

Equal Opportunities

Dealing with discrimination



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There are many situations where you could be discriminated against, for example because of your age or your sex or because you are gay or lesbian. This leaflet explains the laws that protect you from discrimination, and what you can do if you are discriminated against.

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The leaflets in this series give you an outline of your legal rights. They are not a complete guide to the law and are not intended to be a guide to how the law will apply to you or to any specific situation. The leaflets are regularly updated but the law may have changed since this was printed, so information in it may be incorrect or out of date.

If you have a problem, you will need to get more information or personal advice to work out the best way to solve it. See 'Further help' on page 23 for sources of information and advice.

When discrimination can happen

Discrimination happens when someone is treated worse (in legal terms, 'less favourably') than another person in the same situation. Discrimination may happen in many situations:

- **At work** – for example, a gay person may be refused a job without good reason, or be harassed by other employees. A woman may have a problem about equal pay, or the way she is treated if she is pregnant or has a child to care for.
- **When you are buying or using goods and services** – for example, a person in a wheelchair may be told they can't go into a restaurant because their wheelchair takes up too much space.
- **When you are buying or renting somewhere to live** – for example, a landlord may refuse to let their flat to a Muslim person.
- **At a school or college** – for example, a school may treat a black child differently from a white child when deciding whether to exclude (remove) them.

You may suffer discrimination for various reasons. The protection you have in law depends on why you were discriminated against. The law gives you the right to go to an employment tribunal or to court if you have been treated unfairly because:

- of your race;
- of your sex;
- of your religion or belief;
- you have a disability;
- of your age;
- you are gay or lesbian; or
- you are a transgender person.

You may get compensation for loss of earnings or if your feelings have been hurt, depending on the kind of discrimination you've suffered. Also, taking an organisation to a tribunal or court may improve the way it behaves towards other people in future.

This leaflet:

- explains how the law on equal opportunities and anti-discrimination works, and what types of discrimination you are protected from;
- looks in more detail at the laws on discrimination because of sex, sexual preference, religion or belief, and age;
- explains what you can do if you have been discriminated against.

Separate Community Legal Advice leaflets, 'Racial discrimination' and 'Rights for disabled people', deal with those things in more detail.

Sometimes a person may be discriminated against for more than

one reason. If you think you are in this position, you may need to get advice about the best course of action. You can get advice from:

- a trade union (if you belong to one);
- a law centre;
- a Citizens Advice Bureau; or
- a solicitor.

See 'Further help' on page 23 for more about where to get advice.

Types of discrimination

The law on equality talks about two types of discrimination:

- Direct discrimination, which is when you are treated less favourably because, for example, you are a woman, or of a certain age.
- Indirect discrimination, which can happen where there are rules or conditions, policies or practices at work that apply to everyone but disadvantage one group of people more than others without a good business reason. For example, a company rule that says employees must do night shifts could disadvantage women who have children to care for.

In certain cases, discrimination is allowed. For example, an actor may have to be of a certain age for a particular role. For more about when

employers are allowed to discriminate:

- because of your sex – see page 5;
- because you are gay or lesbian – see page 12;
- because of your religion or belief – see page 13; and
- because of your age – see page 16.

Harassment

Harassment is unwanted behaviour that violates your dignity (is humiliating) or creates an intimidating, hostile, degrading, humiliating or offensive environment. Harassment at work that is related to sex, race, disability, sexual preference, religion or belief, age or because you are transgender is unlawful (illegal).

Harassment may be:

- targeted at you because, for example, you are gay or hold certain religious beliefs; or
- part of the general culture in your workplace, which allows anti-gay or religious jokes and teasing.

Harassment does not have to be deliberate to be unlawful. Unintentional harassment may be unlawful if what happened could be reasonably considered to have caused offence.

If your colleagues at work harass you and the employer does nothing

about it, your employer (as well as the staff) may be held responsible.

Also, your employer may be held responsible if you are repeatedly harassed at work by someone other than a colleague, such as a client or customer, and your employer knows about the harassment but does nothing about it.

Victimisation

Victimisation is when your employer treats you less favourably because you:

- have complained about being discriminated against;
- are helping a colleague who is complaining; or
- have been called as a witness in disciplinary proceedings.

