Discrimination and the law

Discrimination is when someone is treated unfairly for any of these reasons:

- age
- disability
- gender reassignment
- marriage or civil partnership
- pregnancy or maternity
- race (including colour, nationality, ethnic and national origin)
- religion or belief
- sex
- sexual orientation

These are called 'protected characteristics' under the law (the Equality Act 2010). Discrimination based on any of these protected characteristics is usually against the law.

Types of unfair treatment

According to the law, there are different types of unfair treatment.

Discrimination is one type of unfair treatment and can, for example, be direct or indirect. Other types of unfair treatment include bullying.

Find out more about harassment, bullying and victimisation.

Equal pay

The employer must make sure they follow the law on equal pay.

2. Direct discrimination

Direct discrimination is when someone is treated unfairly because of a protected characteristic, such as sex or race. For example, someone is not offered a promotion because they're a woman and the job goes to a less qualified man.

Asking about protected characteristics when recruiting

An employer must not ask questions about any protected characteristic when hiring new staff, except in rare circumstances.

Example

A business is looking to hire a personal assistant. In the job application form, there's a question asking if the applicant has any disabilities that will make doing the job difficult.

As disability is a protected characteristic, this question is against the law. The employer should instead ask all applicants if they need
any reasonable adjustments to complete the interview or any part of the hiring process.

Employers can find out more about avoiding discrimination when hiring someone.

**If you believe you've been discriminated against when applying for a job**

Find out what to do if you believe you've been discriminated against when applying for a job.

**Being treated unfairly because of someone else's protected characteristic**

One type of direct discrimination is when someone is treated unfairly because of the protected characteristic of either:

- someone they know
- someone they're associated with

This is sometimes known as:

- 'discrimination by association'
- 'associative discrimination'

**Example**

Al has a close friend who had surgery to change their sex. After some of Al's work colleagues find out about the surgery, they stop inviting Al to social events. This could be discrimination by association, as gender reassignment is a protected characteristic.

**Being treated unfairly because of a protected characteristic someone thinks you have**

Another type of direct discrimination is 'discrimination by perception'. This is when someone treats a person unfairly because they think they have a certain protected characteristic, whether or not it's true.

**Example**

Rehan is rejected for promotion to a supermarket buying team that sources wines. The employer believes Rehan is Muslim because of her name and they would therefore not want to work with alcohol. This is discrimination by perception (Rehan is not a Muslim).

**Marriage and civil partnership**

Marriage and civil partnership are not covered by the law on:

- discrimination by association
- discrimination by perception

**Pregnancy and maternity**

This can be a complex area. You can call the Acas helpline if you'd like to talk this through.

**Indirect discrimination**

Indirect discrimination can happen when there are rules or arrangements that apply to a group of employees or job applicants, but in practice are less fair to a certain protected characteristic.

The employee or applicant must be able to prove both of the following about the rule or arrangement:

- it's unfair to them and to others with the same protected characteristic, for example a woman believes she's experiencing sex
discrimination against women

- it's unfair compared with those who do not have the protected characteristic, for example, it's unfair to employees who are women, but not to men

Indirect discrimination can be allowed if the employer can prove a business case for the rule or arrangement (‘objective justification’).

**Example 1**
A business is recruiting for a head of sales. The HR team only advertises the job internally. The only people who could apply internally are all men. This means the business could be discriminating indirectly, based on sex.

**Example 2**
A job advert for a salesperson says applicants must have spent 10 years working in retail. By doing this the business could be discriminating indirectly based on age. This is because the advert excludes young people who may still have the skills and qualifications needed.

The advert should instead say that applicants need a specific type of experience and knowledge. It should also include the main tasks and skills involved in the job, to show applicants what they'll need to be able to do.

**If you have questions about types of discrimination**

You can:
- speak to an Acas adviser
- [contact the Equality Advisory and Support Service (EASS)](https://www.eass.org.uk)
- get legal advice

If an employee discriminates against someone else, by law their employer could also be held responsible. This is known as 'vicarious liability'.

Whether the employee and employer are both held responsible depends on whether the discrimination is linked to the employee's work. The law describes this relationship as 'acting in the course of employment'. The discrimination could happen at work or outside the workplace, for example at a work party, or through social media that's linked to work.

**Example**
Bill, a shop assistant, makes a negative comment to someone they work with about their race. Bill's employer could also be held responsible for that discrimination.

An employer might not be held responsible if an employment tribunal decides they took all reasonable steps to try to prevent discrimination, harassment and victimisation by staff.

**Example**
James and Opeyemi both work for CarpetZone as sales staff. As with all staff, CarpetZone annually trains and tests James on equality, diversity and discrimination. Last year, CarpetZone ran an anti-bullying campaign across all its stores.

James sends Opeyemi a string of offensive and sexually suggestive emails at work. After Opeyemi complains about this to their line manager, CarpetZone immediately opens an investigation into the matter and suspends James' access to their email account.

The investigation leads to James being disciplined with a final written warning. James is also sent on refresher equality training.

If Opeyemi chooses to make a claim to an employment tribunal, CarpetZone's actions may help show it took 'all reasonable steps' to
stop discrimination from happening.

Vicarious liability can be a complicated area. If you have questions you can speak to an Acas adviser.

You can help prevent discrimination in the workplace by steps including:

- having an up-to-date equality policy
- providing regular anti-discrimination training to staff
- making it clear how staff can complain if discrimination happens
- regular one-to-one catch-ups between employees and their line managers, to help build positive working relationships

This can help:

- make sure your workplace treats employees fairly
- make it less likely you'll be held responsible for discrimination carried out by an employee

Find out more about improving equality, diversity and inclusion in your organisation.

### 3. Public Sector Equality Duty

The Public Sector Equality Duty (PSED) is a legal duty for anyone who works in the public sector or does work on behalf of the public sector. Under the duty, you must consider how you could:

- stop discrimination, harassment and victimisation for employees, customers and other users of your services
- help support equality and equal opportunities in the day-to-day running of your organisation
- help make good relations by tackling prejudice and promoting understanding on all protected characteristics

The PSED helps ensure public bodies consider the needs of everyone in their day-to-day work, including:

- their employees
- when shaping policies
- when delivering services

You can find the full list of employers who must follow the PSED in Schedule 19 of the Equality Act 2010 on GOV.UK.

As well as the overall public sector duties, there are also specific duties that apply in England, Scotland and Wales. Find out more about the public sector duties from the Equality and Human Rights Commission.

Related content
/pltv-improving-equality-diversity-and-inclusion
/pltv-handling-a-bullying-harassment-discrimination-complaint

If you believe someone at work has discriminated against you, you should raise the issue with your employer. It's best to do this informally at first.

If that does not resolve the issue you can raise it formally. This is known as 'raising a grievance'.

You can also make a claim to an employment tribunal. It's best to try the other options first.

### 4. Getting help
You can get help and advice from:

- the Acas helpline
- the Equality Advisory and Support Service

If you’re a member of a trade union, it might be able to help.

You can also get legal advice.

Related content
Webinar recording - an employee's guide to discrimination