



Discrimination: What to do if it happens

Acas – promoting employment relations and HR excellence

August 2015

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 rule out an employee for promotion because she is pregnant.

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.

August 2015

Information in this guide has been revised up to the date of publishing. 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 outlines the basics of what employers of all sizes, managers, and employees and their representatives must and should do when discrimination happens or is alleged within the workplace. The guidance applies equally to issues of discrimination between employees, between a manager and an employee, or where there is a wider concern about discrimination - for instance, about a pay system or a question over whether a reasonable adjustment should be applied.

It is the third of three main guides in a series. The first, Equality and discrimination: understand the basics, gives an overview of how equality legislation applies at work. The second, Prevent discrimination: support equality, outlines how to promote and benefit from the principles of equality and diversity, and put them into practice in the workplace.

There are also guides giving guidance related to individual protected characteristics.

Step 1: Raising and receiving complaints and concerns about discrimination

Discrimination because of a protected characteristic within an organisation is unacceptable and unlawful. Forms of discrimination can range from unintentional misunderstandings and lack of awareness through to deliberate and/or malicious acts.

The Equality Act 2010 defines the nine protected characteristics as:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Employees who believe they have been subjected to discrimination, or who believe they have witnessed discrimination in the workplace should be confident in raising the matter with their employer or manager and assured it will be taken seriously.

Raising complaints and concerns about discrimination

There are many different ways that complaints and concerns about discrimination can come to the attention of an employer and they will not always be raised in writing. These include when:

- an employee raises the matter quietly with a manager
- an employee raises the matter through other contacts - for example, the HR department, trade union representatives or 'fair treatment' contacts such as a manager or employee representative with the role of helping to champion equality
- an employee raises a complaint as part of the organisation's grievance process
- a member of staff or line manager observes behaviour that concerns them
- the organisation's equality monitoring process highlights a concern such as a company policy unintentionally discriminating against staff with a particular protected characteristic
- an individual from outside the organisation raises the matter with the employer or a manager.

Receiving complaints about discrimination

There are different ways for handling complaints about discrimination once received by the employer. Information about deciding how to handle a complaint is in Step 3.

There are ways of dealing with complaints in some circumstances which do not involve moving straight into a formal approach, such as the grievance process. These include informal discussions and mediation.

If complaints cannot be satisfactorily dealt with in these ways, it would usually be appropriate to move into the grievance process or another relevant process an employer may have, such as a harassment policy's procedure.

Is early intervention an option?

Sometimes an employer or employee who has been involved in a discrimination complaint might consider whether there could be a suitable way, other than the grievance procedure, to come to an agreeable outcome where a work relationship is the underlying issue. Where this may be an option, the employer and employee/s should talk to each other as soon as possible about these alternatives.

There may be different methods of early intervention available depending on the policies and practices of the workplace, and the situation involved. Options include informal discussions or mediation, but all methods are focussed on repairing working relationships and agreeing acceptable standards of behaviour. Such methods are generally voluntary and might also need to be followed up by some form of support, such as mentoring or training.

For example, mediation (covered in more detail in Step 5) may also be a suitable alternative where the parties agree to put a grievance procedure on hold to give mediation a chance first.

This kind of intervention is flexible. It can help individuals reach agreement where there have been misunderstandings or a lack of awareness, settle an issue where there is little or no appetite to take matters further, or encourage employees out of entrenched positions.

Special considerations when a grievance is raised

While many matters can be dealt with at an early stage informally, all employers should have a grievance procedure. It must be referred to in an employee's Written Statement of Terms and Conditions of Employment, naming the person, normally their line manager, with whom they should raise a grievance. The statement should say where details of the grievance procedure can be found.

Follow the Acas code

An employer who receives a grievance should follow certain minimum procedures set out in the Acas code of practice on discipline and grievance. This includes holding a grievance meeting and considering any appeal. For more information see www.acas.org.uk/dgcode

Grievances should be made in writing, explain the basis of the complaint and focus on the facts. However, experiencing or witnessing discrimination can be particularly stressful and emotive for an employee, which can make it difficult for them to focus on these requirements. Employers should keep this in mind and seek further details or

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confirmation that a grievance has (or has not) been raised when clarity is needed.

Grievances are usually raised with an employee's line manager. Where a grievance is made about an employee's line manager, the employee should be able to raise it through other appropriate channels such as another manager or their HR department. On occasion, especially in small businesses, there may be no alternative person to raise a grievance with. In which case the employer should take all reasonable steps to resolve the matter as fairly and objectively as they can, even if the grievance is about something they have said or done.

