

PAY & EMPLOYMENT RIGHTS SERVICE

PERS leaflet number 8

RACE DISCRIMINATION

**What you need to know about:
RACE DISCRIMINATION
RACIAL HARASSMENT
WHAT YOU CAN DO ABOUT IT
WHO CAN HELP YOU**

*Community
Legal Service*



Aug 2009

RACE DISCRIMINATION - THE LAW

The **Race Relations Act 1976 (RRA)** makes it unlawful for you to be discriminated against at work on the grounds of your **colour, race, nationality or ethnic origins**. The **RRA** was amended in 2003.

The **RRA** defines two kinds of discrimination - **direct discrimination** and **indirect discrimination**. Racial **harassment** can also be direct race discrimination. See below for details. **Victimisation** i.e. discrimination because you have taken action against discrimination at work is also unlawful.

Your employer has a responsibility to ensure as far as possible that you are not discriminated against in the course of your employment, whether by your employer, or by other workers.

Since the 2nd of December 2003 it is also unlawful to discriminate against workers on the grounds of religion or belief. See **PERS** leaflet on discrimination on the grounds of religion and belief.

WHO DOES THE ACT APPLY TO?

You are covered by the **RRA** if you are:

a) an employee. You are covered from the first day of employment. It does not matter if you are part-time, temporary or casual. The **RRA** applies to all aspects of employment including training, promotion, transfer, dismissal and access to facilities and services supplied by the employer.

b) self-employed, providing you are under a personal contract for services. For instance, self-employed **home workers or outworkers**, as well as taxi drivers and driving instructors, are covered.

c) a trainee or apprentice.

d) applying for a job. Job **selection** should be based purely on deciding which applicant is best able to do the job. However, job **advertisements** may legally ask specifically for someone of a particular race to do jobs where there is a '**genuine occupational qualification**' - for example, providing personal services for people in the same racial group, or for authenticity in a particular setting, such as some kinds of restaurant or in dramatic performances.

If you are applying for a job, you may also be affected by the requirements of the **Immigration and Asylum Act**.

IMMIGRATION AND ASYLUM ACT 1996

Section 8 of this Act requires employers to check that **all** prospective employees are allowed to work in the UK. You have an automatic right to work here if you are a British, Irish or Commonwealth citizen with right of abode in the UK, or a citizen

of any EEA (European Economic Area) country or Switzerland. Nationals of states that recently joined the European Union, may have to register with or apply for permission from the Border and Immigration Office before starting to work. See <http://www.bia.homeoffice.gov.uk/workingintheuk/>

Employers must ask to see documents such as a current passport, an NI card or a birth certificate to establish your right to work. **All** applicants have to prove their right to work in UK and produce supporting documentation.

The Act applies to new employees, however, in certain circumstances a check will be made every 12 months, e.g. employees providing proof to work in UK with a valid work permit.

If you are the only person asked to prove your right to work in the UK and you think it is because of your race, colour or ethnic background, then you could claim **direct race discrimination**. Contact **PERS** for more information.

DIRECT DISCRIMINATION

Direct discrimination is when you are treated less favourably at work than others at work because of your race or ethnic origin.

EXAMPLES OF DIRECT DISCRIMINATION

*Racial abuse and harassment

* A black woman who applied for a job in person at a hotel was told the job had been taken but when she phoned later was told it was still available.

* A factory operated a system where the day shift consisted wholly of white workers and the night shift consisted entirely of Asian workers. The Asian night workers were sent letters telling them that if they did not comply with new working conditions they would be dismissed. The white day workers did not receive such letters.

INDIRECT DISCRIMINATION

Indirect discrimination is when your employer applies an unnecessary provision, criterion or practice equally to all workers; which puts or would put people of a certain race or ethnic or national origin at a particular disadvantage in comparison with other groups and which cannot be objectively justified on non-racial grounds.

If you are basing your claim on colour or nationality, you must show that a requirement or condition applied universally can only be met by a considerably smaller proportion of people from a particular group. Further, it must be to the detriment of a person from that group because he or she cannot meet it; and the requirement or condition cannot be justified. This is a narrower test than an applied provision, criterion or practice.

EXAMPLES OF INDIRECT DISCRIMINATION

- *A college wanted a teacher of English 'whose mother tongue was English.' This requirement meant that a well qualified Asian woman was turned down for the post.
- *A large department store insisted that its female workers wear a skirt and overall, not trousers. This requirement discriminated indirectly against women in the local Pakistani community, who were mostly Muslim and could not wear this uniform.

VICTIMISATION

Victimisation is when you are treated less favourably because you have complained about racial discrimination, or supported someone else who has.

RACIAL HARASSMENT

Harassment on grounds of race or ethnic or national origin is defined as unwanted conduct which has the effect of violating a person's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for that person. It can take different forms: **name calling, racist abuse, gestures and jokes, racist graffiti, physical attacks and being shunned on the grounds of race.**

WHAT TO DO IF YOU ARE BEING HARASSED

All harassment should be taken seriously. However it may sometimes be possible to stop offensive behaviour without proceeding at once to legal action. Your initial response may depend to some extent on the nature of the harassment. If an incident is particularly threatening or unpleasant, you will need to take stronger action at once.

