers
- Terms of employment, including pay, benefits, promotion, transfer and training opportunities
- Dismissal or redundancy
- Discipline and grievances.

In what ways can a person be a victim of sex discrimination?

Sex discrimination in the workplace covers the following types of discrimination:

1. **Direct discrimination** – Direct discrimination occurs if you treat a person less favourably because of their sex. You might be able to rely on a defence of objective justification, providing you can show there was a genuine occupational requirement – for example, it might not be reasonable to expect a television production company to employ a male actor to play the part of a female character. Direct discrimination can happen at any time in the workplace, for example it can occur:
    - At a job interview
    - In a contract of employment
    - In promotion opportunities
    - In dismissal or redundancy cases.

    Discrimination by perception might arise if a person appears to be a member of one sex (even though they are not) but you discriminate against them because of that misunderstanding.
2. **Indirect discrimination** – Indirect discrimination occurs if you apply practices or procedures to all your staff, which puts people of a certain group at a disadvantage because of their sex. For example, a job advertisement requiring all job applicants to be over 6 feet tall is likely to indirectly discriminate against women, fewer of whom are likely to meet the height requirement than men. You may have a defence if you can show that certain practices were justified, however.
3. **Harassment** – Harassment is if you, or a member of your staff behaves in an unwanted fashion – related to a person's sex – that violates their dignity or creates an intimidating, degrading, humiliating or hostile environment. For example, if a member of your staff makes unwanted physical contact, offensive jokes or comments about a person based on their sex, or if people from a particular sex are excluded from team meetings or social events, this could be deemed harassment.
4. **Victimisation** – Victimisation is if you treat a person less favourably as a result of them having made a complaint or raised a grievance, relating to an act or acts of sex discrimination.

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How is discrimination in the workplace identified?

Employment tribunals will usually compare the treatment of the person who has complained about sex discrimination with that of a colleague who is in a similar position but is of the opposite sex.

The colleague is known as a comparator. For example, if you reject a person for a promotion because they lacked particular IT skills, the comparator would need to be a person of the opposite sex who also lacked those skills. If there is no suitable comparator available, the tribunal can invent one, known as a hypothetical comparator.

A comparator is not required where the discrimination is on grounds related to pregnancy or maternity as there can be no question of comparing a woman's situation with that of a man as pregnancy and maternity are uniquely female conditions.

Are any situations exempt from sex discrimination in the workplace?

Workplace-based sex discrimination legislation does not apply to the following areas:

- **Election candidates** – political parties can select candidates on the grounds of sex – i.e. women-only shortlists.
- **Ministers of Religion** – religions can insist on a minister being of a particular sex or marital status to avoid offending religious doctrine.
- **Armed Forces** – the armed forces are protected from sex discrimination by the Equalities Act but it is not unlawful to require a member of the armed forces to be male, providing that is a proportionate way of ensuring combat effectiveness.
- **Sports** – it is not unlawful discrimination to hold single-sex sports events.

Can I be held responsible for the actions of my staff?

You can be legally responsible for any acts of discrimination committed by your employees during the course of their employment, whether you were aware of their actions or not. This is known as vicarious liability.
You may be able to defend yourself against a finding of vicarious liability if you can show that you took all reasonable steps to prevent your member of staff from committing a discriminatory act.

Ultimately, what constitutes 'all reasonable steps' may have to be decided by an employment tribunal, but examples can include:

- Implementing an Equal Opportunities Policy and being able to demonstrate that your staff were aware of it and had received appropriate equality training
- Dealing effectively with staff complaints and grievances.

What legal action could be taken against me and my business?

Sex discrimination claims can be brought against you personally, your business and/or members of staff.

If an employment tribunal concludes that you, your business and/or employees of that business discriminated against a person on the grounds of their sex, any one or all of you can be ordered to pay substantial compensation. It is not only employees who can make discrimination claims in an employment tribunal. Casual workers, agency workers, those on zero-hours contracts and some self-employed people can also claim.

There is no qualifying period for bringing claims, so a person does not have to work for any minimum period of time before they can make a discrimination claim. If an employee suffers any detriment as a result of having made a complaint about discrimination, they may have a victimisation claim. They might also decide to resign because they feel their position is untenable as a result of the discrimination they have suffered, in which case they might also have a constructive dismissal claim.

