



Matt Gingell™

Making sense of employment law

Sex discrimination: A guide for employees

DIRECT DISCRIMINATION

It's unlawful for an employer to discriminate directly by treating a job applicant or employee less favourably because of their sex.

Supposing two applicants for a job have similar qualifications and experience, but the prospective employer chooses a man over a woman because they think the man would be a better fit? This is likely to be direct sex discrimination.

Another example of possible direct sex discrimination could be if a woman is given the same performance ratings as her male colleague but, unlike her male colleague, is put on a performance improvement plan.

INDIRECT DISCRIMINATION

It's unlawful for an employer to discriminate against by applying a provision, criterion or practice that disadvantages job applicants or employees of a particular sex without objective justification. The individual has to be disadvantaged, personally, too.

An example of this type of discrimination could be, for instance, where an employer has a policy not to allow employees to work part-time hours. This could be indirectly discriminatory on the basis that the policy of not allowing staff to work part-time disadvantages women as more women than men have child caring responsibilities.

HARASSMENT

Harassment related to sex is prohibited. This happens where a person engages in unwanted conduct related to sex and the conduct has the purpose of either violating the other person's dignity or creates an intimidating, hostile, degrading, humiliating or

offensive environment for them. An example could be refusing to assist a woman carrying heavy files when a man would normally be assisted.

Sexual harassment is prohibited. This occurs where a person engages in conduct of a sexual nature and the conduct has the purpose or effect of violating the other person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them. Examples could include unwelcome sexual advances, sexual jokes, emails containing sexual language or emails with pornographic photos.

Less favourable treatment for rejecting or submitting to harassment is also prohibited.

VICTIMISATION

Individuals must not be victimised because they have alleged discrimination, brought a discrimination claim or given evidence or information in relation to proceedings.

BRINGING A CLAIM

Job applicants or employees who believe they have suffered sex discrimination could consider bringing a claim in the employment tribunal. Prior to issuing a claim the job applicant or employee would be required to follow the Advisory Conciliation and Arbitration Service (Acas) early conciliation process. In certain cases, it may also be appropriate to have raised an internal grievance beforehand.

Any claims must normally be filed within three months (less a day) from when the discriminatory occurred. The time limit is subject to the early conciliation rules for extending time.

This guide is intended for guidance only and should not be relied upon for specific advice.
The law is also subject to frequent change. © Matt Gingell 2017

For Employment Law Advice Contact