Victimisation is unlawful in the same way discrimination is.

Also, an employer must not victimise you after you have left the job, for example by refusing to give you a reference because you complained of discrimination.

Sex discrimination

Two laws aim to make sure that men and women are treated equally:

- The Sex Discrimination Act 1975 (as amended 1986) makes it unlawful to discriminate against men or women in employment, education, housing or providing

goods and services, and also in advertisements for these things. It's also against the law, but only in work-related matters, to discriminate against someone because they are married or in a civil partnership.

- The Equal Pay Act 1970 (as amended 1984) says that women must be paid the same as men when they are doing the same (or broadly similar) work, work rated as equivalent under a job evaluation scheme, or work of equal value. European law also says that women and men should receive equal pay for equal work. For more about this, see 'Equal pay' on page 7.

Applying for a job

The Sex Discrimination Act makes it unlawful for an employer, when filling a job vacancy, to discriminate because of your sex or because you're married. The law covers three areas:

- When deciding who should be offered the job. This includes the job description, the 'person specification' (the description of the skills, experience and qualifications needed to do the job), the application form, the short-listing process, interviewing and final selection.
- The terms and conditions of the job, such as pay, holidays or working conditions.

- Deliberately not considering your application.

The law covers contract and part-time workers as well as full-time or permanent staff.

An example of direct sex discrimination would be refusing to consider you for a job just because you are a woman or because you are a man (for example, refusing to consider a man for a job as a secretary).

An example of indirect sex discrimination would be saying, without good reason, that everyone applying for a job must be six feet tall. Because fewer women than men are six feet tall, a woman would be less likely to get the job.

Treating a married person less favourably than a single person of the same sex is also unlawful under the Sex Discrimination Act. It would be 'direct marriage discrimination' if an employer refused to employ a married woman just because they thought she would be more likely than a single woman to leave to have a baby.

'Indirect marriage discrimination' could happen if, for example, an employer said that everyone applying for a job must move to a new location, unless the employer could show that moving was essential to the job. This is because a married person would be likely to find it harder than a single person to satisfy this requirement.

When an employer is allowed to discriminate

In some cases employers are allowed to offer a job only to men, or only to women. This is called a 'genuine occupational qualification' (GOQ). The main cases where an employer may do this are:

- for privacy and decency: for example, employing a male care assistant because he has to help men dress or use the toilet;
- for personal welfare services: for example, employing women counsellors for a women's welfare charity;
- where the employee has to live on work premises and there aren't separate sleeping areas for men and women;
- for some jobs in single-sex institutions, such as hospitals and prisons;
- for some jobs in private homes, such as a live-in carer;
- where the job has a real physical need, such as to model women's clothing, or for a role in a play or other performance;
- in some cases, where the job is outside the UK; and
- where the job requires a married couple.

However, an employer may not, for example, use a need for strength or stamina in a job as a reason for looking at applications from men only.

Being dismissed or made redundant

An employer may not discriminate against women or men when dismissing people or making them redundant. This means that, for example, it would be against discrimination laws for an employer to:

- dismiss a man if he took time off work to care for a sick child, if they wouldn't have dismissed a woman for the same reason;
- dismiss someone for often being late for work if they didn't dismiss someone of the opposite sex who was late just as often; or
- have a company policy which says that staff with the shortest length of service are the first in line for redundancy, because women are more likely to have taken a career break for family reasons.

For more information about your rights if you are dismissed, or facing redundancy, see the Community Legal Advice leaflet, 'Employment'.

Having a child

It is against the law for an employer to treat a woman unfavourably because she is pregnant or has taken maternity leave; for example, if she is:

- dismissed or made redundant;
- refused promotion;
- moved to a less rewarding job when she comes back to work after having a baby; or
- treated differently (worse) in some other way.

It may also breach discrimination laws if a woman is treated unfavourably because she needs to care for her child – for example, if a breast-feeding mother was told she could come back to work only if she worked fixed full-time hours. The employer would have to show that she really needed to work fulltime and that, for example, she could not do part of her job at home.

Equal pay

The Equal Pay Act allows you to claim equal pay for work which is the same or broadly similar (known as 'like work') to that done by someone of the opposite sex working for the same employer (known as the 'comparator'). It also allows you to claim equal pay if the work is quite different but is of 'equal value' to the comparator's job in terms of the demands on you, or if your work has been rated the same under a job evaluation scheme.

