



# COVENTRY LAW CENTRE

## **EMPLOYMENT**

## **DISCRIMINATION ON GROUNDS OF** **SEXUAL ORIENTATION**

Coventry Law Centre  
The Bridge  
Broadgate  
Coventry CV1 1NG

Tel: 024 76223053

Registered with Charity Commission as Coventry Law Centre: 1087312  
Registered as a limited company in England & Wales: 4149673

Although every effort is made to ensure the information in this leaflet is accurate and up to date, it should not be treated as a complete and authoritative statement of the law and does not constitute legal advice - we cannot be held liable for any inaccuracies and their consequences. The information in this leaflet is written for people resident in, or affected by, the laws of England and Wales only.

Since the 1 December 2003 it has been unlawful to discriminate against somebody at work on the grounds of their sexual orientation. The new law applies to all employment and vocational training and includes recruitment, terms and conditions, promotions, transfers, dismissals and training at work. The definition of sexual orientation has a broad definition and is defined as: orientation towards persons of the same sex (gay men and lesbians), orientation towards persons of the opposite sex (heterosexual) or orientation towards a person of the same sex and the opposite sex (bi-sexual).

## **What type of discrimination is covered?**

### Direct discrimination

Direct discrimination occurs when a worker or a job applicant is treated less favourably on grounds of their sexual orientation or *perceived* sexual orientation. So, if somebody is not employed, or is dismissed, or is not provided with training or promotion, or given unfavourable terms and conditions of employment, or denied access to other benefits purely on the grounds of their sexual orientation then this will amount to direct discrimination.

In some limited circumstances there may be a Genuine Occupational Requirement (GOR) that is a job undertaken by a person of a particular sexual orientation. For example, a charity providing advice exclusively to lesbians and gay men may consider it more credible to have a lesbian or a gay man as the manager of the organisation. Alternatively, some religious organisations may refuse to employ somebody on the grounds of their sexual orientation on the basis that it is incompatible with their religious belief. However, Genuine Occupational Requirements are always open to challenge by an individual and the burden of proof lies with the employer to establish the validity of a GOR by providing evidence to substantiate the claim. Employers should be very careful when suggesting there is a GOR.

### Indirect Discrimination

Indirect discrimination occurs when a company or organisation applies a provision, criterion or practice which applies to all workers and job applicants regardless of sexual orientation but puts persons of the same sexual orientation at a particular disadvantage when compared with other persons, and which cannot be shown to be a proportionate means of achieving a legitimate aim.

For example, a policy requiring workers and job applicants to disclose all criminal convictions (including spent criminal convictions) could be discriminatory in light of the fact that certain consensual homosexual acts were once illegal.

Indirect discrimination will not be unlawful if it can be justified. An employer must be able to show that there is a legitimate aim, in other words a real business need, and that the practice is proportionate to that aim. In other words, there is no alternative to the provision criterion or practice which is in place.

### Harassment

Harassment consists of any behaviour that undermines the dignity of the individual and is offensive, frightening or in any way distressing. This can include intentional bullying which would be obvious but it can also be more subtle, such as nicknames, teasing or name calling. Such

behaviour can cause great upset to the individual and the employer is under an obligation to investigate and treat seriously allegations of harassment.

### Victimisation

Victimisation occurs when an individual received detrimental treatment because they have made a complaint, they intend to make a complaint or it is a third party who is assisting somebody who has made a complaint to a Tribunal.

### Liability

An employer should be liable for the actions of its employees, or other third parties if they are in a position to control the situation or take remedial action. If they do not do so then you may have a valid claim against them.

### Enforcement of the Law

The way that the law against discrimination on grounds of sexual orientation is enforced is by complaint to an Employment Tribunal. However, before a complaint is made to a Tribunal it is advisable to make sure that you have exhausted all internal grievance procedures. A complaint to a Tribunal must be made within 3 months of the act complained of or if the complaint is of a succession of acts, within 3 months of the last act committed.

It is worth seeking legal advice at an early stage to determine whether you have a case in law and the strength of your case.

Coventry Law Centre runs an employment and discrimination advice line for initial telephone advice on 024 76253169. The advice line runs on Tuesdays and Thursdays between 10:00am – 12:00noon.