

Conduct of Employment Agencies and Employment Businesses Regulations 2003

This piece of legislation was introduced by the Department of Business, Innovation and Skills (BIS) to provide workers and hirers with minimum standards they could expect from private sector recruitment agencies and businesses.

The regulations are designed to apply to workers who are controlled by the client, which means that not only do the vast majority of contractors simply not require the protection which the regulations bring, but also as skilled professionals in business in their own right are not controlled by their clients so technically the regulations will not apply.

Discrimination

Fairness at work and good job performance go hand in hand. Tackling discrimination helps to attract, motivate and retain staff and enhances an organisation's reputation as an employer. This guide gives employers and managers practical help in complying with the Equality Act 2010 and in creating a fair working environment in which no one is put at a disadvantage because of age, ethnicity, religion or belief.

What the law says

- 1.1 Religion or belief is defined as: – any religious belief, provided the religion has a clear structure or belief system. Denominations or sects within a religion can be considered a protected religion or religious belief. Appendix 2 provides a list of commonly practised religions in Britain. – a philosophical belief
It is as unlawful to discriminate against a person for not holding a particular (or any) religious or philosophical belief as it is to discriminate against someone for holding a religious or philosophical belief. Discrimination can occur even where both the discriminator and the person being discriminated against hold the same religious or philosophical belief.
- 1.2 **Direct discrimination** means that workers or job applicants are treated less favourably than others because they hold, are perceived to hold, or do not hold a particular (or any) religious or philosophical belief, because of their age (too old or too young) or ethnicity. Employees are also protected from direct discrimination which occurs because they associate with someone who holds or does not hold a particular religious or philosophical belief.
- 1.3 **Indirect discrimination** occurs when an organisation has practices, policies or procedures which, although they are applied to everyone, have the effect of disadvantaging people of a particular age, ethnicity, religion or belief (or people without a religion or belief). Indirect discrimination will not be unlawful if it can be justified. This means you must show that there is a legitimate aim (i.e. a real business need) and that the practice is proportionate to that aim (i.e. necessary and there is no alternative less discriminatory means available).
- 1.4 **Harassment** is “unwanted conduct related to a relevant protected characteristic, such as religion or belief, 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 may involve nicknames, teasing, name calling or other behaviour which may not be intended to be malicious but nevertheless is distressing.
- 1.5 An employee can make a complaint against their employer where they are harassed by someone who doesn't work for that employer such as a customer, client or passenger. As an employer, once you are aware of this unwanted behaviour you should take reasonable and proportionate action to address the issues.
- 1.6 Victimisation is when an individual is treated detrimentally because they have made a complaint or intend to make a complaint about discrimination or harassment or have given evidence or intend to give evidence relating to a complaint about discrimination or harassment. They may become labelled 'troublemaker', denied promotion or training, or be marginalised by their colleagues. You should make staff aware that they must not penalise any individuals who make a complaint of discrimination. This

applies to all staff, including those who are the subject of a complaint, mentioned as a witness, asked to give relevant evidence, or are supportive of the alleged discrimination.

1.7 Discrimination, harassment or victimisation following the end of a working relationship covers issues such as references either written or verbal.

There is a sound business case for eliminating discrimination in the workplace. Employees who are subjected to discrimination, harassment or victimisation may: be unhappy, less productive and demotivated, resign, make a complaint to an Employment Tribunal. If employees are subjected to discrimination, harassment or victimisation this may affect an organisation in terms of: damage to reputation both as a business and as an employer, cost of staff leaving and consequent recruitment and training, cost of compensation if they take a claim to an Employment Tribunal – there is no upper limit to the amount of compensation an organisation may be ordered to pay

Where it is reasonable to do so, you can adapt your methods of recruitment so that anyone who is suitably qualified can apply and attend for selection. Some flexibility around interview/selection times allowing avoidance of significant religious times, for example Friday afternoons, Sundays or periods of fasting, is good practice. In very limited circumstances it will be lawful for employers to specify that job applicants must have, or must not have, a particular protected characteristic under the Equality Act 2010 (e.g. they might specify that applicants must be Muslim, or must be female). This is known as an occupational requirement. Where you believe an occupational requirement applies to a post, this should be made clear in the advertisement. The reasoning should also be explained in any application pack and during the selection process. The Employment Rights Act 1996 provides for those working in the retail or betting trades to opt out of Sunday working by giving their employer three months notice of their intention to stop working on Sundays. This does not apply to those working only on Sundays.