The Equal Pay Act also covers most other terms of your employment, for example:

- working hours;

- holidays;
- sick pay; and
- pensions.

Most equal-pay complaints are by women, but the law also applies to men who are paid less than women for equal work. If you believe you are not being paid the same as someone else of the opposite sex for equal work, you should first take up your complaint with your employer through their grievance procedure (see 'Dealing with discrimination at work' on page 19).

If that doesn't work, you can take an equal-pay claim to an employment tribunal. If the jobs being compared are fairly similar, it is usually best to make a 'like-work' claim as well as an 'equal-value' claim. The tribunal will examine your like-work claim first and, if that fails, it will go on to consider the equal-value claim.

Making a like-work or equal-value claim can be complicated. Even if the tribunal decides that you are doing like work or equal-value work, the employer may be able to convince them that there is a 'material factor' (a good reason other than your sex) why you are paid less. You can get more details and advice about the process from the Equal Opportunities Commission (see 'Further help' on page 23 for details).

You can get advice and support about taking a claim from your union, if you have one, or from a law centre, Citizens Advice Bureau or solicitor (see 'Further help' on page 23 for details).

Part-time work

The Sex Discrimination Act and the Equal Pay Act cover all workers, including people who work:

- part-time; or
- on casual or temporary contracts.

In an equal-pay claim, a part-time job can be compared with a similar full-time job on a pro-rata basis (that is, based on the number of hours each of you works).

Because most part-time workers are women, if they are treated worse than full-time workers this could amount to indirect discrimination under the Sex Discrimination Act. You may have a claim for indirect discrimination if you want to work part-time (or flexitime, at home or in a job share) because, for example, you need to care for a child, and your employer refuses without a good reason.

Part-time workers are also protected by the Part-Time Workers Regulations 2000, which give them the right to the same pro-rata contractual benefits (rates of pay, holidays and access to training, for example) as full-time workers doing the same

work. It is also unlawful for an employer to treat you less favourably (for example, by dismissing you) because you work part-time.

Similar rights apply to workers with fixed-term contracts under the Fixed-Term Employee Regulations 2002. In both these cases, it doesn't matter whether the workers being compared are the same sex or not. For more on this, see the Community Legal Advice leaflet, 'Employment'.

Sexual harassment at work

You are protected against harassment at work and during work-related training. Harassment could include:

- comments about the way you look;
- indecent (offensive) remarks; or
- requests for sex (perhaps in return for a promotion or other benefit).

It is also unlawful for your employer to treat you less favourably because you have been harassed or tried to stop someone harassing you. For example, your employer would be breaking the law if they refused you a promotion because you had objected to someone commenting about your appearance or because you had been harassed.

If someone is harassing you and they don't stop when you ask them to (or if you are afraid to confront them), you should tell your employer – unless, of course, the employer is the person doing it.

The law says that employers are responsible for discrimination by their employees. Many employers treat sexual harassment by their staff as a disciplinary offence, and they should discipline the person harassing you. If your employer does nothing (or not enough to solve the problem), then you can take a claim against them to an employment tribunal. In many cases you could also take the person harassing you to an employment tribunal.

If you are having a relationship with someone at work

Some employers won't employ:

- the husband or wife;
- the partner; or
- a relative;

of someone working for them.

Also, some employers don't allow workplace 'affairs'. Employers are not breaking the Sex Discrimination Act in doing this as long as they treat men, women, married and unmarried staff equally. Otherwise it could be considered discrimination. An example of discrimination is if a woman was transferred to another office or department when she didn't want to be, because she was having a relationship at work, when a man would not have been transferred in the same circumstances.

Discrimination after leaving your job

An employer must not discriminate against you after you have left your job. For example, it is unlawful for your employer to refuse to give you a reference because you had complained about being discriminated against while you were employed.

If you are buying or renting a house or flat

It is illegal to discriminate against someone because of their sex when selling or letting a house or flat. It is also illegal for a landlord to treat tenants differently because of their sex. However, the Sex Discrimination Act doesn't apply if the landlord (or a close relative of theirs) lives in the same building and shares some of the living areas (including a kitchen or bathroom, but not a hall or stairway) with the tenant.

