

Guidance

Marriage and civil partnership discrimination: key points for the workplace

September 2017



About Acas – What we do

Acas provides information, advice, training, conciliation and other services for employers and employees to help prevent or resolve workplace problems. Go to www.acas.org.uk for more details.

'Must' and 'should'

Throughout the guide, a legal requirement is indicated by the word 'must' - for example, an employer must not ignore an employee for promotion because the employee is in a civil partnership or married.

The word 'should' indicates what Acas considers to be good employment practice.

Understanding the term 'employee'

Regarding discrimination matters, under the Equality Act 2010, the definition of 'employee' is extended to include:

- employees (those with a contract of employment)
- workers and agency workers (those with a contract to do work or provide services)
- some self-employed people (where they have to personally perform the work)
- specific groups such as police officers and partners in a business
- job applicants.

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Information in this guide has been revised up to the date of publication. For more information, go to the Acas website at www.acas.org.uk

Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

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About this guide

This guide offers employers, senior managers, line managers, HR personnel, employees, employee/trade union representatives and job applicants a grounding in how marriage and civil partnership discrimination can occur in the workplace, how it can be dealt with and how to reduce the chance of future discrimination.

While employers and employees can be liable for their own acts of discrimination, employers can also be liable for their employees' acts. For an overview of how equality legislation applies generally at work, Acas provides the following guidance:

- Equality and discrimination: understand the basics
- Prevent discrimination: support equality
- Discrimination: what to do if it happens.

This guide also encourages employers to make sure their workplaces are 'inclusive'. In other words, so employees feel they belong and are not considered separate because, for example, they are married, in a civil partnership or because of their sexual orientation.

What is marriage and civil partnership discrimination?

The Equality Act 2010 protects employees from discrimination because of marriage and civil partnership, one of nine features known in law as protected characteristics and covered by the Act. Guidance on other protected characteristics, and other useful tools and materials can be found at www.acas.org.uk/equality

Neither marriage nor civil partnership are defined in the Act, but the legislation is taken to broadly cover:

- people who are married in a legally-recognised union – either an opposite-sex or same-sex couple
- people in a civil partnership – a legally recognised and registered relationship between two people of the same sex only.

The protected characteristic of marriage and civil partnership does not cover:

- people living together as a couple (also known as cohabiting) who are not married or registered civil partners
- individuals who are engaged to be married, who are intending to marry or enter into a civil partnership
- people whose civil partnership has been dissolved
- divorced people

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- widows or widowers
- single people.

Discrimination against men because of their marriage or civil partnership is just as unlawful as discrimination against women because of their marriage or civil partnership. Also, it is no defence for the alleged discriminator to say they themselves are married or a civil partner, or that their actions were because of their religious or other beliefs.

In certain circumstances, people who are married or in a civil partnership are still protected from marriage and civil partnership discrimination if one or both people in the relationship are changing their gender, they agree to stay in a legally-recognised relationship and meet certain legal criteria. For more information, see the section headed [Changing legal gender](#).

The Equality Act does not require any minimum length of continuous employment, or any employment at all in the case of a job applicant, for a discrimination claim to be made. It makes discrimination unlawful at all stages - from when a role is advertised and interviewed for, through to the last day of employment and beyond, including any references.

Employers: Make sure your policies are up to date

Employers should ensure the wording of their policies is up to date. Civil partnerships for same-sex couples were introduced in 2005, and same-sex marriage has been legally recognised in England, Wales and Scotland since 2014. So wording referring to marriage will need to cover same-sex marriage and include civil partnership.

How marriage and civil partnership discrimination can happen

The three types of discrimination within the protected characteristic of marriage and civil partnership under the Equality Act 2010 are:

- Ordinary direct discrimination
- Indirect discrimination
- Victimisation.

Employers should be aware that successfully dealing with a complaint of discrimination is not always the end of the matter. It is useful to think of how any future instances of discrimination might be prevented. Find out more in the companion guide, [Prevent discrimination: support equality](#).

Ordinary direct discrimination

This type of discrimination is where someone is treated less favourably than others because they are married or a civil partner. It could, for

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example, involve a decision not to employ someone, to dismiss them, withhold promotion or training, offer poorer terms and conditions or deny contractual benefits because they are married or a civil partner. In almost all circumstances, this would be unlawful. However, for example, the Act in very limited circumstances allows discrimination where the job requires someone who is not married or a civil partner – this is known as an ‘occupational requirement’ which is explained later in this guide.

For example... ordinary direct discrimination

Marsha, a personal assistant for senior manager Tim at a large office, applies for promotion. The following week she tells colleagues she has married long-time partner Lucy. Then, two weeks before important training towards the possible promotion, Marsha is told her training will have to be rescheduled because she is needed to support Tim at an unexpected series of meetings.

Marsha asks if someone else could support Tim on this occasion, but is told ‘no’ because Tim needs her. However, Marsha knows there are other staff who could cover and that all other internal candidates for the promotion are still being allowed to attend the training.

Later she is told by one colleague that the real reason her training was cancelled is that Tim does not approve of her same-sex marriage and is now blocking her career path. If true, this would be ordinary direct discrimination – either because of her same-sex marriage, or her sexual orientation, or both.

Other types of direct discrimination

Under the Equality Act, the two other types of direct discrimination do not apply under the protected characteristic of marriage and civil partnership. These are:

- **direct discrimination by association** – so, an employee cannot claim discrimination because they are associated with someone, such as a friend, family member or colleague who is married or a civil partner
- **direct discrimination by perception** – so, an employee cannot claim discrimination because they are perceived to be married or a civil partner.

However, these types of direct discrimination might apply if the discrimination crosses over into other protected characteristics such as sex or sexual orientation, or may raise human rights issues.