When handling a grievance about discrimination an employer should:

- **keep an open mind** – discrimination situations are often very individual and what may, or may not, be felt to be discriminatory can change over time, and from person to person
- **be respectful and empathetic** to the employee who raised the complaint – it can be particularly upsetting and/or stressful to experience or witness discrimination
- **investigate the matter thoroughly** and be tactful when looking for evidence that supports or undermines the grievance
- **conclude and/or resolve the matter** - remember that an employee who has raised a grievance about discrimination could appeal the decision or take the matter to an employment tribunal if they do not believe their grievance has been resolved adequately.

Temporary measures employers may consider

In certain situations, a temporary transfer or suspension of an employee may be necessary while investigations into the alleged discrimination are carried out. For example, where relationships have broken down completely, in potential gross misconduct cases, or where there are risks to an employee's and/or the company's property.

Suspension should only be used after careful consideration and should be reviewed to ensure it is not unnecessarily drawn out. It should be made clear that suspension is temporary, not an assumption of guilt and not a disciplinary sanction. Employees should be paid when on suspension, unless their contract says otherwise.

It may sometimes be more practicable and productive to transfer one of the employees involved to a different area of work on a temporary basis.

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The parties involved do not then have to work together while the investigation is ongoing. Which of the employees is temporarily transferred should depend upon the situation and the work requirements of the organisation at that time. However, employers should beware of transferring or adversely treating the employee who believes they have been subjected to discrimination, as they may see this as detrimental treatment as a result of complaining about discrimination.

Step 2: Investigating the matter

An employer or appropriate manager investigating alleged discrimination of any sort under the Equality Act should take care to deal with the employees involved in a fair and reasonable manner.

The nature and extent of an investigation will depend on the seriousness of the allegations and potential outcome if they are found to be accurate. Any investigation should always be thorough, and for more serious or complex allegations may take up significant time and resource.

It is important an employer or manager keeps an open mind and looks for evidence which supports the allegations as well as evidence which undermines them. Also, it is vital they keep good records of the process they have undertaken.

Acas offers training for employers and managers in conducting investigations - more details can be at www.acas.org.uk/training.

Appointing an investigator

There should always be a named individual responsible for conducting an investigation. They are usually a manager in the organisation, or from the HR department when there is one. Where possible, they should be neutral, not involved in the matter itself, understand how to conduct investigations and not be involved in any subsequent part of the process.

Small businesses, in particular, could well find this a challenge, as finding a manager who is unconnected is not always possible. An employment tribunal will generally take into account the size and resources of a business when looking at whether the investigation and subsequent steps in handling a matter of discrimination were fair. What is most important is that the investigator and those involved in any subsequent steps act fairly, impartially and objectively, and keep a trail of documentation.

Collecting evidence

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All investigations require basic collection of evidence relevant to the matter. Examples may include any complaints (written or verbal), information from witnesses and details of any relevant policies and procedures.

Investigatory or fact-finding meeting

Sometimes it may be appropriate for an investigator to meet with employees who have raised concerns, are the subject of the concerns, or have witnessed a situation. Employees should be given advance warning and time to prepare. There is usually no right for an employee to be accompanied at an investigatory meeting, but an employer should consider whether it may be reasonable and good practice to allow an employee to be accompanied (or if its policies and procedures require it).

Collating evidence

The investigator should organise the information gathered from the investigation and provide it to the appropriate manager in the organisation, being careful to focus on the facts and not make any judgments on the rights and wrongs of the allegations. As mentioned earlier, the business owner/manager/employer may have to be the investigator when the firm is small, and in effect present the information to themselves. In this situation, they must handle the matter reasonably, fairly and objectively.

Step 3: Deciding how to handle the matter

Once the appropriate manager has all the relevant and available information, they need to decide if the evidence suggests what further steps ought to be taken. Does the evidence indicate the complaint:

- might be resolved through an **informal discussion or mediation**?
- appears to have a basis for having been **lodged as a grievance**?
- should also be **followed up with a disciplinary procedure**?
- might result in a need to **review policies**?

Discrimination law does not set out how serious an issue should be to require disciplinary or other action - instead, an employer needs to decide

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what a reasonable approach and response would be in the situation they are facing.

Some complaints of discrimination can be very serious, even including threats of violence or a deliberate campaign of discrimination. Others will be relatively easy to resolve, such as a one-off, unintended remark between colleagues who are able to resolve the issue, possibly with some management assistance.