It's also illegal for a bank or building society to treat someone less favourably in granting a loan because of their sex or because they are pregnant. If, for example, a couple apply for a joint mortgage and the woman earns more than the man, then the lender must use the woman's income as the higher one in working out how much they will lend. And offering mortgages only to

people who work full-time is also seen as discrimination, because more women than men work part-time.

Going to school or university

Mixed-sex schools, colleges, adult education centres and universities must not discriminate against parents or children because of their sex. For example, careers advisors must provide advice and help in the same way to boys as girls. Single-sex schools must not restrict the types of subjects they teach just because they have only boys or only girls as pupils. Schools and colleges must also deal with sexual harassment in the same way that employers do (see 'Sexual harassment' on page 9).

If you feel your child is facing sex discrimination at school, you should first try to discuss the problem with the teacher or headteacher. If that doesn't work, you should complain to the school governors or the local education authority.

For advice about dealing with this kind of problem, contact the Equality and Human Rights Commission or the Advisory Centre for Education (see 'Further help' on page 23 for details). For more information about legal rights at school, see the Community Legal Advice leaflet, 'Education'.

Buying and using goods and services

Under the Sex Discrimination Act it is against the law for businesses to discriminate against men or women in the 'goods, facilities and services' they provide. This means refusing a service or deliberately not providing it on the same terms and of the same quality. The Act covers things that are free or paid for, and applies to:

- shops;
- public places, such as hotels, restaurants, bars, nightclubs and leisure centres (for example, offering only to women free or cheaper admission or drinks would breach the Sex Discrimination Act);
- bank accounts, loans, credit cards and insurance;
- travel and transport services that are public or offered by private companies or travel agents; and
- services supplied by local authorities (such as leisure services).

Discrimination against men or women may be allowed in certain situations:

- private members' clubs;
- services that are only for men or only for women, to avoid 'serious embarrassment' (for example, women-only saunas);

- voluntary organisations, care homes and charities that provide services only for men or only for women; and
- insurance policies where it can be shown that women are a better or a worse insurance risk than men (though this is being reviewed, and may not be allowed in the future).

Transgender people

If you have had 'gender reassignment' (often called a sex change), you have some legal protection against discrimination. The Sex Discrimination Act protects transgender people against direct discrimination and harassment in employment and work training. But the Act doesn't cover housing, education or services.

The Act covers anyone who plans to go through, is going through, or has gone through gender reassignment. If you are discriminated against for one of these reasons, you will have a claim under the Sex Discrimination Act. Employers should not discriminate when choosing people for a job or for dismissal. Also, for example, an employer should allow you time off work for treatment connected with gender reassignment in the same way they would for other kinds of necessary medical treatment. And if other employees harass you because of your gender reassignment,

your employer must stop the harassment.

The Equality and Human Rights Commission has a guide, 'Sex Equality and Transsexualism', which deals in detail with this kind of discrimination, including examples of case decisions.

Discrimination because you are gay, lesbian or bisexual

Under the Employment Equality (Sexual Orientation) Regulations 2003, it is unlawful to discriminate against you at work because of your sexual orientation or sexual preference. The regulations also cover work-related training.

The regulations say it is against the law for an employer or potential employer to discriminate against you because you are (or people think you are) gay, lesbian, heterosexual or bisexual. This includes:

- deciding not to employ you;
- dismissing you;
- giving you worse terms and conditions at work;
- not giving you training or a promotion; and
- not giving you the same benefits that people of a different sexual orientation have (unless the benefits are only relevant to married people).

You are also protected from harassment (see page 4) and

victimisation (see page 5).

Benefits for same-sex partners

If an employer gives benefits, such as insurance or private health care, to heterosexual unmarried partners, then refusing to give the same benefits to same-sex partners would be discrimination. Employers do not have to give gay couples benefits that are specially for married couples. Yet both kinds of couple should get the same parental or adoption leave, if they are entitled to it.

When an employer is allowed to discriminate

In some circumstances, an employer is allowed to discriminate if it is a 'genuine occupational requirement' that the jobholder must be of a particular sexual orientation. For example, in some cases, it may be lawful for an organisation providing welfare services to lesbian, gay and bisexual people to insist on some workers being of a particular sexual orientation.