Indirect discrimination

This type of discrimination is usually less obvious than ordinary direct discrimination and can often be unintended. In law, it is where a provision, criterion or practice is applied equally to a group of employees/job applicants, but has (or will have) the effect of putting those who share a certain protected characteristic at a particular disadvantage when compared to others without the characteristic in the group, and the employer is unable to justify it.

So, an employee or job applicant claiming indirect discrimination must show how they have been, or could be, personally disadvantaged. They must also show how the application of the 'provision, criterion or practice' has or might disproportionately disadvantage other employees or job candidates who are married or a civil partner compared to other employees who are not married or civil partners.

The Equality Act does not define a 'provision, criterion or practice'. However, in the workplace, the term is most likely to include an employer's policies, procedures, rules and requirements, whether written down or not. Examples might include recruitment selection criteria, contractual benefits, a redundancy scoring matrix or any other work practice.

Indirect discrimination may be objectively justified if the employer can prove the 'provision, criterion or practice' is 'a proportionate means of achieving a legitimate aim'. However, employers should note this can be difficult to prove.

In attempting to demonstrate 'a proportionate means of achieving a legitimate aim', an employer must show:

- there is a legitimate aim such as a good business reason, but employers should note that cost alone is unlikely to be considered sufficient **and**
- the actions are proportionate, appropriate and necessary.

Both points apply in justifying 'a proportionate means of achieving a legitimate aim', not just one of them.

The process of determining whether discrimination is justified involves weighing up the employer's need against the discriminatory effect on the employee and group of employees who are married or civil partners - the more discriminatory the effect, the more difficult it will be to justify.

Also, the employer should be able to show it has looked for another way of achieving the same aim which would be less discriminatory or not discriminatory, and has been fair and reasonable.

Generally, an employer should scrutinise closely whether any discriminatory act, policy, procedure or rule can really be justified. And it is important to stress that employers should regularly monitor their

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policies and practices, otherwise they may inadvertently indirectly discriminate. For example, policies and practices which were not discriminatory when they were first introduced may become discriminatory over time, perhaps because of a change in the composition of the workforce or a change in the law. For more on monitoring, see the companion guide, Prevent discrimination: support equality.

For example... preventing indirect discrimination

Three graduates start a small IT business. It becomes successful and they hire other IT specialists leaving university. They are all single. As an annual reward, they all enjoy a break paid for by the business at a Mediterranean singles' resort. The perk is also aimed at helping them bond further as a team.

Later, Luke – who is married – joins the business. As the time for the annual reward comes round again, Luke points out that going to a singles' resort would be very inappropriate for someone who is married. His wife is very unhappy at the prospect and he will not go. He feels he is being put at a disadvantage by the practice of the singles' resort break as a reward, missing out on a perk and team bonding because he is married.

This could be interpreted as indirect discrimination.

Victimisation

Victimisation is when an employee suffers what the law terms a 'detriment' - 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 of discrimination.

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

'Victimisation' is a term commonly misused and misunderstood, and only applies when it meets the explanation in this section.

A 'detriment', for example, might include being labelled a 'troublemaker', being left out and ignored, being denied training or promotion, or being given a poor reference.

For example... victimisation

Al-Jasa complains to his manager, Tacitus, that he is rarely included in the department's social activities after work. Al-Jasa is concerned because regulars in the activities are the ones given special projects and who get promoted. He tells Tacitus that he suspects he is not invited or encouraged to join in because he is married while all the others are single. Tacitus takes exception to Al-Jasa's complaint, and during the following weeks Al-Jasa finds some in the team cool towards him. He is increasingly feeling excluded and victimised because he complained to Tacitus.

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 proves to be inaccurate. However, an employee is not protected if they give, or support, information or evidence maliciously.

Harassment does not apply

Under the Equality Act, harassment as a type of discrimination is not covered under the protected characteristic of marriage and civil partnership. This means an employee cannot claim discrimination because they feel they have suffered unwanted behaviour specifically because they are married or a civil partner. However, harassment might still apply if the discrimination crosses over into other protected characteristics such as sex or sexual orientation.

Key areas of employment where marriage and civil partnership discrimination can happen

Six common areas of employment where marriage and civil partnership discrimination can occur are:

- recruitment
- pay, and terms and conditions of employment
- promotion opportunities
- training opportunities
- dismissal
- selection for redundancy.

Recruitment

To avoid discrimination, an **employer when recruiting should** generally:

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- be careful when writing an advertisement, job description and person specification for a vacancy. Stay clear of any reference to marriage and civil partnership, and do not say that applicants should be single. There can be exceptions – see the 'Occupational requirements' section further into this guide – but they are rare. Further, an employer **should not** include anything irrelevant to the job, and should avoid any wording it is unsure about or thinks might be open to legal challenge
- be clear on the skills, experience and qualifications needed for the job so it is objective in assessing and selecting candidates. At the same time, this should reduce the chances of ruling out a candidate because they are married or a civil partner
- avoid advertising solely in one kind of place or media - for example, advertising only in lifestyle magazines or on websites targeted at single people. Use at least two different channels so as not to end up with candidates from too narrow an audience
- make sure the job application form asks only for personal information relevant to the job and/or for the administration of the recruitment
- be mindful, if spreading word of vacancies through existing employees and managers, that relying only on 'word of mouth' is likely to perpetuate any imbalance in the make-up of the workforce, particularly where it is predominantly made up of single people. Also, it is likely to yield only a small pool of candidates
- avoid asking the candidate direct or indirect questions of a personal nature unrelated to the job and their application – for example, do not ask if they are married or in a civil partnership. Such questions may be perceived as intrusive, not relevant to the job and imply potential discrimination. Where such information is volunteered, interviewers or others in the selection process should take care not to be influenced by that information
- tell a recruitment agency being used to comply with the Equality Act. An employer **must not** suggest to the agency that it would prefer candidates who are single, and an agency **must not** follow such an unlawful instruction.