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There is no limit to the amount of compensation an employment tribunal can award in sex discrimination cases, and very large sums of money have been awarded in some instances. Compensation is calculated in line with complex guidelines that consider the seriousness of the discrimination and the hurt the claimant suffered. Awards of up to £8,600 can be made for one-off acts of discrimination, such as a refusal to offer a job, or a standalone incident of harassment – though if a claim relates to an incident before 6th April 2018, the potential level of compensation for injury to feelings will be lower due to changes in the law. In more serious cases, such as the dismissal of a person because of their sex, tribunals can award up to £25,700. In the most severe instances, if a person has suffered a long campaign of discrimination and harassment, awards of up to £42,900 or more can be made.

Delphi can work with you on sex discrimination matters.
If a sex discrimination claim has been brought against you, your business or one or more employees in your company – or if you need advice or training on discrimination issues and equal opportunities policies **– Delphi can help.**

We specialise in employment law and with many years of experience, we are highly qualified to assist with any discrimination issues you might have. **Contact us today on 0113 867 2815**

Sexual Orientation Discrimination

It is against the law for you, as an employer, or potential employer, to discriminate against a person because of their sexual orientation. If you treat a person less favourably because of their sexual orientation, that will amount to unlawful discrimination under the Equality Act 2010.

How is sexual orientation defined?

The definition of "sexual orientation" in the Equality Act covers preference for the opposite sex, as well as homosexual or bisexual preferences. So, it is illegal to discriminate against a person because they are heterosexual, just as it is illegal to discriminate against someone because they are homosexual.

Who is protected against sexual orientation discrimination?

The Equality Act protects all employees, job applicants, trainees, contract workers, office holders – including company directors and managers – those on secondment and self-employed people against sexual orientation discrimination.

What is protected under the Equality Act?

The Equality Act covers all areas of employment, including:

- Application forms
- Interview arrangements
- Aptitude or proficiency tests
- Job offers
- Terms of employment, including pay, benefits, promotion, transfer and training opportunities
- Dismissal or redundancy
- Discipline and grievances.

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In what ways can a person be discriminated against?

Sexual orientation discrimination in the workplace covers the following areas:

Direct discrimination – This occurs if you treat a person less favourably than a colleague because of their sexual orientation, their perceived sexual orientation, or the sexual orientation of someone with whom they are associated, such as a close family member.

The less favourable treatment could include a decision not to employ them, to dismiss them, withhold promotion or training opportunities, offer worse terms and conditions or deny contractual benefits because of their sexual orientation.

There is no defence in a direct discrimination case but an occupational requirement exemption does apply – where being of a particular sexual orientation is an occupational requirement.

Direct discrimination can happen at any time in the workplace, for example it can occur:

- At a job interview
- In a contract of employment
- In promotion opportunities
- If a person is dismissed or made redundant.

Discrimination by perception might arise if, for example, you wrongly assume a person to be gay and discriminate against them on the basis of that misunderstanding.

Indirect discrimination – This is if you apply practices or procedures to everyone that put a particular person, or group of people, at an unfair disadvantage because of their sexual orientation.

Harassment – This occurs if you or one of your employees behaves in an unwanted fashion – related to a person's sexual orientation – that violates their dignity or creates an intimidating, degrading, humiliating or hostile environment for them. For example, if a colleague makes offensive jokes or comments about a person's sexual orientation, spoken or written words, images, etc.

Victimisation – This occurs if you treat a person less favourably as a result of them having made a complaint or raised a grievance, relating to an act or acts of sexual orientation discrimination.

Can I ask a person about their sexual orientation at a job interview?

You may ask a person about their sexual orientation, either for monitoring purposes or as part of an equal opportunities questionnaire, but they are not obliged to answer if they don't want to.

How is workplace discrimination identified?

Employment tribunals will usually compare the treatment of the person who has complained of sexual orientation discrimination with that of a colleague who is in the same position as the complainant but is of a different sexual orientation – known as a "comparator". For example, if you reject a gay man for a job as a receptionist because he has not got particular IT skills, the ideal comparator would be a non-gay man who also lacked these abilities. If there is no suitable comparator available, the tribunal can invent one – known as a "hypothetical comparator".

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Can I be held responsible for the actions of my staff?