It is important that each post is considered separately. An employer may claim a genuine occupational requirement only if the work must be done by someone of a particular sexual orientation, not just because the employer would prefer it.

Also, an employer may not claim a genuine occupational requirement for someone of a particular sexual

orientation if they already have enough employees who can do those parts of the job that need that orientation. For example, if only a small part of the job (say, a job as counsellor that sometimes included counselling gay or lesbian people) qualified for a genuine occupational requirement, then existing members of staff could do this part of the job. The post in question would be adapted to exclude counselling gay or lesbian people, so a genuine occupational requirement would not apply to it.

To make sure it is still valid, an employer should check whether a post still has a genuine occupational requirement each time it becomes vacant.

People with HIV or AIDS

If you have HIV or AIDS, you may face discrimination. Whether or not you are gay, you may have protection under the Disability Discrimination Act. For more information, see the Community Legal Advice leaflet 'Rights for Disabled People'.

Discrimination because of your religion or beliefs

Under the Employment Equality (Religion or Belief) Regulations 2003, it is unlawful to discriminate against people at work because of their religion or belief. The regulations also cover

training that is to do with your work.

The regulations cover any religion, religious belief or 'similar belief'. 'Similar belief' includes such beliefs as paganism, atheism, humanism and pacifism, but it does not include political beliefs.

The regulations also cover not having a particular religion or belief. So, for example, you are protected if an employer refuses to employ you because he or she is of a particular religion and you are not.

Religious discrimination can be closely connected with racial discrimination. For example, if you are discriminated against because you are Jewish, this may be because of either your race or your religion. In this type of case, you may want to rely on both the regulations and the Race Relations Act. For information about racial discrimination see the Community Legal Advice leaflet, 'Racial discrimination'.

When discrimination is against the law

The regulations say it is against the law to for an employer or potential employer to discriminate against you because of your religion or belief. This includes:

- deciding not to employ you;
- dismissing you;

- giving you worse terms and conditions at work;
- not giving you training or a promotion; or
- not giving you the same benefits that people of a different religion or with different beliefs have.

You are also protected from harassment (see page 4) and victimisation (see page 5).

Job duties that conflict with religious beliefs

Employers do not have to employ you if your beliefs mean you cannot do essential parts of the job. But it may not be reasonable to reject you if it is possible to allow you to work in a way that does not conflict with your beliefs. For example, if you are a Muslim or Jew and your work brings you into contact with food, you may not want to handle pork products. But there may be a way that you can still do your job without this.

What you wear at work

Your religion may mean that you have to dress in a certain way. For example, a Jewish woman may want to wear a shirt or blouse outside her skirt to avoid emphasising her body shape, or a Hindu man may want to wear neck beads to indicate his faith.

A dress code at work that wouldn't let you dress this way may be

discrimination unless your employer could show there was a good reason, for example on health and safety or similar grounds.

Religious observance

Your religion or beliefs may mean you have to pray at set times of day. Your employer does not have to provide a prayer room or give you time during the working day to do this.

However, if there is a quiet place at your work, and using it wouldn't cause problems for your co-workers or the organisation, it may be discrimination if your employer didn't let you use the space for this.

You may ask to take your rest breaks to coincide with your obligation to pray at certain times of day. If your employer refuses to let you, without a good reason, this may be discrimination.

It may also be discrimination to:

- make you work on holy days;
- refuse to give you leave to celebrate festivals or attend ceremonies;
- force you to take annual leave at set times.

Whether it is discrimination or not will depend on all the circumstances and whether your employer can justify the arrangements. For

example, your employer may be justified in closing down for a time each year for maintenance work. Or if many workers ask for time off at the same time, it may be difficult to balance the needs of the business with those of the workers. In a small organisation, it may be difficult for an employer to allow several workers to have time off at the same time; but in a large organisation, an employer would have less reason for refusing time off for several people.

When an employer is allowed to discriminate

In a very few cases, an employer is allowed to discriminate if it is a 'genuine occupational requirement' that the jobholder has a particular religion or belief. For example, a hospital may want to appoint a Christian chaplain to tend to the needs of patients who are mainly Christian.

