

BRIEFING NOTE 22 – DIFFERENT TYPES OF SEX DISCRIMINATION

1.0 Legal Duty

1.1 Under the Equality Act 2010 the University has a legal duty to:

- Ensure that it makes every reasonable effort to promote equality for all irrespective of their sex;
- The removal of unlawful sex discrimination
- The promotion of good relations between people of differing sexes.

2.0 Different Types of Sex Discrimination

2.1 Detailed below are explanations of the main types of sex discrimination and examples of how this applies to the workplace sourced from the Equality & Human Rights Commission¹ and ACAS².

2.2 Direct discrimination

This happens when, because of your sex, someone treats you worse than someone of the opposite sex in a similar situation. For example:

- An experienced female security guard applies for a job at her local shopping centre. She attends an interview, but is not successful. The feedback from the company simply said she was not a suitable match for the job, but did not explain the reasons. She later discovers that several completely inexperienced male applicants were offered jobs, that the

¹ Source: the Equality & Human Rights Commission advice and guidance on sexual orientation discrimination <https://www.equalityhumanrights.com/en/advice-and-guidance/sexual-orientation-discrimination#h1> and Equality Act 2010 Code of Practice

<https://www.equalityhumanrights.com/sites/default/files/employercode.pdf>

² Source: ACAS <http://www.acas.org.uk/media/pdf/d/2/Sex-discrimination-key-points-for-the-workplace.pdf>

security team has always been all male, and that the company felt she would not fit in because she is a woman. She writes a letter to the company to complain, alleging sex discrimination.

2.3 Indirect discrimination

This happens when an organisation has a condition, rule, policy or practice that is applied equally to staff of both sexes has the effect of disadvantaging a particular group of individuals because of their sex. For example:

- An employer decides to change shift patterns for staff so that they finish at 5pm instead of 3pm. Female employees with caring responsibilities could be at a disadvantage if the new shift pattern means they cannot collect their children from school or childcare.

Indirect sex discrimination can be permitted if the organisation or employer is able to show that there is a good reason for the discrimination. This is known as objective justification. This is legal but the reason must be robust and based on a meaningful rationale.

2.4 Harassment

The Equality Act³ prohibits three types of harassment.

- **Harassment related to a relevant protected characteristic.** This is known as 'unwanted conduct' related to a person's sex that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person. This form of harassment also applies to the other protected characteristics.

For example:

- During a training session attended by both male and female workers, a male trainer directs a number of remarks of a sexual

³ Source: Equality Act 2010 Code of Practice
<https://www.equalityhumanrights.com/sites/default/files/employercode.pdf>

nature to the group as a whole. A female worker finds the comments offensive and humiliating to her as a woman. She would be able to make a claim for harassment, even though the remarks were not specifically directed at her.

- **Sexual harassment - 'Unwanted conduct' of a sexual nature.** This has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person. This can cover verbal, non-verbal or physical conduct including unwelcome sexual advances, touching, forms of sexual assault, sexual jokes, displaying pornographic photographs or drawings or sending emails with material of a sexual nature. For example:
 - A University lecturer makes sexual jokes to one of his female students and implies that she will pass her exams if she sleeps with him.

- **Less favourable treatment of a worker because they submit to, or reject, sexual harassment or harassment related to sex or gender reassignment.** For example:
 - A shopkeeper propositions one of his shop assistants. She rejects his advances and then is turned down for a promotion which she believes she would have got if she had accepted her boss's advances. The shop assistant would have a claim for harassment.

Harassment can never be justified. However, if an organisation/employer can show it did everything it could to prevent people who work for it from behaving like that, the individual harasser could also be liable. The individual manager and employer would need to provide appropriate evidence to demonstrate the employer has tried to prevent harassment taking place. If they cannot provide this the organisation/employer could be held liable for the harasser's actions.

2.5 Victimisation

This is when you are treated badly because you have made a complaint of sex discrimination under the Equality Act. It can also occur if you are supporting someone who has made a complaint of sex related discrimination. For example:

- A male colleague is helping a female co-worker with their claim of sex discrimination and makes a statement at an Employment Tribunal. The male colleague is then sacked or treated badly by their employer. This is victimisation because of the individual's sex.

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