

INTRODUCTION

The Employment Equality (Religion or Belief) Regulations 2003 made it illegal to discriminate against people in employment or vocational training on the basis of their religion or beliefs. The Equality Act 2006 widened the scope to include the provision of goods, facilities and services, education, the use and disposal of premises, and the exercise of public functions.

RELIGION AND DISCRIMINATION

Religion has long been a major issue in Northern Ireland, but mainland Britain has become increasingly secular. Despite the 2001 census in England and Wales recording 85% of people as having a religious affiliation, and the Anglican church controlling nearly one-in-five schools, many believers not practising and the British Social Attitudes Survey (conducted the year before) found 44% had no religion.

However religious discrimination has been really put back on the agenda by a rise in Islamophobia particularly after September 11th and the July 7 bombings in London.

Marginalised black and minority ethnic communities have often used religion to express their identity and until now there has been no specific protection against discrimination for most religious groups. There is still widespread ignorance and indifference towards religion and in organisational settings this may allow 'unwitting' and institutional discrimination to thrive.

The divisions between religious discrimination and race discrimination are sometimes blurred, and some aspects of religious discrimination are covered by existing race relations legislation. For example discrimination against Jews and Sikhs is outlawed because they are seen as a racial group as well a religious one.

THE LAW

The European Convention on Human Rights upholds freedom of thought, conscience and religion and the manifestation of religion and belief. This was included in the Human Rights Act (1998), but only applies directly to public bodies. The Race Relations Act covers Jews and Sikhs as they are ethnic groups, but other religions are not covered.

The religious discrimination regulations give protection against discrimination on the grounds of "any religion, religious belief or philosophical belief" in a similar way to the existing sex discrimination and race discrimination laws. The Equality Act 2006 widened this to specifically protect "lack of belief" as well.

The regulations do not apply to Northern Ireland where the Fair Employment (NI) Act 1989 already prohibits religious discrimination (including indirect religious discrimination) and includes provisions for affirmative action. Employers have to ensure the active practice of fair employment and monitor the religious composition of their workforce regularly reviewing their recruitment, training and promotion practices.

What does the law say?

The regulations prohibit less favourable treatment in employment and training based on:

- a person's religion or belief
- the perception of a person's religion or belief

- a person's association with someone of a particular religion or belief
- a refusal by a person to comply with a discriminatory instruction.

This does not cover discrimination based on something other than a religion or a similar philosophical belief, but it is unlawful to discriminate against someone of the same religion, or against someone for not belonging to a certain religion. Being a fanatical follower of a football team or holding strong political convictions are not included.

Discrimination is unlawful in the recruitment process; in the workplace including pay, terms and conditions, promotions, transfers and training; in matters surrounding dismissal; and sometimes after employment (for example regarding references).

All workers - not just 'employees' - are protected from discrimination and there are no opt-outs for small employers. Most office holders - Employment Tribunal members, clergy, and the judiciary - are also covered although people in elected positions are not.

In addition, discrimination on the grounds of religion or belief is illegal if carried out by:

- Institutes of further and higher education
- Employment agencies
- Providers of vocational training
- Qualifications bodies
- Trade organisations (including trade unions). This includes all aspects of a union's organisation – including local branches and individual representatives
- or by Barristers or Advocates taking pupils or partnerships within firms.

In common with sex and race discrimination laws, the regulations outlaw (on the grounds of religion or belief):

Direct discrimination

Where someone is treated less favourably than another person on the grounds of their religion or belief.

Indirect discrimination

Applying a 'provision, criterion or practice' which disadvantages people of a particular religion or belief without a good reason.

Bullying and harassment

Unwanted conduct that violates people's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment. It may be that this is intentional, but it may be much more subtle and insidious.

Victimisation

Treating people less favourably for taking action under the regulations or assisting someone else who has taken action. For example making a formal complaint or giving evidence of discrimination.

Are there any exemptions?

There are exemptions from the regulations for 'genuine occupational requirements' (GOR) in very limited circumstances where it is necessary to be from a particular religion to do a certain job. Unlike other anti-discrimination legislation, there is also an exemption for "employers with an ethos based on a religion or belief", which means that they can specify a religion as a job requirement even if it isn't a 'determining' (decisive) occupational requirement.

For example, an employer who requires a Jewish chaplain will be able to appoint a Jewish person to that role, as that would be a genuine occupational requirement.

BARGAINING ADVICE

Fighting religious discrimination is primarily a negotiating issue. UNISON believes it is more effective to prevent discrimination by negotiating collective agreements for all staff rather than taking individual grievances. Unlike race, disability and sex discrimination there is currently no official body to promote or enforce the law banning discrimination on the grounds of religion or belief. Therefore union support is vital.

There are two main situations where the law applies. Firstly where someone with a certain religion or belief is employed and faces discrimination, and secondly where an organisation with a certain religious orientation is employing workers.

Advice on opposing religious discrimination is also good equal opportunities practice. Your employer should ensure that all their policies have been checked to remove any discriminatory practices, and religious discrimination should be included in harassment, equality or similar policies. All staff need to understand the reasons for and implications of any changes, and there should be support for anyone who feels discriminated against.

