



Topics covered: What is Discrimination? / Race & Sex Discrimination

What is Discrimination?

The Law defines four kinds of discrimination:

- > Direct Discrimination
- > Indirect Discrimination system
- > Harassment
- > Victimisation

Direct discrimination

A person is directly discriminated against when they are subjected to less favourable treatment by another because of a protected characteristic. 'Less favourably' means less favourably than other employees are, or would be, treated. For example, an applicant is not short-listed for a job because her name suggests that she is black African. In fact it is her husband's name and she is British white.

Indirect discrimination

A person is indirectly discriminated against if an employer applies a 'provision, criterion or practice' which is discriminatory because of a protected characteristic, e.g. a job advert which specifies applicants must have GCSEs because this disadvantages applicants from other countries not having the GCSE qualification. A 'provision, criterion or practice' is a working condition or rule that, even though applied to the whole workforce, disadvantages one (or more than one) employee(s), unless it can be shown that the condition was a proportionate way of achieving a justifiable aim; for example, to reduce inequality in the workplace.

Victimisation

Victimisation occurs where a person is treated less favourably than others because the person has:

- > Tried to make or have a complaint heard under the Discrimination Law;
- > Has given evidence in support of a complaint under the Discrimination Law;
- > Has raised a complaint alleging that an act prohibited by the Discrimination Law has occurred.

Harassment

A person may make a claim that they have been harassed if they have been subjected to unwanted conduct in relation to their race or sex which violates the dignity of the individual or creates an intimidating, hostile, degrading, humiliating or offensive environment for that person.

What does the discrimination law apply to?

The Law prohibits acts of discrimination in areas including paid and voluntary work, recruitment, education, goods and services, clubs, professional bodies and the management of premises.

Who is liable for discriminatory acts?

Not only will the employee who committed the alleged discriminatory act be potentially liable, an employer may be liable for a discriminatory act of an employee committed in the course of employment, whether or not the employer was aware of it.

How can an employer guard against allegations of discrimination?

A possible defence for the employer is to show that it had an equal opportunities policy in place, that it trained its employees on discrimination and equal opportunities and showed zero tolerance towards acts of discrimination.

Race & Sex Discrimination

THE DISCRIMINATION (JERSEY) LAW 2013

The Discrimination Law came into force on 1st September 2014. It initially only applied to race. On 1st September 2015, it was extended to sex and other related characteristics.

Discriminating against a person in the workplace and in other areas is now illegal.

Complaints may be made to the Jersey Employment and Discrimination Tribunal within 8 weeks of the alleged discriminatory act. The maximum award is £10,000 which includes a maximum of £5,000 for hurt or distress.

The definition of race as a protected characteristic includes colour, nationality, national origin (i.e. from Jersey) and ethnic origin. Since 1st September 2015 sex, sexual orientation, gender reassignment, pregnancy and maternity are protected characteristics.

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