

Briefing Note



Key²Law LLP

PROMOTING EQUALITY AND DIVERSITY

The Employment Equality Regulations 2003

Two recent employment tribunal decisions that have received substantial media coverage have highlighted the need for employers to ensure that their policies and procedures comply with the Employment Equality Regulations 2003.

The two sets of regulations, the Employment Equality (Sexual Orientation) Regulations 2003 ("the Sexual Orientation Regulations") and the Employment Equality (Religion or Belief) Regulations 2003 ("The Religion or Belief Regulations"), which came into force on 1 and 2 December 2003 respectively, make discrimination on the grounds of sexual orientation and religion or belief unlawful.

In summary the Sexual Orientation Regulations and the Religion or Belief Regulations prohibit:

- **Direct discrimination** - treating people less favourably than others on the grounds of sexual orientation, religion or belief;
- **Indirect discrimination** - i.e. applying a provision, criterion or practice which disadvantages people of a particular sexual orientation or religious belief and which is not justified as a proportionate means of achieving a legitimate aim;
- **Harassment** - unwanted conduct that violates people's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment;

Victimisation - treating people less favourably because of something they have done under or in connection with the Regulations - i.e. where a formal complaint may have been made or a tribunal case issued.

The Sexual Orientation Regulations apply to discrimination on the grounds of orientation towards persons of the same sex (i.e. lesbians and gays), the opposite sex (heterosexuals) and the same and opposite sex (bisexuals). The regulations are very wide ranging and cover discrimination on grounds of perceived as well as actual sexual orientation and discrimination by association, i.e. being discriminated against on grounds of the sexual orientation of those with whom you associate.

The Religion or Belief Regulations apply to discrimination on the grounds of religion, religious belief or similar philosophical belief. As with the Sexual Orientation Regulations, they also cover discrimination on the basis of perceived or actual religion or belief and association i.e. being discriminated against on the grounds of the religion and belief of those with whom you associate.

Both sets of regulations protect the rights of workers (rather than employees) and apply to all businesses regardless of their size and whether they are in the public or the private sector. They apply to recruitment, terms and conditions of employment, pay, promotion, transfer and dismissals.

*Employment
Group
January
2005*



In a ground breaking victory brought under the Religion or Belief Regulations, Mohammed Sajwal Khan who cleaned buses for the company NIC Hygiene in Bradford was dismissed because he took 6 weeks off work to make a pilgrimage to Mecca. The applicant, Mr Khan, had applied to use all his annual leave allowance to make the pilgrimage which, under Islam, is a religious observance that all able bodied Muslims should make at least once in their lives. When he did not receive a response from his employer he was advised by the Transport and General Workers Union to put in a written request. Mr Khan did so but still did not receive a response. His manager advised him that he could assume leave had been granted. However, on his return to the UK after making the pilgrimage, his employment was terminated by reason of misconduct. The Leeds Employment Tribunal ruled that Mr Khan had been unfairly dismissed and suffered discrimination contrary to the Religion or Belief Regulations. He was awarded damages in the region of £10,000.

In another such landmark case, which was the first of its kind to be brought under the Sexual Orientation Regulations, the applicant complained of being forced out of his £54,000 a year job at Cleanaway UK after repeated homophobic taunts from his managers and co-workers. Despite having received complaints from homosexual staff in the past the company did nothing to stop the taunts. In particular the applicant, Mr Rob Whitfield complained that he was nicknamed "Sebastian" by fellow workers after the political aide played by David Walliams in the TV series, Little Britain.

The Tribunal ruled that Mr Whitfield had been a victim of both harassment and direct discrimination and accepted his claim of constructive dismissal.

These cases emphasise the need for employers to take measures to ensure good practice is adhered to in an effort to reduce the risk of such claims. Staff handbooks and other policies should be updated to include the provisions of the Regulations and employers should make it clear to employees that derogatory language and discriminatory behaviour is unacceptable. They should also ensure that there are measures in place to deal effectively with any such discriminatory conduct, whether or not the complainant is the subject of the alleged discrimination.

Should you wish for more detail on the above topic either contact Dominique Torode-Parker on +44 207 404 2121 or contact us via info@key2law.co.uk

Note: this update is intended only as a general statement of the law and no action should be taken in reliance upon its contents.