It is important that each post is considered separately. An employer can claim a genuine occupational requirement only if the work must be done by someone of a particular religion or belief, not just because the employer would prefer it.

An employer may not claim a genuine occupational requirement when recruiting if they already have enough employees who can do those parts of the job that need someone

of a particular religion or belief. For example, if only a small part of the job qualifies for a genuine occupational requirement, then the employer may be able to adapt the duties of the job in question so that it does not have a genuine occupational requirement – and therefore discrimination would not be allowed.

To make sure it is still valid, an employer should check the need for a genuine occupational requirement each time a post becomes vacant.

If an organisation has an ethos or philosophy based on a particular religion or belief, it may be able to apply a genuine occupational requirement to jobs where in other circumstances such a requirement would not apply.

Examples of ethos-based organisations include religious institutions, faith schools or faith-based care homes. To apply a genuine occupational requirement, an organisation must show that it is:

- a requirement of the job to keep to the ethos of the organisation; and
- 'proportionate' to apply the requirement. For example, a Church of England faith school may want to employ a religious education teacher who is a member of the same church. However, it would not be lawful

for the school to insist on its maintenance and administrative staff being members of that church.

Discrimination because of your age

Under the Employment Equality (Age) Regulations 2006, it is unlawful for an employer or potential employer to discriminate against you at work because of your age. This includes:

- deciding not to employ you;
- dismissing you;
- giving you worse terms and conditions at work;
- not giving you training or a promotion; and
- not giving you the same benefits as people of a different age.

You are also protected from harassment (see page 4) and victimisation (see page 5).

The regulations also cover work-related training.

When an employer is allowed to discriminate

In some cases, an employer is allowed to discriminate against you because of your age.

- Your employer can justify treating you differently because of your age if they have a good business reason for doing so. For example,

they might need someone to have a minimum period of experience for a job, or ask for certain qualifications.

- An employer can refuse to employ you if you are within six months of its normal retirement age (or older than it), provided the normal retirement age is 65 or older. If the employer does not have a normal retirement age, they can refuse to employ you if you are older than 64 years and six months old.
- Many employers award pay and benefits, such as holiday entitlement or sickness benefit, based on their employees' length of service. These 'service-related' benefits generally advantage older workers who are likely to have longer service. The regulations do not cover benefits paid during the first five years of service. Benefits based on length of service of more than five years are allowed only if your employer can prove they are for a good business reason. So, for example, it may be lawful for your employer to award you a benefit after five years' service if it reflects a greater level of experience, or to encourage your loyalty or motivation.
- The national minimum wage has different rates for workers of different ages, so employers are allowed to pay younger workers on

the national minimum wage less than older workers. See the Community Legal Advice leaflet 'Employment' for more about the minimum wage.

- The amount of a statutory redundancy payment (the minimum your employer must pay you if they make you redundant), varies according to your age. And if your employer has its own redundancy payment scheme that pays more than the minimum, these payments can also in certain circumstances vary with age.
- If your employer provides life assurance cover to workers who have retired early on ill-health grounds, they are allowed to stop this when you reach the employer's normal retirement age, or 65 if they don't have one.
- In a very few cases your employer is allowed to discriminate if it is a 'genuine occupational requirement' that the job holder is of a particular age. For example, an actor may have to be of a certain age for a particular role.

When you must retire

The new regulations also cover retirement ages, and can protect you from being forced to retire when you don't want to. Your employer can set a normal retirement age, which must

be 65 years or older. If they don't set a normal retirement age, the age is 65. Your employer cannot force you to retire if you are under 65 unless they can prove they have a good business reason for this.

Your employer must follow a set statutory retirement procedure if they want to retire you. Between six and 12 months before the date your employer wants you to retire, they must write to you telling you the date they want you to retire, and that you can ask to go on working beyond this date if you want.

If you want to carry on working beyond the retirement date, you must write asking for this between three and six months before the intended retirement date. You must say whether you want to carry on working:

- indefinitely (without a fixed end date);
- for a certain period; or
- until a certain date.

If your employer does not agree to let you continue working, they must invite you to a meeting to discuss your request to do so. After the meeting, your employer must write to you telling you that your employment will continue:

- indefinitely (with no fixed end date); or
- for a further period, stating the date it will end.