And where possible an **employer could**:

- look to redesign jobs, perhaps by making them part-time, job-shares or considering other different types of flexible working so a wider range of candidates might feel able to apply, including people who are married or in a civil partnership with responsibilities for child care or other dependents. For more information, see the Acas guide Flexible working and work-life balance at www.acas.org.uk/flexibleworking

For example... discrimination in recruitment

Maceo is married and applies for a vacancy with a company staging events. At the interview, he is asked a lot of indirect questions to tease out whether he is married. Two weeks later, he is told his application has been unsuccessful, but the company will not give him a reason why. The job is re-advertised. Maceo is suspicious because of the line of questioning, and because he has the skills and experience necessary for the job. If he was turned down because he is married, that would be discriminatory.

Pay, and terms and conditions of employment

It is important to ensure terms and conditions of employment (including contractual benefits) do not generally disadvantage or exclude people because they are married or a civil partner, and that terms and conditions and benefits given to opposite-sex married employees and their spouses, same-sex married employees and their spouses and civil partner employees and their partners are generally the same. This might include pay, being allowed to work flexibly, parental leave, paternity leave, shared parental leave, adoption leave and any gift from the employer or extra days off when an employee marries or enters a civil partnership.

Government review of court's ruling on pensions

The situation regarding employers' pension schemes is being reviewed by the Government. This follows the UK Supreme Court's July 2017 ruling in the case of Walker v chemicals firm Innospec Ltd. The ruling overturned a UK law which had allowed differences in occupational pension benefits for opposite-sex married employees against those for same-sex married employees or employees in a civil partnership. That difference hinged on any contributions paid into a pension fund before December 5, 2005 – the date the Civil Partnership Act 2004 came into force. It meant a same-sex couple's spouse or civil partner was not entitled to benefit in a survivor's pension from those contributions.

The court's ruling now means a same-sex spouse or civil partner generally should be entitled to any pre-December 5, 2005, benefits in a survivor's pension on the same basis as an opposite-sex spouse. It also means opposite-sex married couples and same-sex couples in a marriage or civil partnership generally should have the same rights in a pension scheme. Currently, many occupational pension schemes already do this.

However, it should be borne in mind that, in determining rights, the terms of pension schemes can vary. Also, there is speculation that the court ruling, based on European Union law, might no longer apply after Brexit.

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An employer which thinks it may be affected by this ruling is advised to seek professional pension advice.

However, an employer may be able to justify different terms and conditions if there is a material factor or factors behind them not related to marriage or civil partnership, or, for example, sex or sexual orientation. For instance, these might include job experience, qualifications and where the job is based geographically.

For example... discrimination in terms of employment

Louise is a sales executive. Her civil partner is on maternity leave. In line with the law, Louise informed her employer she wished to take two consecutive weeks' paid paternity leave as soon as the baby was born - the same as a male colleague a few months ago after his wife gave birth. However, her employer repeatedly stalled over her request, saying there was confusion because the company policy did not mention civil partnerships. She feels that the company's indecision meant she was denied her right to take the leave. This is likely to be discrimination because Louise is a civil partner. Alternatively, she could claim sexual orientation discrimination. See the section, [Family-friendly rights](#).

Promotion

In promotion opportunities, employees must not be discriminated against because they are married or a civil partner.

For example, it would be discriminatory to:

- only accept applications from people who are not married or not a civil partner (apart from in rare circumstances where an 'occupational requirement' could be justified as lawful)
- discourage an employee from applying because they are married or a civil partner
- not promote an employee who is the best person for the job because it is believed they would not fit in because they are married or a civil partner
- have an unwritten rule that preferred candidates above a certain level not to be married or a civil partner.

Where possible, an employer should look to take steps including:

- saying in job advertisements that it is open to flexible working where the arrangement could meet the requirements of the role
- encouraging the design and redesign of jobs to allow for flexible working, such as part-time working or a job-share, where the arrangement could meet the requirements of the role.

For example... discrimination in promotion

Salamah applies for promotion as section head at a telecommunications firm. He believes he is a strong contender.

However, he is both puzzled and shocked when told that the role has gone to a stronger candidate – because Salamah knows they have less experience of the technical side of the job and management, and fewer qualifications.

Salamah later finds out Kazim got the job because senior management thought it best suited to someone single, as it requires long spells away from home and abroad. This was despite Salamah telling the interviewers he had discussed the travel with his wife and assured them it would not be a problem.

This is likely to be marriage and civil partnership discrimination.

Training

Withholding training from an employee because they are married or a civil partner would be discriminatory.

Also, an employer should be sensitive about when an employee, who is taking some form of parental leave under the law, undertakes or completes any training. It should be mindful of their needs in these circumstances to avoid any potential discrimination.

Further, an employer should ensure training opportunities are mentioned to all relevant employees and are equally accessible for staff in flexible working or part-time working arrangements, as for those working fulltime. Failure to do so could be discriminatory.

Also, an employer should not assume part-time employees are unlikely to want to switch to full-time work because they are married or a civil partner.

For example... discrimination in training

Jagoda works in a factory which is introducing night shifts for the launch of a new product. She is not selected for training to work on the new product, even though she told her manager she was very interested.

She is now very concerned she is missing out on an opportunity to widen her skills and experience. Also, she has noticed most of the staff selected for the training and night work are single. She and others suspect they have not been chosen because they are married or in civil partnerships.

The factory has an up-and-down past, hiring at one time, then making redundancies another. She is worried that not being given the training means she is more likely to be made redundant should another round of job cuts come round. Being denied training because she is married would be discriminatory.

Dismissal

It is unlawful for an employer to dismiss an employee because they are married or a civil partner.