If the appropriate manager thinks the investigation indicates that one or more of the organisation's policies and/or processes may be discriminatory, they need to be reviewed and any necessary action taken to resolve the problem. For more on this, see companion guide Prevent discrimination: support equality.

Employers should ensure their actions are consistent, and in line with company policy and the circumstances involved. However, they should always be careful that their policies and procedures do not unintentionally rule out options to respond in the most appropriate way. For example, automatically going through the grievance route when, initially, having a quiet word or mediation might be a better option given the circumstances.

Additional help from companion guides

For a better understanding of specific situations which could amount to discrimination, read the Acas guide **Equality and discrimination: understand the basics** and the relevant guides on protected characteristics which can be found at www.acas.org.uk/equality.

No action required

After an investigation, the appropriate manager may sometimes decide there is no need for action, further steps or measures. They should keep a written record of this decision and the reasons for an appropriate period of time. If a complaint or concern was raised by an employee, it is important for an employer to keep in mind that discrimination matters are often very personal and emotional for employees, and they should be notified of the decision in a sensitive way.

Choosing an informal or formal approach

Where a further step or steps are appropriate to deal with an employee or employees, employers should proceed with either an informal or formal process. Which process will depend on a number of key points including:

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- are there any organisational, contractual or statutory requirements that require a particular approach?
- how serious are the allegations?
- what steps may need to be taken?
- what steps have been taken previously in similar cases and what have been the outcomes?
- where relevant, what steps will resolve the issue for the person who made the complaint and/or suffered the alleged discrimination. For example, has the matter made current working arrangements unworkable?
- was the act of discrimination intentional?
- how does the person who raised the concern want the matter handled? On this particular point, please see the next section.

Some allegations of discrimination may be dealt with informally, where the employer or a manager discusses the issue with those allegedly involved with the intention of resolving the problem, and reminding them of the employer's stance against discrimination.

However, complaints of discrimination can often involve strong feelings and appear particularly serious. If the investigation finds evidence suggesting such a complaint may have basis, it is very likely to require a formal approach using the organisation's grievance procedure, then, depending on the outcome of the grievance, being possibly followed up with its disciplinary procedure. In very serious matters, it may go straight to the disciplinary procedure.

Considering how the person who raised the complaint wants the matter handled

There may be occasions where the person who raised the complaint wants the issue resolved in a particular manner. They may wish for it to be handled informally - for example, where they are confident the matter may simply need bringing to a manager's attention to be resolved. Or, they may wish for it to be handled formally - for example, where they think disciplinary action ought to be considered.

While an employer should consider these points, it may not always be appropriate to follow them - for example, where an informal process has been requested but the matter is extremely serious, or has been

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experienced by other employees, too. Ultimately, it is for the employer to decide whether to take any action and/or what process to follow.

Where a grievance was raised, the employee who made it should be notified of the outcome in writing. If the grievance is upheld, feedback should be provided that includes whether further action will be taken. However, the outcome of any further action, such as disciplinary action or equality training, must be kept confidential. Usually only the employee that the disciplinary action relates to, management and HR (if applicable) should be aware of what action is taken.

Step 4: Taking action

Handling the matter informally

Sometimes having informal discussions with the parties involved can resolve the matter.

First, though, it is advisable for the employer, or an appropriate manager, to meet separately with the alleged victim, any accused employee and any witnesses. These initial discussions should indicate whether the informal route is a suitable option.

If it is, the employer, or a manager, might act as the go-between for the accused employee and any alleged victim, or they might even agree to all meet in the same room to resolve the complaint in a way all can agree.

This is particularly effective where those involved may be unaware of the fact they have said or acted in a way which may be discriminatory, or where the alleged behaviour is clearly unusual and/or out of character.

While there are no special rules about informal meetings, they should be held in a private place. It is good practice to give notice of the meetings, explain what they will be about, and to consider allowing the parties to be accompanied.

The purpose of informal meetings is not to consider disciplinary action, but instead to look at how the matter could be resolved. An employer or appropriate manager should:

- listen to what the parties have to say and take into consideration all views expressed
- keep an open mind

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- keep in mind the outcome of any similar situations in the past to make sure any decision is consistent
- propose what they consider would be a reasonable outcome for everyone involved
- keep brief notes of any agreed informal action for reference purposes.

