

29 Sep 2021

Sex discrimination and employment

Explore the UK legal position and main issues employers face when dealing with sex discrimination in the workplace.

Introduction

Sexual orientation discrimination and gender reassignment discrimination are both illegal in the UK. They are both listed as protected characteristics in the Equality Act 2010. They arise when someone is unfairly disadvantaged for reasons related to their sexual orientation or because they are trans.

This factsheet offers an overview of the different types of discrimination with examples of how they apply to sex discrimination. It highlights the need for employers to take action and suggests good employment practices to ensure everyone has fair access and opportunity to progress in work, regardless of their sex.

Explore [our viewpoint on gender equality](#) in more detail, along with actions for government and recommendations for employers.

What is sex discrimination?

Sex discrimination occurs when someone is unfairly disadvantaged for reasons related to their sex. Although most sex discrimination occurs against women, it's just as unlawful to discriminate against a man because of his sex.

Sexual harassment at work still persists and there are continuing campaigns to raise awareness and prompt action to tackle it. A 2016 [TUC survey](#) shows that nearly two in three young women have experienced some form of sexual harassment at work, and a 2017 [BBC/ComRes survey](#) reports that 40% of women have experienced some form of sexual harassment in the workplace. A 2021 [TUC survey](#) found that around 7 in 10

disabled women surveyed about sexual harassment say they have been sexually harassed at work. [Read our guidance](#) on how employers should respond.

Our [2020 research on managing conflict](#) found that bullying and harassment are a serious problem in UK workplaces, although fewer than 5% reported experience of sexual harassment.

The UK legal position

In Great Britain, discrimination on the grounds of sex, [originally introduced by the Sex Discrimination Act 1975], is now contained within the Equality Act 2010.

The Equality and Human Rights Commission (EHRC) has published guidance on [sex discrimination](#) and the [Equality Act](#) including a [Code of practice on employment](#). Whilst not legally binding documents, the codes give important guidance on good practice and failure to follow them may be taken into account by tribunals or courts. CIPD members can find out more in our [Sex discrimination law Q&As](#).

Our [Brexit hub](#) has more on what the implications of leaving the EU might be for UK employment law.

Types of discrimination

Within the Equality Act 2010 there are a number of different types of discrimination which apply to the protected characteristics, including a person's sex.

Direct discrimination

This applies to all protected characteristics. It's treating someone less favourably than another person because of a protected characteristic that they have. For example, it's promoting a man rather than a woman because of their sex.

Indirect discrimination

Indirect discrimination occurs when:

1. a provision, criterion or practice is applied to all, **and**:
2. it puts a group with a protected characteristic at a disadvantage when compared with another group
3. an individual is put at a disadvantage
4. the employer cannot show it to be a proportionate means of achieving a legitimate

aim.

For example, if an employer requires all employees in a particular role to work full time. A female employee with children will suffer a disproportionate impact from this requirement because women are statistically more likely to have child-caring responsibilities. This requirement would be indirect sex discrimination if the employer cannot show that full-time working is essential.

Associative discrimination

This is treating someone less favourably because they associate with an individual who has a protected characteristic. Associative discrimination usually arises in connection with disability or sexual orientation discrimination. However, associative discrimination could arise in connection with sex discrimination, for example, treating a man less favourably because he supported a female colleague who was being discriminated against.

Perceptive discrimination

This is treating someone less favourably because it's perceived that they have a protected characteristic, whether they do or not. Perceptive discrimination rarely arises in sex discrimination claims..

Victimisation

Victimisation occurs when someone is treated less favourably because they have made or supported a complaint or raised a grievance under the Equality Act 2010. It also applies if it's thought that they have made a complaint. A comparator isn't required for a claim of victimisation. Post-employment victimisation can occur - for example, refusing to give a reference to someone who had made a complaint under the Equality Act 2010 - although the Act has some grey areas concerning post-employment victimisation.

Harassment

Harassment is 'unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual'. It includes harassment because of a person's sex and sexual harassment.

