



What is Discrimination?

Introduction

The most common form of discrimination is where a person is treated less favourably because of a certain characteristic. This is often referred to as direct discrimination. However, discrimination laws often cover two other forms of discrimination known as indirect discrimination and a failure to make a reasonable adjustment. This guide gives an overview of these three forms of discrimination and looks at the most common characteristics that attract protection.

Direct Discrimination

Direct discrimination is the form of discrimination that most people are aware of. It covers situations where a person suffers a detriment because they have a particular characteristic. For example, a bar owner may refuse entry to a man because he is black. An employer may fail to shortlist a woman for interview because she has a disability even though her disability does not impact on her ability to do the job. A landlord may refuse to rent a flat to a man because he is gay.

Direct discrimination covers cases of bullying or harassment. Thus a woman who is sexually harassed at work will be a victim of direct sex discrimination and racial abuse or harassment could constitute direct race discrimination.

In many cases the person doing the discriminating will do so because they have relied upon a stereotype or made an assumption about a particular class of people. Thus, an employer could assume that women as a group lack the physical strength to do a particular job without considering the actual strength of particular applicants. Or, an employer could assume that people with a certain ethnic origin are unreliable. In both cases the employer has applied a stereotype rather than looking at the applicant as an individual person.

Under the discrimination laws of most jurisdictions all direct discrimination on a prohibited ground is unlawful unless there is a specific statutory exemption. For example, it is usual to have exemptions relating to the private sphere. Thus, it would be lawful to advertise and employ a woman to provide intimate care to women patients. Another common exception is for cultural authenticity. For example, it would be lawful to employ Indian waiters and waitresses in an Indian restaurant.

Indirect Discrimination

Indirect discrimination occurs where an employer or other person applies a condition or requirement that has a disproportionate impact on people with a certain characteristic and that condition or requirement is not justified.

One example of indirect sex discrimination is a condition that all applicants for a post must be over 6ft tall. This would have a disproportionate impact on women. Unless the employer can demonstrate that there is a good reason for the height restriction the condition would amount to indirect sex discrimination.

An example of potential indirect race discrimination is that all applicants for a post must have very good English. Such a requirement would have a disproportionate impact on certain ethnic groups and, therefore, unless the employer could demonstrate a good reason why very good English is required the condition could amount to indirect race discrimination.

A common employment requirement that can amount to indirect sex discrimination is the condition that a job must be performed on a full-time basis. As women often find it harder to work full-time due to their child care commitments, the condition must be justified if an employer is to avoid a finding of indirect sex discrimination.

An example of indirect age discrimination is where an employer requires an applicant to pass a physical fitness test although physical fitness is not a requirement of the job. A job requirement of 10 years experience could also amount to indirect age discrimination if less experience would be adequate for the job.

Indirect discrimination is a very important form of discrimination because it can create structural unfairness in the way in which a society is organised thereby erecting barriers to equality.

Reasonable Adjustment

The requirement to make a reasonable adjustment is way of combating discrimination that most commonly applies in the context of disability discrimination.

In an employment context employers are placed under a reasonable obligation to change a work practice or a physical feature of premises occupied by them, which places a disabled person under a substantial disadvantage. For example, where a job requires occasional driving that could be undertaken by another employee it would be reasonable for the employer to adjust the job specification so as to employ a disabled person who cannot drive, but can otherwise perform the duties of the job.

In the context of the supply of goods and services, suppliers are required to adapt their practices to accommodate the requirements of disabled people. In a restaurant this could involve menus with large print for customers who are visually impaired or reading out the menu to customers with no sight.

The obligation to make changes is a reasonable one and the detriment to the disabled person must be balanced against the cost and impact on the employer or provider of making the changes.

Protected Characteristics

In most jurisdictions a variety of characteristics are covered by discrimination laws. What is covered by each characteristic will depend on how the laws are drafted. However, some possibilities are set out below.

Sex discrimination would usually cover men, women, marital status and transsexual people.

Disability discrimination legislation usually covers a person who has a physical or mental impairment which has a substantial and long term impact on the individual's ability to carry out normal day-to-day activities. Examples could include cancer, diabetes, multiple sclerosis, heart conditions, hearing or sight impairments, mobility difficulties, mental health conditions or learning difficulties.

Religion and belief would cover all major religions including dominations or sects within religions plus other religions such as Rastafarianism. Belief would normally include philosophical beliefs such as humanism, but not other beliefs such as support for a political party.

Race discrimination would normally cover race, colour, nationality or national or ethnic origins.

Sexual orientation would cover people who are gay, lesbian or bisexual. It would also cover discrimination on the basis of perceived sexual orientation or the sexual orientation of friends or associates.

Age discrimination would cover less favourable treatment because someone is too old or too young.