

## Equal Opportunities at Work, Promoting Diversity: Protected Characteristic Discrimination in Employment Policy.

Employee diversity attracts a broader market and improves team problem solving skills through a wider field of interests, (and therefore) skills, knowledge and viewpoints.

Enforcing equal opportunities at work, to promote diversity, also encourages a happier, more motivated workforce, leading to improved brand value, productivity and recruitment prospects.



'Equal opportunities at work' is achieved by considerate (non-discriminatory) policies governing all employment processes from recruitment to redundancy. Combating discrimination in Employment Policy is not just good practice; it is also against the law to discriminate against anyone due to a protected characteristic.

### ◆ Protected Characteristics by Law ([The Equality Act 2010](#))

It is against the law to:

- Directly discriminate against (treat less favourably, unless objectively justified) anyone due to a protected characteristic; actual or perceived - **age, race, religion, belief, disability, sex, gender reassignment or sexual orientation**, or **pregnancy, maternity, marriage or civil partnership (but not being single)**.
- Directly discriminate against anyone due to **age, race, religion, belief, disability, sex, gender reassignment or sexual orientation** of someone they are associated with.
- Indirectly discriminate against (have a policy that may apply to everyone but treats less favourably, unless objectively justified) anyone due to **age, race, religion, belief, disability, sex, gender reassignment, sexual orientation, marriage or civil partnership (but not being single)**.

### **Understanding 'Objectively Justified'**

Objective justification for treating someone differently due to a protected characteristic occurs only if there is a legitimate aim and there is no other reasonable action that can achieve that aim. Reasonable actions include adjustments to working arrangements (e.g. providing flexible working hours) or physically to the workplace (e.g. replacing steps with ramps or providing adapted equipment). Some objective justification examples follow:

**Age:** If you intend the employee to sell alcohol unsupervised, it is objectively justified to consider for hire only those over 18 years of age, as it would be illegal to do otherwise. Note: Limiting the age of applicants for the aim of employing a more dynamic or more mature person would be discriminatory.

**Sex:** If you intend the employee to attend a female changing room, possibly in view of ladies changing, it is objectively justified to consider for hire only females as the customers could feel uncomfortable otherwise. Note: Only hiring a certain sexual orientation to avoid possible customer discomfort would be discriminatory.

**Disability:** It is objectively justified to consider for hire only those capable of handling heavy goods if the job requires a lot of heavy manual handling. Note: Disabilities that do not affect abilities intrinsic to the job cannot be used to treat the prospective or current employee less favourably.

**Positive action:** It is lawful to encourage application of people due to a protected characteristic if they are currently disproportionately under-represented in your workforce or that role; however the advertising and hiring process should not exclude people due to not having that specific protected characteristic.

As you can see, cases of objective justification are very narrow. As each case brought to court or tribunal are strictly interpreted on an individual basis; if there is any doubt whether you have objective justification for differential treatment of anyone due to a protected characteristic, seeking professional advice is advised.

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## ◆ **Employment Policies and Processes: Recruitment to Redundancy**

Now to the specific processes of employment policy: Below runs through some of the important information that should be considered when reviewing or writing company employment policy to avoid discrimination and promote equal opportunities from recruitment to firing; advertising, interviews, hiring, wages, training and redundancies.

### ***Recruitment Advertising***

**Language for Job descriptions - requirements and role names:** In all recruitment advertising, language should be chosen very carefully. Protected characteristic specific words (e.g. *handyman* or *junior* executive) are easy to eliminate to avoid discrimination but descriptors which can imply discrimination should also be avoided (e.g. *mature* or *dynamic* that may portray discrimination against younger or the older applicants respectively).

**Advert Accessibility:** A broad range of advertising media should be used to ensure non-discriminatory access. For examples, unless objectively justified, placing adverts only in Christian publications would discriminate access due to religion or using only visual advertisements would discriminate access due to disability.

### ***Application and Interview Arrangements***

**Requested Details and Diversity Forms:** Collected details of protected characteristics that are not objectively justified should either be discontinued or kept anonymous and separate to the main application for diversity evaluation only (e.g. on a separate diversity form kept by the HR department). Unnecessary requests for dates and periods should be avoided to reduce the chance of discrimination due to perceived age. Where UK qualifications are required, overseas equivalents should be openly accepted so as not to discriminate due to race.

**Adaptability:** The application process should allow applicants to request reasonable adjustment to the interview process to allow for a disability, where possible reasonable requirements should be met but not used to treat that candidate less favourably, to avoid discrimination due to disability. Accessibility and usability of the application itself should also be considered with regard to different disabilities.

### ***Selection Process for Hiring, Promotion, Training and Learning Opportunities***

**Positive Action:** Selection of a candidate for hiring, promotion, training and learning opportunities may take into consideration any protected characteristic that the company can prove is disproportionately under-represented by the company's current workforce, or in the role being assigned. However, this positive action may only be used as a tie-breaker for equally top contenders for a position and not in any other part of the selection process.

### ***Equal Pay, Terms and Conditions***

**Equality:** A company should give equal pay, terms and conditions for jobs that are either the same, broadly similar, or of equal or similar value. It is up to the company to provide objective justification evidence for any differences.

**Complaints:** A complaint about wage difference can be taken to tribunal up to six months (or to civil court up to six years) -after an employment has ended and the claim can include up to six years of back pay (including sick pay, holiday pay, overtime etc.).

**Pay secrecy:** It is unlawful to restrict employee discussion about possible pay differences but an employer can require that employees do not share their pay rates with people outside the company.

### ***Redundancies***

A protected characteristic cannot be used as criteria for selecting employees for redundancy. Criteria for redundancy selection may have to be adjusted to ensure that certain protected characteristics are not discriminated against by proxy. For example, if absence and sick leave is being used, absence due to a known disability should not be included to avoid discrimination due to disability.

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### ***Action, Results and Review***

It is easy to forget that the job of promoting diversity and equal opportunities is not finished at just writing the employment policy and processes. The policies and processes cannot just sit hidden in a book on a shelf; the circle of effective 'communication/training, action and auditing' needs to be implemented.

Necessary employees need to be effectively trained/told about changes to action them appropriately. The policy and processes should be audited regularly: Are policies being followed? Is equal pay being achieved? Is the company promoting diversity and equal opportunities? Etc. Audits may lead to policy/process improvement or retraining of specific staff, or may prove that the set up is currently working. Appropriate actions indicated by the audit should be made and the chain starts again with communication/training of necessary staff about any amendments and communication of the results achieved by the company. A factsheet to come soon will cover this 'change management' in more detail.

Holges Consulting provide support and advice for HR and Health & Safety. For assistance on this factsheet and other HR or H&S matters please contact: [amanda@holgesconsulting.co.uk](mailto:amanda@holgesconsulting.co.uk)

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