

Understanding Employment Law

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LO2: Know how to manage recruitment and selection activities lawfully



Types of staff

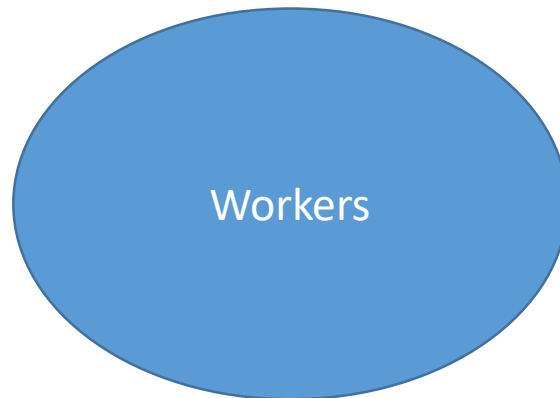
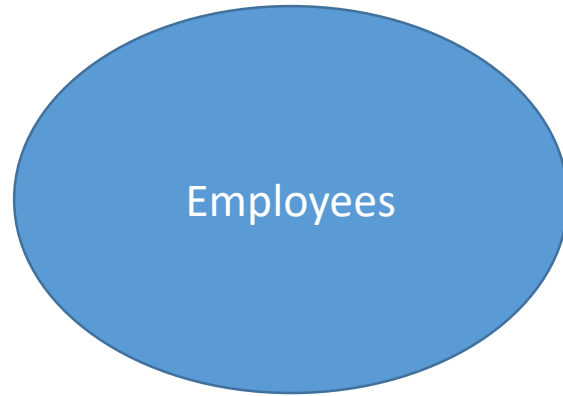
- Employee
- Worker
- Self-employed
- Employee “individual who has entered into or works under a contract of employment” (s230(1)ERA 1996)
- Worker “individual who works under a contract of employment or works under any other contract where that individual agrees to **personally perform** work or services for another party” (s230(3) ERA 1996)

How to determine status?

- What is written in the contract?
- Multiple test
Ready-Mixed Concrete v Minister of Pensions
(1968) ER 433
- Mutual obligations test
Carmichael v National Power (2000) IRLR 43



Workers



Contract of Employment

- Express terms
- Implied terms
- Statutory rights



Implied terms

- Collective agreements
 - Express incorporation
 - Implied incorporation
- Statute,
- Custom and practice,
- The courts,
- Work rules,
- By law.....



Implied terms by law

- Wages
- Provide work
- References to be non-misleading
- Health and safety
- Indemnify employees against liabilities
- Bring matters to the employees attention
- Give effective support against bullying
- Respect privacy
- Deal with grievances
- Not damage the relationship of trust and confidence

Duties on employees

- Obey all reasonable instructions
- Co-operate with employer
- Duty of fidelity
- Take reasonable care in their duties



Written statement of terms and conditions

- Employment Rights Act 1996 sections 1-7
- Part 2 of Employment Rights (Miscellaneous Amendments) Regulations 2019
- Statement of written particulars extended to workers as well as employees.
- This is now a day one right.



Qualifying periods

- Continuity of employment
- S212 ERA 1996
- Continuity continues when contract not in existence e.g. temporary cessation of work
- And through statute e.g. maternity
- Weeks don't count e.g. strike
- All types of claims have different qualifying periods and some with none.



Health and safety – duties of employer

- Safe and adequate plant and equipment
- Safe premises and/or place of work
- Competent and safe fellow employees
- A safe system of work



Health and safety – duties of employee

- Reasonable care for health and safety of themselves and others
- Cooperate with employer as is necessary to enable health and safety requirements to be met
- Requirement to use PPE where provided
- To follow appropriate systems of work laid down by employer
- To inform employer of any serious and imminent dangers to health and safety and to inform of any shortcomings.

Group Exercise

Health and safety case studies



LO5: Know how to ensure staff are treated lawfully at work



Equality Act 2010

- Replaced 9 major pieces of discrimination legislation
- Replaced 100 pieces of smaller legislation
- Harmonisation
- More straightforward



Who is protected?

- Employees
- Workers
- Job applicants
- Ex-employees



The protected characteristics

- Age (section 5 EqA 2010).
- Disability (section 6 EqA 2010).
- Gender reassignment – proposes to, starts or has completed a gender reassignment process (section 7 EqA 2010).
- Marriage and civil partnership (Section 8 EqA 2010).
- Pregnancy and maternity (section 18 EqA 2010).
- Race – colour, nationality and ethnic or national origins (Section 9 EqA 2010).
- Religion, religious or philosophical belief (Section 10 EqA 2010).
- Sex (Section 11 EqA 2010).
- Sexual orientation (Section 12 EqA 2010).