If your employer refuses your request to carry on working, they do not have to tell you why, but they must tell you how you can appeal the decision.

If your employer doesn't tell you your intended retirement date six months before it should happen, you can still ask to carry on working at any time before you actually retire. Your employer must continue to employ you until they have completed the statutory retirement procedure, if they had planned for you to retire.

You and your employer must follow the statutory retirement procedure completely. You may be able to claim compensation if your employer does not follow the set procedure, for example by:

- not telling you of your intended retirement date;
- not telling you of your right to request working beyond the intended retirement date;
- not considering your request to carry on working or not considering your request within a reasonable period;
- not telling you that you can appeal their decision on your request to work beyond the intended retirement date; or
- not considering your appeal or not considering your appeal within a reasonable period.

If your employer agrees to your request to carry on working, they must also follow the statutory retirement procedure when you near the extended date for retirement.

Unfair dismissal

There is no upper age limit on claiming unfair dismissal. For more information about your rights if you are dismissed or facing redundancy, see the Community Legal Advice leaflet, 'Employment'.

Pensions

As part of the new age discrimination regulations, there are new rules covering occupational pension schemes. For more about your entitlement to an occupational pension, see the Department for Business, Enterprise and Regulatory Reform leaflet 'The Impact of Age Regulations on Pension Schemes'. You can download this from the Department's website – see 'Further help' on page 23 for details.

What you can do about discrimination

If you have been discriminated against, first think about what you want to be done. Depending on how you were discriminated against, you may want:

- your job back, if you think you were unfairly dismissed;

- compensation;
- an apology; or
- a clear sign that an organisation won't discriminate in the same way in future.

Whatever you want, it is usually best to first try to sort out the matter with the person or organisation that has discriminated against you (your employer, for example).

If complaining in this way doesn't get what you want, your next steps will depend on the type of discrimination you have suffered and where it happened.

Dealing with discrimination at work

If your discrimination happened at work, you may be able to take your case to an employment tribunal.

The law says that you and your employer must follow a statutory grievance procedure (one set by law) before you can take your case to a tribunal. This means that you must send your employer a grievance, which is a letter saying why you believe you were discriminated against. You must normally do this within three months of the event you are complaining about. This time limit does not apply if you are complaining about equal pay. In this case you can normally send your

written grievance at any time while you are still working for your employer, or within six months of when you stopped working for them.

Your employer must then invite you to a meeting to discuss your grievance. After the meeting, your employer must tell you what they will do about your complaint. They must also tell you how you can appeal their decision if you do not agree with it.

Once you have put in your grievance you must wait 28 days before you can lodge a claim with a tribunal. This time limit applies whether or not your employer has responded to your grievance.

The new grievance procedures are law and must be followed completely, except in a few specific situations. For example, the new procedures do not apply if:

- you are not an 'employee' of the organisation you have been working for, because you are, for example, self employed; or
- your complaint is about dismissal, and your employer has dismissed or is considering dismissing you.

If you have already left your job, you and your employer can agree to deal with your grievance only through letters, without having a meeting. But your employer cannot make you agree to this.

If the dispute reaches an employment tribunal and the tribunal finds that you have not followed the grievance procedure in full, it may reduce any compensation it awards you. You should seek advice if you are unsure about how these new rules apply in your case.

If your employer wants to discipline or dismiss you, they must first follow a set disciplinary procedure. If they dismiss you without following the procedure properly, the employment tribunal may automatically judge your dismissal as unfair, and award you at least four weeks' pay.

For more information about your rights if you are dismissed or facing redundancy, see the Community Legal Advice leaflet, 'Employment'.

Going to an employment tribunal

You can take your case to an employment tribunal if:

- you have been through the grievance or disciplinary procedure but are unhappy with the result;
- your employer hasn't followed the grievance or disciplinary procedure properly; or
- the grievance or disciplinary procedure does not apply to your case.

In all these cases, you must also have put in your grievance to your employer at least 28 days ago.

The cost of going to a tribunal can be low. Even if you lose your case, you will not have to pay your employer's costs unless the tribunal decides you were being unreasonable in bringing the claim.

You bring a tribunal claim by filling in an application form called an ET1. You can get this from your local Jobcentre Plus, Citizens Advice Bureau, or online from the Employment Tribunal Service (see 'Further help' on page 23 for details).