For example... discrimination in dismissal

Joanne works nights at a bakery. On her first day back after her honeymoon, she is shocked to be dismissed for 'performance issues' as the company had previously always been happy with her work.

Colleague Sue says the real reason for her dismissal is her marriage which their manager thinks will now make Joanne unreliable in turning up for night shifts. Sue had overheard the manager saying: 'Married women are like that.' Joanne unsuccessfully appeals against her dismissal and makes an employment tribunal claim of unfair dismissal, marriage and civil partnership discrimination, and sex discrimination.

Redundancy

An employee must not be at a disadvantage or discriminated against in a redundancy process because they are married or a civil partner. For example, an employer must not target employees because it believes staff who are married or in a civil partnership are less flexible employees.

Risk of discrimination tends to be in two key areas:

- the criteria an employer uses to select employees for redundancy
- how an employer manages the redundancy process.

Also, an employer should stay mindful that some behaviours towards employees who are married or a civil partner could alternatively, or also, amount to discrimination because of their sex, sexual orientation, or because they are pregnant or on maternity leave.

For example... discrimination in redundancy

Galad is selected to lose his job because of his low score in his employer's process for choosing which staff should be made redundant. However, he complains his score is unfair, saying he has been marked down on productivity by a manager recently disciplined for an outburst that 'married employees are less flexible at work and take the fun out of the place'. Galad says his score needs to be reconsidered as he is being penalised and discriminated against by a boss who thinks he is less flexible than his single colleagues because he is married. It would be advisable for the employer to check if Galad's score is unfair.

Considerations for everyone

Employers, senior managers, line managers, HR personnel, employees and their employee or trade union representatives should make sure they

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understand what marriage and civil partnership discrimination is and how it can happen, their rights and responsibilities, the employer's policy for preventing discrimination, and what behaviour and actions are unacceptable.

Also, employers and employees should be very careful regarding questions related to an individual's protected characteristics as these might be or become discriminatory, particularly if they are intrusive or handled insensitively.

An employer should provide training for all employees in constructively developing their awareness and understanding of each other, and building a culture in the organisation of promoting equality and diversity. Find out more in the companion guide, Prevent discrimination: support equality.

Impact of other protected characteristics and laws

The protected characteristic of marriage and civil partnership can overlap with other protected characteristics – sexual orientation, gender reassignment, sex, religion or belief and race - and laws such as the Human Rights Act 1998 and the European Convention on Human Rights in supporting, for example, rights to a private life and to marry.

Sometimes, discrimination may be linked to a marriage or civil partnership, but the circumstances may have an equal or greater link with some other protected characteristic. Employees may then rely on these other protected characteristics to bring an employment tribunal claim. For example:

Religion or belief:

A school teacher is dismissed after refusing to end her marriage to a convicted sex offender. She refuses to end her marriage because of her Christian belief in the sanctity of her marriage. The school says it is dismissing her because of its obligation to safeguard children in the school. It may not be easy for the teacher to claim that her dismissal is because of the fact she is married. She therefore brings a claim based on her religious belief. She says her husband has never been at the school and never would be at the school, so no safeguarding issue arises. The employment tribunal might rule that her dismissal was not 'a proportionate means of achieving a legitimate aim' of safeguarding the school's children.

Gender reassignment:

A man-to-woman transsexual employee believes she has been picked for redundancy because of her marriage to a man. She might claim discrimination because of marriage or gender reassignment, or both.

Sex:

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A chef is dismissed on her first day when the restaurant owner finds out she is a married woman with four children. The owner thinks women with child care responsibilities are unreliable. She claims sex discrimination, saying there are married men with child care responsibilities who have not been dismissed from the restaurant.

Sexual orientation:

If an employer offers benefits to couples who are married or in a civil partnership and to unmarried opposite-sex couples, it must also give them to same-sex couples who are not married or not in a civil partnership. Not to do so is likely to be sexual orientation discrimination.

An employer handling a complaint about alleged marriage and civil partnership discrimination should also be mindful there could be multiple legal issues to consider outside of the Equality Act – for example, alleged unfair dismissal can often be an element in such complaints.

Matching core 'occupational requirements' of the job

In certain and rare circumstances, it may be lawful for an employer to specify that employees or job applicants must have (or not have) a particular protected characteristic under the Equality Act.

In law, this approach is known as an 'occupational requirement' and it can provide the employer with a defence to a discrimination claim. However, it is likely to be very difficult to establish where the discrimination relates to marriage and civil partnership. There are circumstances in a religious context where there may be a requirement not to be married or in a civil partnership. These are the only circumstances in which the occupational requirement defence is likely to apply in practice. Even then, the Equality Act allows for only very specific circumstances in which the defence can be relied upon. Employers may wish to take legal advice on whether such a defence is likely to be applicable in a particular case.

It is not enough for an employer to simply decide they would prefer, for example, not to employ someone in a same-sex marriage, or employ someone who is not married or not in a civil partnership. Any such requirement must:

- be crucial to the post, and not just one of several important factors, **and**
- relate to the nature of the job, **and**
- be 'a proportionate means of achieving a legitimate aim'. If there is any reasonable and less discriminatory way of achieving the same aim, it is unlikely that the employer could claim an occupational requirement.

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All three points apply to an occupational requirement, not just one or two of them. There is more on 'legitimate aims' in this guide's section, Indirect discrimination.

An occupational requirement must remain necessary, so should be reassessed each time the job is advertised, even though it may have been valid for the same post in the past. Circumstances may have changed, meaning the occupational requirement may no longer be applicable.

If an 'occupational requirement' not to be married or in a civil partnership applied to only some of the job's duties, and those duties could be done by a colleague who was not married or a civil partner, the occupational requirement might be difficult to justify.