In cases of persistent harassment, you should tackle it in stages as follows:

- * Ask the harasser to stop, with support from other workers if necessary.
- * If this fails, report the harassment verbally to management. If you are a union member, tell the union what is happening to you. Keep a written record of when incidents occur, what you did and who witnessed them.
- * Put your complaint in writing and ask for action to be taken at once, using your company's grievance procedure if there is one.
- * There may be an occasion where the harasser is involved with the management or union structure. You should still ask the harasser to stop, and ask to speak to someone more senior.
- * You can also seek help from the agencies below, or by contacting PERS.
- * You may want to take a case for direct discrimination to an Employment Tribunal.
- * In some cases, you may be able to take a criminal case under the Protection from Harassment Act 1997. You might qualify for financial assistance through the Legal Services Commission (previously Legal Aid) to help you do this.

TAKING ACTION AGAINST DISCRIMINATION

Find out if your company has an equal opportunities or anti-harassment policy which includes an anti-racism clause. If so, you may be able to use this to help your case. If your workplace does not have an anti-racism policy, encourage your union to work with your employer to implement one.

If you think you are being discriminated against in any way, you should first try to settle the matter informally. If that does not resolve it, or the matter is so serious, you should formally write/submit a grievance to your line manager (provided he/she is not the source of the problem) outlining your concerns without reasonable delay.

Your employer then must arrange a meeting to which you will be invited. Further, you will be given the opportunity to take a companion to the meeting. If you decide to do so, you must inform your employer whom you have chosen. Your companion can address the meeting, confer with you but can not answer questions directly put to you.

At the meeting you will be permitted to explain your grievance and how you think it should be resolved. Your employer may then adjourn for an investigation or decide on what action if any to take. This decision should be confirmed to you in writing.

If you feel the issue has not been satisfactorily resolved you should appeal following your employer's procedure. If that does not resolve the issue, you can then take the case to an Employment Tribunal (ET).

Note: A three month time limit runs from the date the discrimination took place and the date the claim form (ET1) must be lodged with an ET. If discrimination occurred over a period of time, the 3 month period begins to run from the date of the last act of discrimination. The process can be complex so make sure you have expert help. See below for sources of help.

GATHERING EVIDENCE

Questionnaires: If these internal actions fail, or if there are reasons why they are inappropriate, you can send your employer an official **question and answer form** (RR65), available from the **Equality and Human Rights Commission (EHRC)** **Helpline** on **0845 604 6610** or see:

<http://www.equalityhumanrights.com/advice-and-guidance/information-for-advisers/key-legislation/>

or other advice agencies. It asks your employer various questions about their business and their equal opportunity policies and employment practice. The answers to the questions can help you decide if it is worth starting a race discrimination case. The replies can also be used as evidence in an ET.

Discovery: An ET can require your employer to grant you "discovery of documents" relating to the case, such as medical reports or equal opportunities policies. Again, these can be used as evidence at tribunal.

LEGAL REMEDIES

If an ET finds that there has been unlawful discrimination, it can make one or more of the following orders:

* **Declaration order.** This declares that your rights have been violated and tells your employer to end the discriminatory practice. If it continues, you can claim compensation.

* **Recommendation order.** This recommends specific action to reduce the adverse effects of the discrimination. For example, if you were refused a job or promotion because of racial discrimination, then although you will not be given preferential treatment at another interview, the next interview panel would be told that your previous application was rejected because of discrimination, and that this time they must comply with the RRA.

* **Compensation order.** This requires your employer to pay you damages, including compensation for 'injury to feelings'. There is no upper limit on the amount of compensation that can be awarded.

WHO CAN HELP YOU?

The Equality and Human Rights Commission (EHRC): "A statutory body with the responsibility to protect, enforce and promote equality across the seven "protected" grounds - age, disability, gender, race, religion and belief, sexual orientation and gender reassignment". The EHRC provides free advice and guidance through a help line on **0845 604 6610**, or see: <http://www.equalityhumanrights.com/>

Trade Unions: Your trade union should be able to help you. If you don't belong to a union, contact **PERS** to find out which is the most suitable one for you.

Citizens Advice Bureaux (CAB): Your local CAB will be able to give you free

advice. The CAB website, www.adviceguide.org.uk allows you to search for the bureau nearest to you and gives opening times and directions, as well as details as to whether specialist help is available. In any case, try phoning or calling round first.

Community Legal Services (CLS): CLS plus some agencies it funds provide free help to people on low incomes and with limited savings. See www.clsdirect.org.uk for a list of agencies in your area that provide legal help and representation. You can also use this website to calculate whether you are eligible for free advice.

Law Centres: There may be a Law Centre in your area who can give professional help with employment and race discrimination cases.

Advisory, Conciliation and Arbitration Service (ACAS): ACAS will be able to provide you with more information regarding employment law issues. They will be automatically involved if you take a case to an ET. Contact ACAS on **08457 47 47 47** or on the internet at **www.acas.org.uk**.

**This leaflet is intended as a guide and is not a full statement of the law.
Please seek advice before taking any action.
PERS has a complaints and comments procedure. Please contact us for a copy
if you wish to make a complaint or comment about our services.**

PERS LEAFLETS

This is one of a series of leaflets which look at aspects of your rights at work. See also www.pers.org.uk for all (downloadable) leaflets, action packs and fact sheets.

PAY & EMPLOYMENT RIGHTS SERVICE

**Unit 14 Batley Enterprise Centre • 513 Bradford Road
Batley • WF17 8LL**

01924 428030

www.pers.org.uk

Telephone advice is available from PERS at the following times:

Monday: 10am to 1pm

Tuesday: 10am to 4pm & 5.30pm to 7.30pm

Wednesday: 10am to 4pm

Thursday: 10am to 4pm

Friday: 10am to 1pm

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