



Discrimination

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Workers and employees are protected from discrimination due to a 'protected characteristics'. These characteristics are defined in law as:

- **Age** - this refers to an age group.
- **Disability** - A person is disabled if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
- **Gender reassignment** - A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.
- **Marriage and civil partnership** - this refers to someone who is married or is a civil partnership
- **Pregnancy and maternity**- if a woman is treated unfavourably because of the pregnancy or because of an illness suffered by her as a result of her pregnancy.
- **Race** - this includes colour, nationality, ethnic or national origins
- **Religion or belief** - Religion means any religion and includes a lack of religion. Belief means any religious or philosophical belief and includes a lack of belief.
- **Sex** - this refers to a man or a woman
- **Sexual orientation** - this means a person's sexual orientation toward persons of the same sex, persons of the opposite sex or persons of either sex.

There are various different types of discrimination claims that can be brought in the Employment Tribunal.

Direct discrimination

A person is directly discriminated against if they are treated less favourably than someone else because of a protected characteristic, unless the protected characteristic is age, here an employer can have a potential defence.

To prove direct discrimination there is a need to have a 'comparator'. This means a worker needs to compare the treatment of someone with a protected characteristic against someone without that relevant protected characteristic.

It is possible to have a hypothetical comparator, although discrimination may be harder to prove in these circumstances. This is not needed in pregnancy/ maternity claims.

If someone was discriminated against because of their association with a person with a protected characteristic, this may be direct discrimination. For example, someone was not hired because they had a disabled child.

If someone has a perceived protected characteristic, this may also be direct discrimination. For example, a heterosexual man was treated less favourably because he was perceived to be gay.

Indirect discrimination

Indirect discrimination is where there is a provision, criterion or practice (PCP) in the workplace which applies to all workers in the same way, but it has a greater impact on workers with a certain protected characteristic.

A PCP can be policy or rule which is applied in the workplace. It does not have to be written down or formal, although this will help to prove there is a PCP. For example, a workplace has a culture of working late; this may amount to a PCP even though the employer has no formal policy of requiring staff to work outside of office hours.

An Employer can defend a claim of indirect discrimination if they can show the PCP is a proportionate means of achieving a legitimate aim.

Harassment

Harassment is unwanted conduct (relating to a protected characteristic) which has the purpose or effect of:

- Violating the workers dignity; or
- Creating an intimidating, hostile, degrading, humiliating or offensive environment for the worker.

Even if the perpetrator does not intend to offend, it can still amount to harassment if this is the effect. There is also specific legal protection for harassment of a sexual nature.

Reasonable adjustments

If a worker is disabled, they have a right for reasonable adjustments to be made in the workplace. These adjustments apply to any policies and procedures the employer has or any physical features on the employer's premises.

An employer should also take reasonable steps to provide an auxiliary aid to the employee, for example, voice recognition software for an employee who has trouble typing.

The extent to which an employer is expected to make these adjustments depends on the size and resources of the employer.

Examples of reasonable adjustments include:

- Changes to the sickness absence policy
- Installing a wheelchair ramp
- Amending a rota
- Allowing an employee to work from home
- Placing the employee in an alternative role

This list is not exhaustive and nothing is outright excluded from being an adjustment, so long as it is reasonable and has the purpose of allowing the employee to overcome the 'substantial disadvantage' they experience due to their disability. Substantial in this context means more than "minor or trivial".

Discrimination arising from a disability

If someone is treated unfavourably because of their disability, this can be a separate claim. Unlike a claim for direct discrimination, there is no need for a comparator.

An employer can have a defence to this claim if they can show their actions were a proportionate means of achieving a legitimate aim.

For example, a person's disability means they cannot meet certain targets set by the employer. As a result, they do not receive a bonus. This may be discrimination arising from a disability if the employer cannot justify this by showing it is a proportionate means of achieving a legitimate aim.

Victimisation

This arises when worker makes a complaint of discrimination to their employer, or brings Employment Tribunal proceedings against them for discrimination, and they are then victimised because of this. Or where a worker is witness for or represents someone bringing a claim of discrimination.

An example would be a worker raising a complaint of harassment and, as a result, is then denied a promotion.

Even if the original complaint of discrimination is not well founded, so long as it was brought in good faith, a worker still has protection from victimisation. For example, a worker brings an Employment Tribunal claim for discrimination but loses their case.

They then find a new job but their employer provides a negative reference because of the tribunal claim. Even though an Employment Tribunal found the worker has not been discriminated against originally, they may still be able to show the negative reference was an act of victimisation.

Time Limits

As with nearly all claims to the Employment Tribunal, the time limit is three months less one day from the act of discrimination, this can be a positive act by the employer or a failure to do something (such as failure to make a reasonable adjustment). This time limit remains the same even if there have been delays in the grievance procedure.

The calculation of time limits in discrimination claims can be quite complex and, if in any doubt contact your GMB representative.

If you are unsure about any aspect of employment law then you can refer to our other UnionLine employment rights pages - in particular the one on the issue of [Limitation in Employment cases](#). You may also want to seek specific advice from your GMB Region in the first instance.

The purpose of this advice page is to give an overview of some of the rights that are available to you; however this is no substitute for specific advice which you can obtain from your GMB Trade Union Representative.