An employer should think carefully, and consider seeking legal advice, before claiming an occupational requirement, as it can be **difficult to justify** and will be rare. Also, a job applicant might make an employment tribunal claim where there appears to be an occupational requirement which could be unjustified. An occupational requirement can only be used in a defence against claims of direct discrimination.

Marriage and civil partnership and organised religion

There are very specific provisions in the Equality Act which address marriage and civil partnership and religion or belief.

If a job is for the purposes of an organised religion, the employer could refuse to employ someone because, for example, same-sex marriage was contrary to the religious doctrine of the organisation or contrary to a strongly and widely-held belief by members of that religion.

In such cases of working for, promoting or representing some organised religions, some roles can be restricted to people of a particular sex or sexual orientation, non-transgender people, people who are not married or not in a civil partnership, or not in a same-sex marriage, or people who are not divorced or married to (or in a civil partnership with) someone who has been divorced.

So while this could apply where the religion's doctrine is key to the job – for example, a priest – it is far less likely to apply where the doctrine is not involved in the role – for example, a church cleaner.

Find out more at www.acas.org.uk/religionorbelief

Married couples/civil partners working for the same employer

It can be acceptable for an employer to have a policy on personal relationships at work, but there needs to be a good reason for having one – what is technically called 'a proportionate means of achieving a

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legitimate aim'. The legal requirements of how such an aim is determined are explained within the earlier section, Indirect discrimination.

This means that such a policy should only be in place:

- to guard the employer's interests – for example, that a personal relationship does not damage work life, lead to favouritism, bullying, a conflict of interest or breach of confidentiality, and
- if those business needs, and in looking to strike a balance with employees' right to a private life, be married or in a civil partnership, still outweigh any necessary restriction on those rights.

Generally, an employer should not seek to ban personal relationships at work, but restrictions on employees in a personal relationship (including married couples and civil partners) working in the same team, on the same projects or managing each other may be appropriate. Employers should ensure they manage such situations even-handedly, fairly and without discriminating against one of the couple because they are more junior than their spouse or partner, or because of their sex.

If a problem arises, and in handling the situation fairly, an employer should, where possible, come to an agreement with both employees in the relationship on the best way forward – for example, the transfer of one or both to other jobs. Dismissal should only be considered as a last resort and employers should seek legal advice before making a decision.

When a couple work together in the same organisation, it can be acceptable for their employer to treat them less favourably than colleagues if the closeness of their relationship is damaging the business. However, generally a married couple or civil partners must not be treated less favourably than other couples who work together.

For example... marriage discrimination

Russell and Abbie work together in a newsroom. On returning to work after their marriage, the editor has now become much more demanding of them and stricter than before they married, even though they are two of the best reporters. They also notice he is still fairly relaxed with the rest of the editorial team. They think the editor wants to send out a message that he's not going to 'go soft on them' now that they are married. This is likely to be discrimination against Russell and Abbie because they are married.

Changing legal gender

In England, Wales and Scotland, people can in certain circumstances now change their legal gender without having to end their marriage – whether it was a same-sex marriage or opposite-sex marriage. Generally, both people in the marriage must agree to the marriage continuing, and the person changing their gender must get a Gender Recognition Certificate.

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To find out more about applying for a Gender Recognition Certificate, go to www.gov.uk/apply-gender-recognition-certificate/overview

In civil partnership, where one of the partners wants to change their gender and the couple want to stay together, the partner changing their gender will need a Gender Recognition Certificate and they must convert their relationship into a marriage. Or, if both partners want to change gender, they could stay in a civil partnership as long as they apply for and get Gender Recognition Certificates at the same time.

Also, it should be taken into consideration that there are subtle legal differences regarding changing gender in marriage and civil partnership in Scotland, as against in England and Wales. In places, the wording of the Marriage and Civil Partnership (Scotland) Act 2014 differs from the Marriage (Same Sex Couples) Act 2013 England and Wales.

To find out more, go to the Equality and Human Rights Commission website on www.equalityhumanrights.com/en/advice-and-guidance

Avoid stereotyping

Employers and employees should avoid making assumptions about people because they are married or a civil partner. Such guesswork can often be done without realising – what is known as unconscious bias. For example, this might include assumptions that someone who is married or a civil partner may be:

- likely to have more commitments outside of work
- has chosen a relationship and family life over committing to a career
- does not need as much pay because they are in a dual income marriage or civil partnership
- less committed to the job than a single person
- less reliable because of the demands of having and raising children.

Making such assumptions and uninformed decisions about employees or job applicants are likely to be discriminatory.

Even when a stereotype is intended as a compliment, employers and employees should be aware that this still has the potential to cause offence. For example, saying a team are the best performers because as single people they can work longer hours is likely to upset other teams with members who are married or a civil partner, and is potentially marriage and civil partnership discrimination.

Whether intended or not, stereotyping often has negative connotations and repercussions.

To find out more about the origins of stereotyping see the companion guide, Prevent discrimination: support equality at www.acas.org.uk/equality. Also, see the Acas website page www.acas.org.uk/unconsciousbias.

Unacceptable terminology

Derogatory and abusive terms about somebody's marital or civil partnership status are clearly unacceptable and discriminatory. Also, employees and employers should be careful not to overlook potentially offensive comments simply because they are aimed at a large part or majority of the workforce.

With discrimination, it is generally how the recipient perceives words and actions rather than the intention of the person delivering them. Changes in the law concerning marriage and civil partnership mean care should be taken in the use of words. For example, the words 'husband', 'wife', 'widow' and 'widower' in law now apply to both married same-sex and married opposite-sex couples. So, 'husband' means any married man, 'wife' any married woman, and where two men marry, and then one dies, the surviving spouse is a 'widower'.

