Direct and indirect discrimination

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.

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.
Marriage and civil partnership

Marriage and civil partnership are not covered by discrimination by association.

Pregnancy and maternity

This can be a complex area. Read our guide on discrimination because of pregnancy and maternity (PDF, 524KB, 25 pages).

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 perception.

Pregnancy and maternity

This can be a complex area. Read our guide on discrimination because of pregnancy and maternity (PDF, 524KB, 25 pages).

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)
- get legal advice