There are two types of harassment related to sex; both involve unwanted conduct that has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

- **Sexual harassment** involves unwanted conduct of a sexual nature. This must have an actual sexual content or connotation, for example making sexual remarks or jokes or making promotion decisions on the basis of sexual advances being accepted or rejected.
- **Sex-based harassment** is a separate form of harassment involving unwanted conduct that is related to an individual's sex or the sex of another person. This is not sexual in nature but is behaviour which is linked to sex; for example, in a female-dominated workplace, constantly telling derogatory jokes about male stupidity which a particular male employee finds offensive.

The law protects individuals from harassment while applying for a job, in employment and in some circumstances after the working relationship has ended (for example, in connection with the provision of a verbal or written reference).

Find out more in our [factsheet on workplace bullying and harassment](#).

Occupational Requirement

Where there is an Occupational Requirement to employ a person with a particular protected characteristic, certain very limited exceptions from the law are permitted covering selection, promotion and training. The employer must be able to show that there is a genuine need, taking account of the type of work. For example, certain hospital or prison work providing special care for one sex is subject to a 'reasonableness' test.

Positive action

Employers can take positive action, for example to address under-representation or other forms of disadvantage within the workforce. The provisions are complex and must be handled very carefully. Different provisions apply concerning positive action relating to recruitment and promotion. See [guidance from the EHRC](#).

Related issues

Gender reassignment and sexual orientation discrimination are protected separately under the Equality Act and covered in our [factsheet on sexual orientation and gender reassignment](#). CIPD members can see more detail in our [Sexual orientation discrimination law Q&As](#).

Equal pay between men and women is also included in the Equality Act 2010. CIPD members can see more detail in our [Equal pay law Q&As](#). From 2017, UK organisations with more than 250 employees are required to publish and report specific figures about

their gender pay gap. Find out more in our [Pay fairness and pay reporting factsheet](#).

Any unfavourable treatment of a woman because of her pregnancy, childbirth or [maternity](#) is unlawful and is likely to constitute pregnancy and maternity-related discrimination. There may also be an unfair dismissal claim. CIPD members can find out more in our [Maternity law Q&As](#).

The law currently gives women made redundant while on maternity leave the right to be offered a suitable alternative role in advance of their colleagues. A Bill to extend this protection for six months beyond maternity leave has been presented to the House of Commons in 2019 and 2020. This legislation if enacted, proposes to make it automatically unfair to make redundancy dismissals for pregnant women, those on maternity leave or who returned from maternity leave in the last six months unless the business is closing. However, the business minister, has indicated rather than supporting this Bill the government plans to introduce different legislation which would extend the requirement to offer an alternative role protection for six months after maternity leave but without further provisions.

Good employment practices

People professionals have a key role in creating fair and inclusive workplace cultures. As part of coherent [inclusion, diversity and employee engagement](#) strategies, employers should undertake thorough reviews or equality analyses of policies and working practices to remove unfair discrimination and bias. There's still a significant way to go until we can claim that all types of sex discrimination, including harassment, are not issues at work.

Our [viewpoint on gender equality](#) lists recommendations for employers, with additional information below.

Inclusion policy

Although there's no legal requirement to have a written inclusion and diversity policy, it's a good idea to produce and actively use one. In some discrimination claims, employers may have a defence if they can show that they took all reasonable steps to prevent the discrimination occurring. Having a comprehensive current policy, and recent relevant training will help employers to distance themselves from liability for acts such as harassment by an individual perpetrator employed by them. A policy also demonstrates the organisation takes its legal and moral obligations towards being a diverse and inclusive employer seriously. It can also encourage employees to treat others equally.