The term 'banter' is often used when there is a disparity between what was intended by one person and how it has been perceived by another. Employers should be prepared to manage situations where a 'joke' or 'banter' has caused offence or upset.

Employers should manage these situations with care. Sometimes these situations can be dealt with by a manager having an informal discussion with an employee and explaining that they have caused offence. In other situations, it could be appropriate for the employer to consider a more formal approach such as disciplinary action. There is more information about handling complaints further on in this guide and the companion guide, *Discrimination: what to do if it happens*, at www.acas.org.uk/equality.

Also, employers and employees need to take into account that the acceptability or unacceptability of terms can change over time, and sometimes quite quickly.

Family-friendly rights

At some point in their working lives, many employees will have, or consider having, a family. This may or may not take place within a marriage or civil partnership, or within any form of relationship. Equally, employees who are married or civil partners may not have, or be interested in starting, a family. However, many employees who are married or in a civil partnership do have, or are considering having, a family and are likely to be interested in family-friendly rights:

Pregnancy and maternity:

A protected characteristic in its own right under the Equality Act. It protects an employee from ordinary direct discrimination as well as victimisation because of her pregnancy, or for taking/seeking to take

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maternity leave. To find out more, go to Acas website page www.acas.org.uk/index.aspx?articleid=5271 **Shared parental leave:**

Requests for this must be handled by an employer fairly and consistently to avoid discrimination. A mother and partner may be eligible for shared parental leave regardless of whether or not they are married, they are in a civil partnership or their sexual orientation. To find out more, see the Acas guide, Shared parental leave: a good practice guide for employers and employees, at www.acas.org.uk/spl **Parental leave:**

Employees who have worked for their employer continuously for one year can take up to 18 weeks' unpaid leave over the years to look after each of their children until their 18th birthday. Parental leave is a different entitlement to shared parental leave. To find out more, go to Acas website page www.acas.org.uk/index.aspx?articleid=1637 **Adoption leave:**

An employee matched with a child as their main adopter can take up to 52 weeks' adoption leave, including 39 weeks receiving at least statutory adoption pay. To find out more, go to Acas website page www.acas.org.uk/index.aspx?articleid=1828 **Paternity:**

An employee is likely to be able to take up to two weeks' leave, with at least some pay, once their partner has given birth, has a baby from surrogate parents or has adopted a child or certain details of the adoption are being finalised. To find out more, go to www.acas.org.uk/index.aspx?articleid=1806 **Time off for dependents:**

Usually a day or two of unpaid leave – but it may be more and/or paid depending on circumstances and the employee's contract – to deal with an emergency involving a dependent such as a partner, child or elderly relative. To find out more, go to Acas website page www.acas.org.uk/index.aspx?articleid=3235 **Flexible working:**

All employees who have worked for their employer continuously for 26 weeks have the right to ask if they can work flexibly. For example, that might be to change which hours they work, go part-time or work from home. An employer must agree to flexible working where the business can accommodate the request, but it can turn down requests on business grounds defined in the flexible working regulations. But in considering a request, an employer must not discriminate against the employee. To find out more, see Acas guide The right to request flexible working at www.acas.org.uk/flexibleworking

Employers should develop or update policies on these family rights in consultation with employee or trade union representatives.

How employees should raise complaints

There are two ways a complaint of alleged discrimination may be handled. Informally or formally.

An employer should be sensitive to the wishes of the employee who has raised a complaint and discuss with them which way they would prefer the matter to be dealt with. They should come to an agreement on this, but it is for an employer to decide whether to pursue disciplinary measures against an employee.

Some complaints may be dealt with **informally**, where the employer has a quiet word with those involved to reach a resolution which has the desired effect and to which they can all agree. Dealing with a complaint this way can prevent it escalating, allow for it to be dealt with sensitively without the formality of a grievance process and possibly avoid the matter ending as an employment tribunal claim.

However, it is not uncommon for complaints of alleged discrimination to evoke strong feelings for both the person who has made the complaint and the person that the complaint has been made against. Such a complaint is very likely to go through the **formal** approach, using the organisation's formal grievance procedure, and possibly its disciplinary procedure, too.

All employers should have discipline and grievance procedures, and each employee's contract of employment should include information on where the details can be easily found.

How employees should raise complaints, including the option of raising the matter with a trade union representative, is covered in more detail in the companion guide, *Discrimination: what to do if it happens*, at www.acas.org.uk/equality. It includes help for employers and employees in deciding whether to handle a matter informally or formally.

When an employee experiences discrimination

When an employee makes a complaint that they have been a target of discrimination, an employer should be mindful that the employee may feel they have been personally attacked. Handling the situation sensitively with the complainant, the person(s) accused of discrimination and any witnesses is essential, whether this is being done informally or formally.

For example... How an informal complaint can work

Three months ago, when Aditi married Rejeev, her employer gave a discretionary wedding gift of an extra night's honeymoon in the Maldives, in addition to a present from employees.

Colleague Alison, who is entering into a civil partnership with Trish, is aware of the employer's gift to Aditi, but annoyed that nothing similar is being offered to her. She thinks she may be being discriminated against

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because of her planned civil partnership and sexual orientation. She explains to her manager, Alan, that she is upset, adding that she thinks it is unfair as she works just as hard as Aditi.

Alan says he knows such gifts are discretionary, but adds that he will raise the matter with his boss. Alan comes back to Alison to apologise, adding that she is equally deserving of a discretionary gift, and offers an extra night's stay in Miami as part of her and Trish's celebrations. Alison says she is delighted and thanks Alan for resolving the matter.

For example... How a formal approach can work

Jannine applies for promotion. She has a glowing track record, the experience, skills and qualifications needed for the post, and she thought both interviews went well. However, the post is given to another candidate. On the grapevine, Jannine hears she didn't get the job because she recently married. The two managers interviewing her felt she would not be totally focussed on helping the company develop because she would be likely to start a family soon.

