

RELIGION OR BELIEF DISCRIMINATION

Introduction

In this Reps Bulletin we will be looking at one of the protected characteristics from the UK's Equality Act (EQA) 2010, that of religion and belief, and how the key points apply to the workplace.

Before we get to that, and by way of background, it worth recognising that despite media reports and claims from anti-religious organisations, surveys show that the level of faith in Britain still remains high with nearly 57% of the population having a religious affiliation.¹ Even among the 41.5% who said they have no religious affiliation, there will be many who maintain a philosophical belief like humanism.

What is religion and belief discrimination?

The EQA is designed to protect employees from discrimination, harassment and victimisation because of their religion or belief with the characteristic mainly divided into two areas:

- Religion and religious belief
- Philosophical belief

For a discrimination claim to be made, the Act does not require:

- Any minimum length of continuous employment;

- Any employment for a job applicant.

Discrimination is unlawful from when a role is advertised and interviewed for, through to the last day of employment and beyond, including in respect of any job references.

The ACAS Guidance Document that has been used in preparing this Bulletin also references the Human Rights Act (HRA) 1998 which gives a person:

- The right to hold a religion or belief and to change their religion and belief;
- The right to show that belief, but not if that display or expression interferes with:
 - public safety
 - public order
 - health or morals
 - the rights and freedoms of others.

Religion and religious belief

The EQA does not define what a religion is. However, it is accepted that in line with the European Convention on Human Rights and Britain's Equality and Human Rights Commission's (EHRC) employment statutory code of practice, "a religion must have a clear structure and belief system."

This accepted definition of religion also covers:

- A clearly structured denomination or sect within a religion
- Employees without a religious faith, and those with a faith, can be protected against discrimination (eg, someone who is not a Hindu would be protected against discrimination because they are not a Hindu)
- What makes up religious belief or practice may vary among people in that religion
- No one religion or a branch of that religion overrides another (meaning that an employee is protected against discrimination by someone of another religion, the same religion or a different branch or practice of their religion).

The EQA does not give a comprehensive list of religions but in its explanatory notes the examples listed include Buddhism, Christianity, Hinduism, Islam, Judaism, Rastafarianism and Sikhism.

Philosophical belief

The ACAS guidance broadly defines philosophical belief as requiring to be all the following:

- Genuinely held;
- Not just an opinion or a point of view based on current information;
- A weighty and substantial aspect of human life and behaviour;
- Clear, logical, convincing, serious, important; and
- Worthy of respect in a democratic society, compatible

with human dignity and not conflicting with the fundamental rights of others

The EQA does not give a list of philosophical beliefs. Instead, individual cases are decided by employment tribunals on the facts of the case which will look at whether that belief affects how the person lives their life. Broadly accepted examples of beliefs are humanism, atheism and agnosticism. Supporting a football team or loyalty to a native country are not accepted as philosophical beliefs

NOTE: in general, supporting a political party is not considered to be a philosophical belief under the EQA. However, where a person can show that a political philosophy significantly affects how a person lives their life may be protected.

All protected beliefs – whether religious or philosophical – are equal, meaning that they cannot override each other.

An employee can be protected because they do not hold a particular philosophical belief, regardless of any other religious or philosophical belief they may or may not hold.

How religion or belief discrimination can happen

Under the EQA there are four main types of discrimination:

- Direct discrimination
- Indirect discrimination
- Harassment
- Victimisation

Direct discrimination

There are three different types of direct discrimination where someone is

treated less favourably than others because of:

- Their own religion or belief, or lack of religion or belief (known as **ordinary direct discrimination**)
- The religion or belief, or lack of religion or belief, of someone they are associated with, such as a friend, family members or colleagues (known as **direct discrimination by association**)
- A religion or belief they are thought to hold, or not hold, regardless of whether the perception is correct or not (known as **direct discrimination by perception**).

Direct Discrimination in all of its three forms could, for example, involve a decision not to employ someone, make them redundant or turn them down for promotion because of religion or belief. In almost all circumstances, it would be unlawful.

The EQA, however, in some limited circumstances, does allow discrimination where the job requires someone of a particular religion or belief in what is known as an “occupational requirement.”

Indirect discrimination

Often unintended, and less obvious than direct discrimination, indirect discrimination legally requires a “provision, criteria or practice” that involves all the following:

- It is applied equally to groups of employees, only some of whom share the protected characteristic (religion or belief in this case);

- It has (or will have) the effect of putting those who share the protected characteristic at a particular disadvantage when compared to others without the characteristic in the group;
- It puts (or would put) an employee at that disadvantage; and
- The employer is unable to objectively justify it.

Note: Indirect discrimination can be “objective justified” if the employer can prove the “provision, criterion or practice” is “a proportionate means of achieving a legitimate aim.” This can be difficult for employers to prove as they must show that:

- There is a legitimate aim (such as a good business reason – but cost alone is unlikely to be sufficient according to ACAS);
- The actions are proportionate, appropriate and necessary.

Both points apply, not just one of them.ⁱⁱ

Note: Reps should ask employers to review company policies, practices and rules to establish if they may be more difficult for people of a certain religion or belief and whether they can be justified. Otherwise, they may be inadvertently indirectly discriminatory, perhaps because the make up of the workforce, the law or work arrangements have changed.