Communication and training

Employers should:

- Communicate a firm commitment to workplace inclusion and ensure equality and diversity policies and statements are easily accessible to all. Use a variety of communication methods and channels to do this.
- Ensure all employees understand their personal responsibility to treat colleagues with respect. Make it clear the organisation has a zero-tolerance approach to bullying, harassment and discrimination. Provide examples of the standards of behaviour required, what sex discrimination and harassment looks like, and the consequences of breaking the behaviour codes.
- Ensure staff know how to report instances of bullying, harassment or discrimination and feel able to do so. Deal proactively with all complaints of inappropriate behaviour swiftly, seriously and compassionately.
- Ensure line managers understand their role in promoting inclusion and are trained and confident to challenge any form of inappropriate behaviour. Work closely with managers to ensure they implement people management practices fairly and consistently, ensuring they provide evidence and reasoning for promotion and reward decisions.
- Work with employee networks, for example a gender network or resource group, to understand the specific issues in the organisation, how staff can be better supported, and work collaboratively with networks in communicating the importance of inclusion and diversity to the rest of the organisation.

Reviewing employment practices

Employers should:

- Assign senior level responsibilities for driving diversity issues, including a sponsor for gender inclusion and allocating appropriate resources.
- Ensure recruitment and selection processes are fair and not open to discrimination on the basis of someone's sex. For example, take care in drafting advertisements to avoid discrimination and stereotyping through language and images, and aim to attract candidates from diverse sources. Indicate if any genuine Occupational Requirements apply.
- Consider including a statement on flexible working in job adverts, signalling to

applicants that you're open to discussing how the job could be done flexibly from day one. Flexible working is likely to be made a day-one right in 2022 (as called for by the CIPD's [Flex From 1st](#) campaign), depending on the government's consultation on this which closes on 1 December 2021.

- Incorporate a diversity statement in every job advert. Have links to your organisation's inclusion and diversity webpage where people can find out more about the organisation's commitment, and information about employee resource groups, such as a gender network.
- Operate transparent and consistent performance management processes and check that career paths, and promotion and development opportunities are inclusive for all employees, regardless of their sex.
- Review policies and procedures, and terms and conditions of employment to ensure fairness and legal compliance, including flexible working practices and dress code. Involve your gender network in reviewing policies if you have one and keep the wording of policies and procedures gender neutral.
- Actively examine the reasons for gender imbalance at different levels of the organisation and across occupations, identifying the action needed to remove barriers to entry and progression for men and women. Use data from gender pay gap reporting and other people management processes to inform your approach. Our survey report [Gender diversity in the boardroom: reach for the top](#) explores HR practitioners' perspectives and offers practical strategies for improving women's representation. Listen to our [podcast on boardroom diversity](#).

Useful contacts and further reading

Contacts

[Acas - Discrimination, bullying and harassment](#)

[GOV.UK - Employers: preventing discrimination](#)

[Equality and Human Rights Commission - Sex discrimination](#)

[Government Equalities Office](#)

Books and reports

ACAS. (2017) [Sex discrimination: key points for the workplace](#). London: Acas.

FAWCETT SOCIETY. (2020) *Sex and power 2020* (online).

GOVERNMENT EQUALITIES OFFICE. (2018) *Dress codes and sex discrimination: what you need to know*. London: GEO.

RUBENSTEIN, M. (2021) *Discrimination: a guide to the relevant case law*. 34th ed. London: Michael Rubenstein Publishing.

STRATEGY& (2021) *Women in work 2021: the impact of COVID-19 on women in work*. PwC.

Journal articles

ELY, R. and PADAVIC, I. (2020) What's really holding women back? *Harvard Business Review*. Vol 98, Issue 2, pp58-67. Reviewed in *In a Nutshell*, Issue 95.

KIRTON, H. (2017) Gender equality at work has barely improved in 10 years, report finds. *People Management* (online). 13 October.

OWEN, J. (2019) Workplaces are sexist, claim female managers and HR professionals. *People Management* (online). 20 June.

CIPD members can use our online journals to find articles from over 300 journal titles relevant to HR.

Members and *People Management* subscribers can see articles on the *People Management* website.

This factsheet was last updated by Lisa Ayling, solicitor and employment law specialist, and by Jill Miller.