You can be legally responsible for any acts of discrimination committed by your employees during the course of their employment, whether you were aware of their actions or not. This is known as vicarious liability.

You may be able to defend yourself against a finding of vicarious liability if you can show that you took "all reasonable steps" to prevent your member of staff from committing the discriminatory act(s).

What constitutes "all reasonable steps" may have to be decided by an employment tribunal but examples can include:

- Implementing an Equal Opportunities Policy and being able to demonstrate that your staff were aware of it and had received appropriate equality training.
- Dealing effectively with staff complaints and grievances.

What legal action could be taken against me and my business?

Sexual orientation discrimination claims can be brought against you personally, your business and/or any individual members of staff.

If an employment tribunal concludes that you, your business and/or any individual employees of that business discriminated against a person on the grounds of their sexual orientation, any one or indeed all of you can be ordered to pay substantial compensation.

It is not only employees who can make sexual orientation discrimination claims in an employment tribunal – casual workers, agency workers, those on zero-hours contracts and some self-employed people can also claim. There is no qualifying period, so a person does not have work for any minimum period of time before they can make a sexual orientation discrimination claim.

If an employee suffers any detriments as a result of having made a complaint about sexual orientation discrimination, they may have a victimisation claim. They might also decide to resign because they feel their position is untenable as a result of the discrimination they have suffered, in which case they may also have a constructive dismissal case.
There is no limit to the amount of compensation an employment tribunal can award in sexual orientation discrimination cases, and very large sums of money have been awarded in some instances. Compensation is calculated in line with complex guidelines that consider, among other things, the seriousness of the discrimination and the hurt they suffered. Awards of up to £8,600 can be made for one-off acts of sex discrimination – such as a refusal to offer a job, or a one-off incident of harassment. In more serious cases, such as if you sack a person because of their sexual orientation, tribunals can award up to £25,700.

In the most severe cases – if a person has suffered a long campaign of discrimination and harassment – awards of up to £42,900 can be made. Although if a discrimination claim was made before 6th April 2018, the potential levels of compensation for injury to feelings will be lower than the most recent figures quoted above.

Delphi can work with you on sexual orientation discrimination matters.
If a sexual orientation discrimination claim has been brought against you, your business or one or more employees in your company – or if you need advice or training on discrimination issues and equal opportunities policies **– Delphi can help.**

We specialise in employment law and with many years of experience, we are highly qualified to assist with any discrimination issues you might have. **Contact us today on 0113 867 2815**

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Bullying

Bullying is intimidating or offensive behaviour that can have a significant effect on the quality of an employee's working life. Studies have shown that bullying is a common problem in the workplace and can affect any employee regardless of age, experience or status.

What is workplace bullying?

Bullying can take many forms – for example, your employees might regularly pick on one individual, spread malicious gossip or make unpleasant remarks about their appearance. Alternatively, an employee might be shouted at, undermined, or denied promotion or training opportunities by their supervisor or line manager. Bullying can happen in face-to-face situations, by letter, email, text or phone.

Whether the person or people intended to bully an individual is irrelevant – what matters is whether the bullying behaviour is considered unreasonable in normal circumstances.

What are my responsibilities as an employer?

Employers have a legal duty to ensure their employees' protection and safety at work. You should have a bullying and harassment policy, usually in the staff handbook, telling your employees what to do if they have suffered either in the workplace.
It is not unreasonable to expect your staff to contend with some occasional nastiness from their workmates, but if you are confronted with more serious allegations of workplace bullying – or allegations concerning your managers – you should assess and investigate each accusation individually.

As an employer, if you fail to properly address a complaint of workplace bullying and your employee subsequently resigns as a result of the bullying and/or your failure, you could face a claim of constructive dismissal.

What is the law on workplace bullying?

The UK does not have any specific law to prevent bullying at work, but that does not mean there is no legal protection. Under the Equality Act 2010, harassment is unlawful and provides the main protection against workplace bullying. Harassment is unwanted behaviour that is related to one of the following:

- Age
- Sex
- Disability
- Gender (including gender reassignment)
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sexual orientation.

If your employee thinks they have been a victim of bullying or harassment at work – and have not been able to resolve the matter informally or via the company's grievance procedure – they might be able to make a claim to an employment tribunal.