Note: The EQA does not define a “provision, criteria or practice” but the term is most likely to include employer’s policies, procedures, requirements, rules and arrangements,

even if informal, and whether written down or not.

Note: What is “proportionate” can depend on the size of the company – eg, a big employer with a large workforce may have more flexibility to cover time off for religious reasons than a small firm.

Harassment

Defined as “unwanted conduct,” harassment must be related to a relevant protected characteristic, in this case, religion or belief.

The harassment must have the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

ACAS advise that this could include:

- Bullying
- Nicknames
- Threats
- Intrusive or inappropriate questions
- Excluding someone
- Insults

It can be verbal, written or physical.

Unwanted jokes and/or gossip which the employee finds offensive can also be harassment. To say the behaviour was not meant to be harassment or that the comments were “banter” is no defence.

The guidance notes that in harassment cases:

- The impact of the unwanted conduct as perceived by the victim is more important than the perception of the harasser and their intent;

- Whether it is reasonable for the victim to feel the way they do is also taken into account.

Note: An employee who witnesses conduct directed at another person (but are not on the receiving end of it themselves) may also make a complaint of harassment when it has a negative impact on their dignity at work or working environment. In this case, the employee making the complaint would not need to share the same religion or belief as the colleague being harassed or have any religion or belief.

ACAS advise managers to be careful not to let their own views influence a situation or dismiss a concern because they do not deem the behaviour offensive themselves. Instead, they should recognise that if an employee feels strongly enough to make a complaint or raise a concern, the manager should treat it seriously and deal with it appropriately and correctly.

Victimisation

This occurs when an employee suffers a “detriment,” defined as something that causes disadvantage, damage, harm or loss because of:

- Making an allegation of discrimination, and/or
- Supporting a complaint of discrimination, and/or
- Giving evidence relating to a complaint about discrimination, and/or
- Raising a grievance concerning equality or discrimination, and/or
- Doing anything else for the purposes of (or in connection with) the Equality Act, such as bringing an Employment

Tribunal claim for discrimination.

Victimisation can occur because an employee is suspected of doing one or more of these things, or because it is believed that they may do so in the future.

ACAS suggest examples of a detriment could be being:

- labelled a “troublemaker”
- left out and ignored
- denied training
- denied promotion
- denied time off
- given a poor reference

Note: An employee is protected under the Equality Act from victimisation if they make, or support, an allegation of discrimination in good faith, even if the information or evidence they give turns out to be inaccurate. However, no protection is available if they give, or support, information or evidence maliciously.

Where is religion or belief discrimination most likely to happen?

ACAS suggest that discrimination on the basis of religion or belief is most likely to occur:

- During recruitment
- When dealing with requests to take annual leave, breaks and time away from work for religious reasons
- Dress codes

Maybe, you have a member who has experienced religious or belief discrimination in one of these areas and is asking for your advice? Reps are advised to look at the details that appear at pages 10-16 in the ACAS

guide which explores each of these scenarios in a lot of depth.

Considerations for everyone

The ACAS guide also goes into a broader brief about how employers, managers, HR staff, employees and trade union reps should make sure they understand:

- What religion or belief discrimination is and how it can happen
- Their rights and responsibilities
- The employer's policy for preventing discrimination
- What behaviour and actions are unacceptable such as derogatory comments about an employee's religion or belief.

The ACAS advice then proceeds to consider a range of areas that reps may find surprising, including the use of unacceptable language (how many people use religious swear words today without regard to the deep offence that can cause to a person of faith in that religion?).

Among the areas considered are:

- Developing policies for handling requests for reasons of religion or belief
- Job duties and religion or belief
- Talking about religion or belief at work
- Unacceptable language
- Food and fasting
- Behaviours based on religious belief
- Working on a holy day of the week
- Avoiding stereotyping
- Occupational requirements
- Bereavement

Advice to reps

TSSA advice to reps is to make themselves familiar with the contents of both this Bulletin and the ACAS advice upon which it is based.

As stated earlier, and to avoid claims for indirect discrimination, reps should also ask employers to review company policies, practices and rules to establish if they may be more difficult for people of a certain religion or belief and whether they can be justified. Such a review is particularly important if policies have not been updated for some years and there have been changes in the workforce, the law or working practices. The company may also have had to deal with indirect discrimination claims. The rep may wish to study existing policies beforehand in case they could find an example to support the request (additional to the ACAS advice).

Ideally, the rep should ask:

- to be involved in any review (or nominate a member who would be interested)
- or be able to comment on any findings
- that changes are subject to consultation with trade union reps and members

Acknowledgements

This Bulletin has been prepared using information from:

ACAS Guidance document: “Religion or belief discrimination: key points for the workplace” (May 2018) available from:

<http://www.acas.org.uk/media/pdf/a/p/Religion-or-belief-discrimination-key-points-for-the-workplace.pdf>

British Religion in Number (website): “Counting Religion in Britain January 2018” at:

<http://www.brin.ac.uk/2018/counting-religion-in-britain-january-2018/>

ⁱ Counting Religion in Britain January 2018 at: <http://www.brin.ac.uk/2018/counting-religion-in-britain-january-2018/>

ⁱⁱ See Page 8 of ACAS Guidance for further details.