Disability

- “physical or mental impairment that has a substantial and long-term adverse effect of a person’s ability to carry out normal day-to-day activities”
- Deemed disabilities (cancer, HIV, MS)
- Section 6 EqA 2010



Types of discrimination

- Direct discrimination (Section 13 EqA 2010).
- Associative.
- Perception.
- Indirect discrimination (Section 19 EqA 2010).
- Harassment (Section 26 EqA 2010).
- Victimisation (Section 27 EqA 2010).
- Discrimination arising from disability (Section 15 EqA 2010).
- Failure to make reasonable adjustments (Section 21 EqA 2010).



Direct discrimination

Direct discrimination occurs where "because of a protected characteristic, A treats B less favourably than A treats or would treat others".

- Section 13 EqA 2010



Associative discrimination

- The discrimination need not be because of B's protected characteristic, except in marriage and civil partnership cases.
- Therefore, less favourable treatment because of an employee's **association** with someone who has a protected characteristic is covered.



Perceptive discrimination

- An employee who is wrongly **perceived** to have a protected characteristic (other than marriage or civil partnership) will be protected against any less favourable treatment they receive for that reason.



Indirect discrimination

- A discriminates against B where:
 - A applies to B a provision, criterion or practice (PCP).
 - B has a protected characteristic.
 - A also applies (or would apply) that PCP to persons who do not share B's protected characteristic.
 - The PCP puts or would put persons with whom B shares the protected characteristic at a particular disadvantage compared to others.
 - The PCP puts or would put B to that disadvantage.
 - A cannot show the PCP to be a proportionate means of achieving a legitimate aim.
- Section 19 EqA 2010



Harassment

- A harasses B if A engages in unwanted conduct related to a relevant protected characteristic which has the purpose or effect of either:
 - Violating B's dignity, or
 - Creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- Section 26 EqA 2010



Victimisation

- Victimisation occurs where A subjects B to a detriment because either:
 - B has done a protected act.
 - A believes that B has done, or may do, a protected act.
- Protected acts:
 - Bringing proceedings under EqA2010.
 - Giving evidence or information in connection with those proceedings, regardless of who brought those proceedings.
 - Doing any other thing for the purposes of or in connection with EqA2010.
 - Alleging that A or another person has contravened EqA2010.
- Section 27 EqA 2010



Discrimination arising from disability

- A treats B unfavourably because of something arising in consequence of B's disability.
- A cannot show that the treatment is objectively justified as a proportionate means of achieving a legitimate aim.
- Section 15 EqA 2010



Reasonable adjustments

- Where a **provision, criterion or practice** applied by the employer puts a disabled person at a substantial disadvantage in comparison with those who are not disabled.
- Where a **physical feature** of the employer's premises puts a disabled person at a substantial disadvantage in comparison with those who are not disabled.
- Where a disabled person would, but for the employer's provision of an **auxiliary aid**, be put at a substantial disadvantage in comparison with those who are not disabled.
- Section 20 EqA 2010



MCQ 1

Derek makes it clear to his manager Matthew that he finds the way his colleague Kevin refers to the female members of the team as "the floozies" offensive. Which of the following is correct?



MCQ 2

- A white employee who sees a black colleague being subjected to racially abusive language could have a case for harassment if the language also causes an offensive environment for her.



MCQ 3

David has just started work in an all-male office and has complained that, although they don't include him in this activity, he finds his colleagues' habit of swapping "page three" pictures offensive. Which of the following is correct?

This type of behaviour could potentially amount to sex-related harassment...



MCQ 4

Linda has complained to her manager that a colleague William sexually harassed her at the company charity quiz, which took place one evening in the local pub. Which of the following is correct?



Recruitment and selection

- “A job that would suit a teacher in their first five years of their teaching career”
- “Clean-shaven person needed for construction company”



Positive action

Employer reasonably thinks that either:

- Persons who share a protected characteristic suffer a disadvantage connected to the characteristic.
- Persons who share a protected characteristic have needs that are different from the needs of persons who do not share it; or
- Participation in an activity by persons who share a protected characteristic is disproportionately low.
- Section 158 EqA2010



Positive action in recruitment and promotion

- Employer can (but not obliged to) take any action which is proportionate means of achieving a legitimate aim of:
 - Enabling or encouraging persons who share the PC to overcome or minimise the disadvantage
 - Meet the needs identified
 - Enable or encourages persons to participate



Defence

- Occupational requirements
- Objective justification



Liability

- Employer if it discriminates
- Employee if it discriminates
- Employer for acts of employees (vicarious liability) unless it took reasonable steps to prevent the employee from doing the discriminatory act or it wasn't done in the course of employment.



Remedies

- Declaration
- Recommendation
- Compensation for injury to feelings (*Vento*):
 - A lower band of £900 to £8,800
 - A middle band of £8,800 to £26,300
 - An upper band of £26,300 to £44,000 (for the most severe cases). In exceptional circumstances, awards can exceed £44,000.



Group Exercise

Vento bands



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