Jannine is very angry and writes asking for feedback on why she was unsuccessful. She is unconvinced by the reply, contacts her trade union representative and raises a grievance which is upheld. A disciplinary investigation into the conduct of the two interviewers follows, and the outcome is both are given final written warnings. Jannine is encouraged to apply for another vacancy which would be an equally good promotion.

When an employee observes discrimination

An employee who witnesses discrimination taking place is just as entitled to raise a complaint as the victim. What has been observed should be taken seriously by the employee who has seen it and by the employer who receives a complaint about it from the witness. The main issue is that discrimination is allegedly taking place. Also, the employer should be mindful that the witness feels strongly enough to make a complaint. As with a complaint from an employee alleging discrimination aimed at them, a complaint about discrimination which has been observed should be handled just as sensitively.

For example... How an informal approach can work

Karl overhears a group of managers decide that Dan should be the one to staff reception and miss his team's away-day, as he's the one who's married and likely to be not as much fun at the evening get-together.

Karl is sure the managers don't mean to 'pick on' Dan, so has a quiet word with his own approachable boss, William, mentioning that the group

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are discriminating against Dan because he is married. William says he will raise the matter with the group.

The outcome is that Dan is included in the away-day plans, someone from another team is drafted in to staff reception for the day, and the group of managers admit they need a refresher about equality. Also, William thanks Karl for his concern and initiative.

For example... How a formal approach can work

Supervisor Vana by chance looks at some files. She notices remarks from Vince, a senior manager, that two employees who are in same-sex marriages cannot be allowed to front any of the company's key campaigns because the 'family image' of the company has to be protected. Vana is very worried about what she should do – if anything. She is frightened of upsetting Vince, but at the same time very aware of the company's drive to prevent and tackle unlawful discrimination. She feels most comfortable discussing the matter with her trade union representative.

The union representative tells her the matter is serious and that he will raise the matter with the company's HR team, who check the files and find the comments plus others from Vince. He is disciplined and dismissed for gross misconduct.

How employers should handle discrimination complaints

When an employer receives a complaint about marriage or civil partnership discrimination, it should take the matter very seriously, and listen carefully and with empathy to what the employee says.

A complaint – or grievance as it is also known – might be handled in an organisation **informally** or **formally** depending on the nature of the particular complaint, its seriousness, the possible action that may need to be taken and the outcome desired by the person making the complaint, as explained in the previous section, How employees should raise complaints.

However, if an employer or manager becomes aware that discrimination, or victimisation is taking place because of someone's marriage or civil partnership, it is important that they do not wait until a complaint or grievance is raised. The sooner action is taken the more easily it can be resolved and it is less likely that the employer would be liable for the discriminatory actions of the employee/s involved.

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An employer should discuss with the employee raising the concern whether the employee wishes to have the matter dealt with informally or formally. They should come to an agreement on this.

It is for an employer to decide whether to pursue disciplinary measures against an employee. However, it should ensure it investigates complaints thoroughly and follows disciplinary procedures where warranted. Any inaction by the employer could damage staff morale in general and possibly culminate in the employee who made the complaint submitting a claim to an employment tribunal.

How employers should handle a complaint of alleged discrimination is covered in more detail in the companion guide, *Discrimination: what to do if it happens* at www.acas.org.uk/equality. It includes help for employers and employees in deciding whether to handle a matter informally or formally.

To help give a better understanding of when to use an informal approach or a formal one concerning alleged marriage or civil partnership discrimination, both employers and employees should assess the following examples.

When to consider an informal response

It is likely an employer will use an informal response when it and the parties involved agree that this is likely to be the best way forward. Such an approach will be largely based on the employer having conversations with the parties concerned to investigate the matter in the hope of resolving it, without using the organisation's formal grievance procedure.

If the matter turns out to be relatively straightforward, the informal approach can have the advantage of resolving the matter sooner, with less stress and at less cost than if the matter went through the formal grievance route. Also, it can make it easier for work relationships to be rebuilt.

When considering whether an informal response is appropriate, an employer should be mindful of the outcome the complainant is seeking and the outcome that might be necessary from the employer's point of view. Also, an employer can explain to an employee that an informal approach still means the complaint is being treated seriously and, in the circumstances, is potentially the best way to try for the most desirable outcome for all concerned.

However, if an informal approach doesn't work or turns out to be inappropriate, the matter could still be dealt with formally.

For example... Informal response to informal complaint

David and Heather, who are employed by the same train company, have always been careful not to let their romance show at work. However, David, a train driver, and Heather, a business development manager, are being upset by derogatory comments from some staff about their marriage since they wed recently. Both are concerned the behaviour could harm their reputations at work.

They decide to explain their concern to their employer's HR team, saying they don't want to be taken less seriously at work because they are husband and wife, and they want the comments to end. A HR manager has a quiet word with managers of the staff making the comments, saying they have to explain to their staff why the discriminatory behaviour has to stop.

When to consider a formal response

The formal response, usually using the employer's formal grievance procedure including a hearing, is likely to be the way forward when the allegation of discrimination cannot be resolved informally. It is even more likely if the complaint is particularly serious and could also lead to a disciplinary investigation. However, there can be other circumstances where the need for a formal response can arise, as highlighted in the final example, Formal response to informal complaint.

For example... A formal grievance

Luke is delighted when manager Stephen tells him his fixed-term contract will be renewed for another 12 months. Reassured, Luke confides in Stephen that he has started a process of gender reassignment, will at some stage change his name to Linda, and that his husband is being very supportive about him changing his gender status.

However, Luke thinks Stephen seems surprised and is himself taken aback when Stephen asks: 'How does that work then?'

