

PAY & EMPLOYMENT RIGHTS SERVICE

PERS leaflet number 9

SEX DISCRIMINATION

What you need to know about:

**SEX DISCRIMINATION
SEXUAL HARASSMENT
WHAT YOU CAN DO ABOUT IT
WHO CAN HELP YOU**

*Community
Legal Service*



Aug 2009

SEX DISCRIMINATION - THE LAW

The **Sex Discrimination Acts (SDA) 1975** and **1986** apply to both women and men. They define two kinds of discrimination - **direct discrimination** and **indirect discrimination**. Sexual harassment and discrimination against pregnant workers can also be sex discrimination. **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, by other workers or, in some cases, by customers or clients.

The **SDA**, along with the European Directive on Equal Treatment, has been successfully used to improve the rights of part-time workers, who are predominantly women, and to give additional employment protection to pregnant women. See **PERS** leaflets **No. 10 Part Timers** and **No. 5 Maternity and Paternity**.

The **SDA** also makes it unlawful to discriminate against transgender people. Discrimination against gay men, lesbians and bisexuals is now outlawed by the **Employment Equality (Sexual Orientation) Regulations 2003**.

WHO DOES THE ACT APPLY TO?

You are covered by the SDA if you are:

a) an **employee**. You are covered from the first day of employment. Part-time, temporary or casual, and agency workers are protected.

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

c) a **trainee or an 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 lawfully ask specifically for a woman or a man to do certain jobs where being of a particular sex is a '**genuine occupational qualification**' - for example, work in a women's aid refuge, or a job involving some kind of intimate personal care, or for a female part in a play.

DIRECT DISCRIMINATION

Direct discrimination is where you are treated less favourably at work because of your gender or because you are married. This includes situations where your employer makes assumptions about women (or men) regarding domestic arrangements, or regarding physical or mental abilities.

EXAMPLES OF DIRECT DISCRIMINATION

- An employer selected a female employee for redundancy because she had a young child and her employer thought she would be unable to make overnight trips on company business.
- A woman due to start work with a team of painters was told at the last minute that her services would no longer be required because she would be the only female on the team.

INDIRECT DISCRIMINATION

Indirect discrimination is where your employer:

- applies a condition equally to **all** workers; and
- the number of people of your sex who can comply with the condition is considerably smaller than it is for the opposite sex; and
- it cannot be justified by any other reason not to do with your sex; and
- you suffer a 'detriment' (disadvantage).

EXAMPLES OF INDIRECT DISCRIMINATION

- a woman wished to return to work from maternity leave on part-time hours or job-share but the firm refused to consider her request, saying that only full-time workers were employed in her department. She has the right to request flexible working hours under the Employment Rights Act, but could also claim indirect sex discrimination as more women than men have child care responsibilities.
- A firm required its workers to sign a mobility clause to say that they would work at any place within the UK. This was seen as indirect discrimination because more women were 'secondary wage earners' and therefore fewer could comply with a direction to relocate.
- Applying different terms and conditions to part time employees, most of whom are women. This also contravenes the Part Time Workers Regulations 2000.

HARASSMENT

There are two definitions of harassment:

- 1) Someone subjects you to unwanted conduct that is related to your sex,

e.g. continually putting crucial equipment on a high shelf which can only be reached by tall people (mainly men).

2) Someone engaging in unwanted verbal, non-verbal or physical conduct of a sexual nature, e.g. unfavourable treatment after refusing sexual advances or sexual teasing, unnecessary touching, sexual assault.

In both cases the treatment can be by someone of the same or opposite sex and it results in a feeling of indignity, or an intimidating, hostile, degrading, humiliating or offensive atmosphere.

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 immediately taking legal action. Your first response may depend on the circumstances. If an incident is very threatening or unpleasant, you should 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 your union what is happening. 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.
- If the harasser is involved with the management or the union structure, you should still ask the harasser to stop, but then report to someone more senior.
- 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 may qualify for financial assistance from the Legal Services Commission (previously Legal Aid) to help you do this. See below.

TAKING ACTION AGAINST DISCRIMINATION

Find out if your company has an equal opportunities or anti-harassment policy

which includes an anti-sexism clause. If so, you may be able to use this to help your case. If your workplace does not have an anti-sexism 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 put directly 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** (SD 74), 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 sex 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 a promotion because of sex discrimination, then although you would 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 SDA.
- **Compensation order.** This requires your employer to pay you damages, including compensation for 'injury to feelings'. There is no upper limit to 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 sex 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

Pay & Employment Rights Service is funded by



**PERS is an independent charity providing advice, information, training
and consultancy on pay and employment rights.**

**© 2009 Pay & Employment Rights Service (Yorkshire) Ltd
Company No 2201619
Registered charity 1097401**