As there is no specific legislation preventing bullying in the workplace, bullying and harassment cases are normally brought under other forms of legislation – such as discrimination and/or constructive dismissal.

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Alternatively, your employee could make a claim under the Protection from Harassment Act 1997, providing there is no element of discrimination in the bullying allegations. The legislation will only consider the most serious examples of bullying and harassment, which must involve at least two incidents "calculated to cause distress or alarm". Such claims cannot be heard by an employment tribunal however, and can only be made in the civil courts, which means that you are at risk of paying your employee's legal costs if you lose.

Delphi can advise you on matters of workplace bullying.
If you are looking for advice on how to deal with allegations of workplace bullying – or need a grievance procedure or bullying and harassment policy drafting to safeguard your employees – **Delphi can help.**

We specialise in employment law and with many years of experience, are highly qualified to assist you with any workplace bullying issues you might have. **Contact us today on 0113 867 2815**

Victimisation

Victimisation is effectively a form of discrimination which happens if you, or one of your members of staff subject an employee to a detriment because they carried out a protected act. The Equalities Act 2010 provides protection to prevent employees from being victimised at work if they carry out a protected act.

What kind of unfair treatment is regarded as a detriment?

The Equalities Act does not specifically define "detriment" but for unfair treatment to amount to a detriment it must be fairly serious. For example:

- Threatening an employee with disciplinary action or dismissal.
- Refusing a pay rise or bonus.
- Passing an employee over for promotion.

Detrimental treatment may be regarded as victimisation if the protected act is one of the reasons for the treatment but it does not have to be the only reason.

What are protected acts?

The following acts are protected:

- Making a discrimination claim against an employer.
- Giving evidence or supplying information in relation to a discrimination claim.
- Making allegations that an employer has acted in breach of discrimination laws.

Are there any exceptions in which protection would not be provided?

Employees are not protected if they make a false complaint, or complain in bad faith. So, if an employee complained about discrimination just to cause you trouble, that complaint would be regarded as being in bad faith and would not be a protected act. So if the employee was subsequently sacked they would not be able to claim that they had suffered unlawful victimisation.

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Can I be held responsible for the actions of my staff?

You can be legally responsible for any acts of victimisation committed by your employees during the course of their employment, whether you were aware of their actions or not. This is known as vicarious liability.

You may be able to defend yourself against a finding of vicarious liability if you can show that you took all reasonable steps to prevent your member of staff from committing an act of unlawful victimisation.

Ultimately, what constitutes 'all reasonable steps' may have to be decided by an employment tribunal, but examples can include:

- Implementing an Equal Opportunities Policy and being able to demonstrate that your staff were aware of it and had received appropriate equality training
- Dealing effectively with staff complaints and grievances.

What legal action could be taken against me and my business?

Claims of victimisation can be brought against you personally, your business and/or members of staff.
If an employment tribunal concludes that you, your business and/or employees of that business victimised a person because they carried out a protected act, any one or all of you can be ordered to pay substantial compensation.

It is not only employees who can make victimisation claims in an employment tribunal. Casual workers, agency workers, those on zero-hours contracts and some self-employed people can also claim. There is no qualifying period for bringing a victimisation claim, so a person does not have to work for any minimum period of time before they can make a claim.

They might also decide to resign because they feel their position is untenable as a result of the victimisation they have suffered, in which case they might also have a constructive dismissal claim.

There is no limit to the amount of compensation an employment tribunal can award in cases, and very large sums of money have been awarded in some instances. Compensation is calculated in line with complex guidelines that consider the seriousness of the victimisation and the hurt the claimant suffered. Awards of up to £8,600 can be made for one-off acts of victimisation, though if a claim relates to an incident before 6th April 2018, the potential level of compensation for injury to feelings will be lower due to changes in the law. In more serious cases, such as the dismissal of a person because they carried out a protected act, tribunals can award up to £25,700. In the most severe instances, if a person has suffered a long campaign of victimisation, awards of up to £42,900 can be made.

Delphi can advise you on matters of victimisation.
If you are looking for advice on how to deal with allegations of victimisation – or need a grievance procedure or victimisation and harassment policy drafting to safeguard your employees – **Delphi can help.**

We specialise in employment law and with many years of experience, are highly qualified to assist you with any victimisation issues you might have. **Contact us today on 0113 867 2815**