A few weeks later Luke is shocked to be told by Stephen that there has been a change in circumstances at the company and it can no longer renew his contract.

Luke is sure the decision is discriminatory because of his gender reassignment and his marriage to a man. He raises a grievance. A senior manager investigates the grievance, a hearing upholds it and Luke's contract is renewed. Also, the company takes disciplinary action against Stephen.

For example... Formal response to informal complaint

Andros works in a warehouse. He notices that his supervisor John has become off-hand with him since he recently entered a civil partnership. However, he asks for an informal chat with John to query overtime for which he says he has not been paid. He is shocked by John's angry reaction. Two weeks later Andros is dismissed because John says he's a 'trouble-maker'.

Andros writes to John's manager, Sylvia, complaining that he has been unfairly dismissed because he queried how much he was paid and because John didn't like him because he is in a civil partnership. Sylvia phones Andros to say she will look into the matter.

Sylvia starts a disciplinary investigation and a disciplinary hearing finds John discriminated against Andros because he does not approve of civil partnerships. Andros is reinstated, his overtime is paid and John's conduct is addressed through the employer's disciplinary procedures.

Further information

Acas learning online

Acas offers free e-learning. The Equality and diversity course gives: an overview of what equality and diversity mean; why they are important; putting the principles into practice in an organisation; and a test to gauge understanding of the key points.

Acas training

Our Equality and diversity training is carried out by experienced Acas staff who work with businesses every day. Training can be specially designed for smaller companies and our current programme includes:

- equality, diversity and discrimination: the essentials
- is it okay to ask? How to handle some of the trickiest workplace situations
- behaviours at work – understanding the unacceptable
- working with unconscious bias

Go to www.acas.org.uk/training for up-to-date information about our training and booking places on face-to-face courses.

Also, Acas specialists can visit an organisation, diagnose issues in its workplace, and tailor training and support to address the challenges it faces. To find out more, see the Acas website page, Business solutions

Acas guidance

- Equality and discrimination: understand the basics
- Prevent discrimination: support equality

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- Discrimination: what to do if it happens
- Age and the workplace: a guide for employers and employees
- Disability discrimination: key points for the workplace
- Gender reassignment discrimination: key points for the workplace
- Race discrimination: key points for the workplace
- Religion or belief discrimination and the workplace
- Sex discrimination: key points for the workplace
- Sexual orientation discrimination: key points for the workplace
- Asking and responding to questions of discrimination in the workplace
Managing redundancy for pregnant employees or those on maternity leave
- Bullying and harassment at work: a guide for managers and employers
Bullying and harassment at work: a guide for employees
- Code of practice on discipline and grievance
- Conducting workplace investigations
- Guide on discipline and grievances at work
- Flexible working and work-life balance
- The right to request flexible working
- Code on handling in a reasonable manner requests to work flexibly
- Homeworking - a guide for employers and employees
- Shared parental leave: a good practice guide for employers and employees
- Adoption leave
- Age discrimination
- Breastfeeding in the workplace
- Employees' rights during IVF treatment
- Equal pay
- Gender identity discrimination
- Marriage and civil partnerships
- Maternity leave and pay
- Parental leave
- Paternity
- Race discrimination
- Religion or belief discrimination
- Sex discrimination
- Sexual orientation discrimination □ Time off for dependants

Equality Advisory Support Service

For wider equality issues the Acas helpline does not cover, call the EASS helpline on 0808 800 0082 (Text phone: 0808 800 0084)

Equality and Human Rights Commission

Employment Statutory Code of Practice on

www.equalityhumanrights.com/sites/default/files/documents/EqualityAct/employercode.pdf

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Marriage and civil partnership rights on www.equalityhumanrights.com/en/advice-and-guidance

Gov.uk website

Changing legal gender and applying for a Gender Recognition Certificate on www.gov.uk/apply-gender-recognition-certificate/overview

Advice on work pensions on <https://www.gov.uk/government/publications/comparison-of-civilpartnership-and-marriage-for-same-sex-couples>

Stonewall

Pension rights for opposite-sex married couples, same-sex married couples and civil partners on www.stonewall.org.uk/helpadvice/partnership-rights/pensions

Additional help

Employers may be able to seek assistance from groups where they are members. For example, if an employer is a member of the Confederation of British Industry or the Federation of Small Businesses, it could seek its help and guidance.

If an employee is a trade union member, they can seek help and guidance from their trade union representative or trade union equality representative.

Keep up-to-date and stay informed

Visit www.acas.org.uk for:

- Employment relations and employment law guidance – free to view, download or share
- Tools and resources including free-to-download templates, forms and checklists
- An introduction to other Acas services including mediation, conciliation, training, arbitration and the Acas Early Conciliation service
- Research and discussion papers on the UK workplace and employment practices
- Details of Acas training courses, conferences and events.

Sign up for the free Acas e-newsletter. The Acas email newsletter is a great way of keeping up to date with changes to employment law and to hear about events in your area. Find out more at:

www.acas.org.uk/subscribe

The Acas Model Workplace. This engaging and interactive tool can help an employer diagnose employment relations issues in its workplace. The tool will work with you to identify areas of improvement you can consider, and will point toward the latest guidance and best practice:

www.acas.org.uk/modelworkplace

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Acas Helpline Online. Have a question? We have a database of frequently asked employment queries that has been developed to help both employees and employers. It is an automated system, designed to give you a straightforward answer to your employment questions, and also gives links to further advice and guidance on our website:

www.acas.org.uk/helplineonline

Acas Helpline. Call the Acas Helpline for free and impartial advice. We can provide employers and employees with clear and confidential guidance about any kind of dispute or relationship issue in the workplace. You may want to know about employment rights and rules, best practice or may need advice about a dispute. Whatever it is, our team are on hand. Find out more: www.acas.org.uk/helpline

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