Handling the matter formally in a grievance procedure

When dealing with allegations of discrimination through a grievance procedure, an employer or appropriate manager should:

- keep it confidential - allegations of discrimination can polarise a workforce and negatively affect an organisation's productivity
- write to the employee who made the grievance, outlining the arrangements for the grievance meeting and the employee's right to be accompanied by a workplace colleague or trade union representative
- keep an open mind - discrimination situations are often very personal. An employer or appropriate manager should hear the grievance as impartially as possible and avoid having pre-conceptions about any of the individuals involved.

The outcome must be kept confidential. Usually only the employee who is subject to a grievance, management and HR (if applicable) should be aware of what action is taken.

Follow the Acas code

An employer or manager who is conducting a grievance process should follow certain minimum procedures set out in the Acas code of practice on discipline and grievance. This includes holding a grievance meeting and considering appeals. For more information see www.acas.org.uk/dgcode

An employer or appropriate manager should, after the grievance meeting:

- write to the employee who raised the grievance saying what action will be taken to resolve the matter and how to appeal if they are unhappy with the outcome. Or, give the reasons, carefully explained, if the grievance has not been upheld
- check or monitor that action taken has dealt with the grievance effectively and review the matter if necessary

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- address a widespread issue quickly if the grievance has brought this to light.

Handling the matter formally in a disciplinary procedure

When dealing with allegations of discrimination through a disciplinary procedure, an employer or appropriate manager should:

- keep it confidential - allegations of discrimination can polarise a workforce and negatively affect an organisation's productivity
- write to the employee accused of discrimination, outlining the arrangements for the disciplinary meeting and the employee's right to be accompanied by a workplace colleague or trade union representative
- keep an open mind - discrimination situations are often very personal. An employer or appropriate manager should hold the disciplinary meeting as impartially as possible and avoid having pre-conceptions about any of the individuals involved.

The outcome must be kept confidential. Usually only the employee who is subject to a disciplinary meeting, management and HR (if applicable) should be aware of what action is taken.

Follow the Acas code

An employer or manager who decides disciplinary action may be necessary must follow certain minimum procedures set out in the Acas code of practice on discipline and grievance. This includes holding a disciplinary meeting and considering any appeal. For more information see www.acas.org.uk/dgcode

An employer or appropriate manager should, after the disciplinary meeting:

- write to the employee who was the subject of the disciplinary meeting, saying what action will be taken to – it could range from a written warning and training to dismissal. The employee should also be informed how to appeal if they are unhappy with the outcome. Or, give the reasons, carefully explained, if the allegation was not upheld
- check or monitor that action taken has dealt with the matter effectively and review it if necessary
- remember an employee who is dismissed and has at least two years' service with the organisation, could take the matter to an employment

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tribunal if they do not believe the process and the decision to dismiss was fair and reasonable. If they believe the dismissal because of discrimination, related to any protected characteristic, was unjust, a two-year limit would not apply.

Handling claims of harassment

While an employer should treat all discrimination complaints seriously, one involving allegations of harassment and/or sexual harassment might have to be dealt with particularly promptly to stop the problem escalating.

Some employers may deal with this by developing a separate harassment procedure, while others may choose to handle the matter with special care - for example, there may be a more pressing need to keep apart the employees. Suspension of an employee or employees may be an option in very serious cases.

Some incidents of harassment may become a criminal issue as well as an employment matter. Although police or court proceedings might be taking place, they should not replace or delay the need for the employment matter to be dealt with. An employer must still carry out investigations into the matter and follow a fair disciplinary process where appropriate.

For more information on the criminal element of harassment, go to www.cps.gov.uk.

Changing policies, procedures and practices

Where a policy, procedure or practice is, or appears to be, discriminatory, the employer should reassess it promptly. The review should ensure the policy, procedure or practice complies with the law and that any element which was discriminatory is removed. Any revised policy, procedure or practice should be communicated to all staff.

Any existing consultation arrangements should be followed in advance of any changes being made which would require an alteration in contracts of employment. Changes, when finalised, should be communicated to all staff.

Early conciliation and employment tribunal claims

If an employee believes they have been discriminated against because of a protected characteristic, they may wish to make a claim to an employment tribunal. Where an employer has taken

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reasonable steps to resolve the complaint, this may sufficiently reassure the employee against bringing a tribunal claim.