Employers should consider if their procedures or facilities indirectly discriminate against workers of a certain religion or belief. Workers of different religions should be consulted to discuss any requirements and how these can be accommodated. Most specific requirements should be easily accommodated. For example, allowing Muslims to take an extended lunchbreak of an extra hour on Fridays to attend the nearest mosque for the Jumu'a prayer may be quite straightforward, as long as the time is made up. So could ensuring they can take the two Eid festivals off as part of annual leave.

Raising awareness of the issue is often needed and giving staff diversity training and consulting them is important. Small things can sometimes help a lot. When Bradford Hospitals NHS Trust analyses their 'missed appointments' statistics they found that many patients were missing appointments on religious holidays, and so distributed a multifaith calendar to staff enabling them to plan patients' treatment better (see 'Further resources' at the end of this factsheet).

Specific Issues

Recruitment

Jobs should be advertised to a wide audience including minority media. Only essential job requirements should be used as selection criteria, as a needless condition of socialising with alcohol or working unnecessarily inflexible hours which prevent praying etc) may be discriminatory. It should be clear what the job involves so people are aware of any potential conflicts with their beliefs.

Dietary requirements

Some religions have special dietary requirements such as vegetarianism, not eating certain meats or storing food separately. A canteen should serve vegetarian food or there should be a fridge where food can be stored.

Leave

Most religions have special ceremonies or festivals, which can normally be accommodated using annual leave. Some religions place a great importance on attending certain events, for example Muslims are expected to go on the Hajj once in their lifetime. People of a certain religion shouldn't have better terms

and conditions than anyone else, but a provision for unpaid leave could be included.

Prayer

Some religions require their followers to pray at specific times, and even if a prayer room is not available there may be a quiet room that can be used for that purpose at certain times.

Dress

Some religions have certain dress requirements such as items of jewellery, or skull caps for Jewish men for example. As long as these do not contravene health and safety requirements your employer should try to accommodate them. If there is a dress code then some flexibility should be built into it, unless the employer can show there is a genuine occupational requirement for not doing so.

Monitoring

Equality monitoring is good practice and monitoring of religious beliefs can tell an organisation about its staff and their potential needs. However it is important that this is done in a sensitive and collaborative way. The UNISON branch should be involved and should ensure that their membership understands why the monitoring is taking place. The monitoring should be confidential, and the branch should get reports from the employer.

Involving members

This is not just a matter of UNISON protecting its members. Campaigning for equality can help recruit more members and turn members into activists. Religion plays an important part in the lives of many people, and making links with religious organisations can give union campaigns strength from outside the workplace. Branches should promote the new rights in workplaces, and consider creating a union working party to come up with specific proposals.

In a recent pay dispute with NHS contractors in East London, the UNISON branch worked closely with local community and religious organisations to get broad support for a low pay campaign. It increased membership from 60 to 280 out of 360 staff at Whipps Cross hospital during the successful dispute.

IF DISCRIMINATION OCCURS

Although the best way of tackling discrimination is to prevent it by having collective agreements with an employer, sometimes an individual remedy must be sought. Discrimination may be unintentional or through thoughtlessness, so it is best addressed at an informal level initially, or via a line manager. The next stage is the grievance procedure of the organisation where there should be trade union representation.

A complaint can ultimately be taken to an Employment Tribunal under the Employment Equality (Religion or Belief) Regulations 2003. This must be done within 3 months of the discriminatory act, and you should consult your Regional Officer.

OTHER EQUALITY LAWS

The Sexual Orientation Regulations apply to lesbians and gay men, and heterosexuals and bisexual people. They cover discrimination on grounds of perceived as well as actual sexual orientation (i.e. assuming - correctly or incorrectly - that someone is lesbian, gay, heterosexual or bisexual). The Regulations also cover association, i.e. being discriminated against on grounds of the sexual orientation of those with whom you associate (for example, friends and/or family).

However, there is an exemption if a workers' employment 'is for purposes of an organised religion' and a particular sexual orientation is required to:

'comply with the doctrines of the religion', or

'to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers'.

So an employer with an "ethos based on religion or belief" could discriminate against someone even where sexuality is not relevant to their ability to do the job. This directly affects UNISON members in faith-based charities, voluntary organisations, and schools. The National Secular Society says organisations with a 'religious ethos' employ 200,000 people.

Following a legal challenge in 2004, the High Court indicated that this exemption would only apply narrowly to, for example, ministers of religion, and teachers (for example) would have protection against discrimination.

The intention of these regulations is to complement, not undermine other equality laws

FURTHER INFORMATION

UNISON bargaining materials are on the Equalities Bargaining Zone – www.unison.org.uk/bargaining/equalities.asp.

The Department of Trade and Industry have got the regulations on their employment relations website - www.dti.gov.uk/er/equality.

ACAS guidance on the regulations is at www.acas.org.uk or from 08457 47 47 47.

There is an introduction to many different religions at www.multifaithnet.org.

The Shap calendar of religious festivals is at www.shap.org/calendar.html.

More on Islamophobia is at www.runnymedetrust.org/publications/pdfs/islamophobia.pdf

IRS Employment Review has a review of Equality monitoring in Issue 770, February 2003. Copies of this are available from the Bargaining Support Group.

The National Secular Society has a discussion of discrimination as it might affect non-believers on www.secularism.org.uk

UNISONdirect, the information and advice service for members is on 0845 355 0845.

Your Comments

UNISON welcomes comments on this factsheet. Write to the Bargaining Support Group UNISON, 1 Mabledon Place, London WC1H 9AJ or email bsg@unison.co.uk