

Religious Discrimination in Employment: What's it all about?

It is an unfortunate reality of life that many people – especially Muslims – experience discrimination at work based on their religion; a recent Home Office survey found that more than 50% of Muslims reported frequent unfair treatment from managers and colleagues.

The coming into force of the Employment Equality (Religion or Belief) Regulations 2003 in December last year should therefore be welcomed, since these Regulations now make discrimination on the grounds of an individual's religion or belief against the law in employment and vocational training. This covers the full spectrum of the employment relationship, from recruitment and interviews, to pay, terms and conditions of employment, training, promotion and dismissal, and the provision of references.

It is quite obvious that discriminatory conduct cannot be tackled by a simple ban alone, and this is recognised and dealt with in the Regulations. Obviously there is a provision relating to direct discrimination – where an individual is treated less favourably than another because of their religion; however our society has thankfully moved on from the days when such overt discrimination was common place, yet individuals still feel that there are various obstacles in their paths which hinder their progress.

This is where the second provision – Indirect Discrimination – comes to the fore. If an employer has a rule or policy which applies to everyone but which in practice disadvantages members of a particular religion, it will amount to indirect discrimination. A classic example is where an employer has a uniform policy that women must wear knee length skirts. The only defence available to an employer is to show that the rule is in place to meet a legitimate aim, and that no other less damaging alternative would meet that aim.

Often we find that although we may not actually be discriminated against at work, we may be the subject of jokes and teasing related to our religion from our colleagues. The Regulations therefore make provisions for harassment based on a person's religion to also be outlawed. Significantly, this could be a one off incident or a general culture at work; what is important is that it has the effect of violating a person's dignity, or creates an intimidating, hostile or offensive environment for that individual.

The Regulations also acknowledge that outlawing certain treatment now cannot make up for years of discrimination in the past. Provisions are therefore made for Positive Action, where employers can take positive steps to redress previous inequalities in the workplace. They can advertise vacancies in the ethnic press to attract individuals from particular religions which are underrepresented within their workforce, and organise training courses so that individuals are armed with the skills required for promotion. Obviously selection for promotion etc. must still be on the basis of merit alone, but these measures – which would otherwise be discriminatory – can go some way to help those religious groups who have suffered in the past.

However the most significant change as far as Muslims are concerned, is the fact that employers are required to make reasonable adjustments to accommodate religious practices at work. Muslims can now ask for prayer facilities, or for flexible working time so they can attend Jummah prayers. A request can only be refused if it would cause an undue financial or business

burden on an employer. It would therefore be unlikely that a large company with many vacant meeting rooms could legitimately refuse a Muslim employee's request that they be allowed a quiet area in which to pray; on the other hand a small company operating out of two rooms would be justified in refusing, as they would not practically be able to accommodate the request. However they would then have to consider other alternatives, such as allowing the individual to attend a mosque to pray, if one is located nearby. These provisions can affect a whole range of areas, from time off for religious obligations and festivals, including Eid and Hajj, to dietary requirements at work.

It is changes like these that are likely to make the most difference in practice, as individuals will no longer be forced into making a choice between their careers and their religious obligations. It is therefore essential that everyone is aware of what the Regulations mean in practice, as merely opening a dialogue with employers is often all that is required to reach agreement on having religious needs met at work.