

The Law

It is unlawful to discriminate against employees, job seekers or trainees because of their sexual orientation. There are several sources, in law, that underpin workplace rights in respect of sexual orientation, which include European and domestic (UK) law and case law from each of these jurisdictions. The key legislative instrument for reference purposes is the Equality Act 2010.

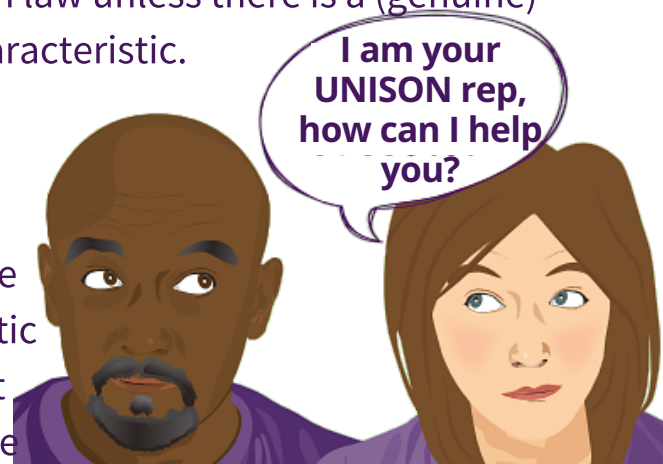
The Act protects and applies equally to people who are discriminated against because they are:

- • A lesbian, gay man, heterosexual or bisexual
- • An employee associated with someone who is a lesbian, gay man, heterosexual or bisexual
- • An employee who is perceived, correctly or incorrectly to be lesbian, gay heterosexual or bisexual
- • Subjected to comments and behaviours regarding sexual orientation which they find offensive

There are 4 types of discrimination covered by the legislation:

Direct discrimination – where the perpetrator/employer treats someone less favourably directly because of their sexual orientation; the sexual orientation of someone with whom they are associated; or how their sexual orientation is perceived. Generally speaking direct discrimination cannot be justified in law unless there is a (genuine) occupational requirement under this protected characteristic.

Indirect discrimination – whereby a provision, criterion or practice (PCP) is applied equally to a group of employees or job applicants, which has the effect of placing those with a protected characteristic at disadvantage in comparison to those who do not share the characteristics and the employer is unable



to justify this. In these circumstances the individual must show:

- Their personal disadvantage / effect
 - How they are disproportionately disadvantaged because of their sexual orientation.
- This type of discrimination can be justified if the employer can show that the PCP is ‘a proportionate means of achieving a legitimate aim’. This might be a good business reason, although cost alone may not be enough. The action must be proportionate, appropriate and necessary. It requires weighing the employer’s need against the discriminatory effect. The employer must also show that they have considered other ways of achieving their aim.

Harassment – unwanted conduct related to the relevant protected characteristic, of a sexual nature ‘with the purpose of violating the person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment ‘for the person. This may include threats, jokes, insults, ‘outing’ someone, excluding them or asking inappropriate questions. Witnesses to such harassment can also complain.

Victimisation – where someone is caused to suffer a detriment because they have:

- Made a complaint about discrimination
- Supported someone else’s complaint
- Given evidence in respect of it
- Raised a grievance or started Employment Tribunal proceedings
- Or is suspected of having done one of the above

The law protects employees in respect of recruitment, contractual terms, promotion, training opportunities and dismissal.

If you believe that you have been discriminated against in any of these ways because of your sexual orientation or that of someone else contact your UNISON Branch for advice as soon as you can. Legal claims must be initiated within 3 months less 1 day of the event about which you are complaining. In the case of ongoing discrimination time will run from the date of the most recent event. The employer and perpetrator can both be liable for the acts described.