To bring a claim, the employee must use the Acas early conciliation service to try to resolve the matter and avoid going to tribunal. And before that, the employee should feel they have exhausted the employer's internal procedures, providing this can be done before the expiry of the three-month time limit to raise a tribunal claim. For more information, visit www.acas.org.uk/earlyconciliation

Should the claim proceed to a tribunal, compensation is the most common remedy in successful claims against discrimination. It would usually be calculated based on: the employee's loss of earnings and fringe benefits (both past and future); employees being awarded their full losses; possibly including an award for injury to feelings; and there being no legal limit on the amount of compensation that can be awarded.

Tribunals also have the power to make declarations or recommendations to employers about the steps they should take to reduce any adverse effect of discrimination. From 1st October 2015 this can only be made where the claim is upheld at the tribunal.

For further information on employment tribunals, see www.justice.gov.uk/tribunals/employment.

Step 5: Avoiding further allegations of discrimination

After a complaint of discrimination has been raised and a conclusion to the matter reached, an employer should consider what action is necessary to prevent a similar issue from occurring again.

Mediation

At the end of the grievance and/or disciplinary process, whether unlawful discrimination has been found or not, the relationship between the parties involved can be strained and not conducive to a productive work environment.

Mediation can be helpful at this point, but it can also be used at all stages. For example, early on it can provide a forum where the parties can listen to each other and gain an understanding so they might agree how they can resolve the complaint. It might also be an option after an investigation.

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Mediation focuses on collaboration to solve problems. It has been found to be very effective when dealing with relationship breakdown, personality clashes and communication problems:

- it is voluntary
- it can explore the issues, feelings and concerns of all participants
- it can enable the parties to understand and empathise with the feelings of the people they are in dispute with
- it can help rebuild relationships
- any agreement comes from those in dispute, not from the mediator
- it is confidential.

Mediators may be employees trained and accredited by an external mediation service or from an external mediation provider.

There are no hard and fast rules for when mediation is appropriate, but it may not be suitable if: a decision about right and wrong is needed; the parties do not have the power to settle the issue; or one side is completely entrenched.

For more information about mediation and an accredited training course Acas offers, see www.acas.org.uk/mediation.

Check on the outcome of a complaint or concern

Whether it was decided that some form of discrimination occurred or not, the person who raised the complaint or concern must not be treated unfairly for having raised it.

An employer should observe the situation to ensure that the unlawful discrimination (if it was found to have occurred) has stopped, and/or that the person who raised the complaint, and any other employees who supported it, are not victimised for their actions.

Creating and amending an equality policy

An employer who does not have an equality policy should consider whether having one may now benefit the organisation and prevent further discrimination arising. A policy can help confirm to everyone in the organisation what is acceptable and expected of them as individuals and

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as part of the organisation. For more information on how to create an equality policy, and how to communicate, promote and enforce it, see the Acas guide Prevent discrimination: support equality.

Where an employer already has an equality policy in place, it should be reviewed to ensure it is still achieving what it was designed for or whether adjustments to it could help avoid further complaints of discrimination.

Providing equality training

Following a complaint of discrimination, an employer should consider whether equality training is needed for individual employees, managers or the organisation as a whole.

For more on training, see the Acas guide Prevent discrimination: support equality.

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
- tackling bullying and harassment at work
- promoting mental health at work.

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 to the Acas website page Business solutions.

Acas guidance

Equality and discrimination: understand the basics

Prevent discrimination: support equality

Age and the workplace: a guide for employers and employees

Discrimination: What to do if it happens

Religion or belief discrimination and the workplace

Sexual orientation discrimination: key points for the workplace

Race 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

Guide on discipline and grievances at work

Age discrimination

Disability discrimination

Gender identity discrimination

Marriage and civil partnerships

Maternity leave and pay

Race discrimination

Religion or belief discrimination

Sex discrimination

Sexual orientation discrimination

Equal pay

The Equality and Human Rights Commission

<http://www.equalityhumanrights.com/>

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)

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.

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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 and arbitration and the Acas Early Conciliation service
- Research and discussion papers on the UK workplace and employment practices
- Details of upcoming 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 upcoming events in your area. Find out more at:

www.acas.org.uk/subscribe

Acas e-learning. Our e-learning covers a range of employment relations topics and can help you understand both best practice and current legislation. Our e-learning is free to use and can be accessed directly on our website:

www.acas.org.uk/elearning

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

www.acas.org.uk/modelworkplace

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

Look for us on:

Facebook - <https://www.facebook.com/acasorguk>

LinkedIn - <http://linkd.in/cYJbuU>

Twitter - <http://twitter.com/acasorguk>

YouTube – <https://www.youtube.com/user/acasorguk>