You must normally make a claim to an employment tribunal within three months minus one day from when you first knew about the discrimination. However, if the discrimination is ongoing, this time limit may not apply.

The time limit also does not apply if you are complaining about equal pay. In this case you must normally make a claim to the tribunal:

- at any time while you are still working for your employer; or
- within six months minus one day of when you stopped working for them.

If you are going through the grievance or disciplinary procedure, you have an extra three months to bring your claim, as long as:

- you have sent your grievance to your employer within the right time limit; or

- the dismissal or disciplinary procedure is ongoing, or you have good reason to believe it is ongoing.

Using the questionnaire procedure

If you want to make a claim to an employment tribunal, you normally send a special form, called a questionnaire, to your employer. You can get this form from:

- your local Jobcentre Plus or Citizens Advice Bureau; or
- the Equal Opportunities Commission, if your claim is about sex discrimination or equal pay.

In this form, you can ask your employer for more information about your treatment. For example, if you believe that you didn't get a job because of your sex, you can ask for details of:

- your employer's selection procedures; and
- the qualifications and experience of the person who got the job, to see how they compare with your own.

If you believe you may not be receiving equal pay, this form will also help you find out whether this is the case and if so, why.

You must send the form to the employer:

- within three months of when the discrimination happened; or
- within 21 days of the employment tribunal receiving your complaint.

You don't have to use the questionnaire procedure, but it will normally help your case. In the same way, the employer doesn't have to fill in the form, but if they don't it may harm their case. And if you do use it, you can still choose to withdraw your complaint before the tribunal deals with your case.

How compensation is worked out

- If the tribunal rules that you have been unlawfully discriminated against, it can award you compensation for: loss of earnings (including money you would have earned if you had not been discriminated against);
- injury to your feelings;
- personal injury, if it was caused by discrimination.

If you are unhappy with the tribunal's decision

If you, or your employer, are unhappy about how the tribunal reached its decision, you may be able to appeal to the Employment Appeals Tribunal. But you can appeal only on whether the law was applied correctly, not on whether you thought the tribunal's decision was fair. You have 42 days after the decision is issued to lodge an appeal.

Dealing with other types of discrimination

You should take your claim to the county court if you have been discriminated against because of your sex, and it was about:

- buying or renting a house or flat;
- going to school or university; or
- buying and using goods or services.

The Equal Opportunities Commission can give you help and advice. It can also advise you how to deal with a complaint, including going to a tribunal or to court.

See 'Further help' on page 23 for contact details.

Going to court

If you want to take a case to court, you must start your case within six months less one day from when the discrimination happened. The court can give you copies of the claim form N1 and more information about procedures.

How to pay for your case

If you are claiming more than £5,000, you need to think carefully about how you will pay for your case, because the costs can be very high. If you cannot afford to pay for court action yourself, there are several ways you may be able to pay for your case:

- If your claim is for sex discrimination or equal pay, the Equal Opportunities Commission may take on your case, for example as a 'test case'.
- You may be able to get funding from the Community Legal Service (formerly called Legal Aid), provided you meet certain conditions. See 'The Community Legal Service' on page 23 for how to find out more about this.
- You may be able to find a solicitor who will take your case under a 'no-win, no-fee' agreement. See the Community Legal Advice leaflet 'No-win, no-fee actions' for more about this.

The Human Rights Act

The Human Rights Act 1998 covers many different types of discrimination – including some that are not covered by other discrimination laws. Rights under the Act can be used only against a public authority (for example, the police, a local council or Jobcentre Plus), and not a private company. However, court decisions on discrimination will generally have to take into account what the Human Rights Act says. For more on this, see the Community Legal Advice leaflet, 'The Human Rights Act'.

Further help

Community Legal Advice

Provides free information, help and advice direct to the public on a range of common legal issues.

Call 0845 345 4 345

Speak to a qualified legal adviser about benefits and tax credits, debt, education, housing or employment or find local advice services for other problems.

Click www.communitylegaladvice.org.uk

Find a quality local legal adviser or solicitor and links to other sources of online information and help.

Equality and Human Rights Commission In England

Disability Helpline phone: 08457 622 633

textphone: 08457 622 644

Helpline for other types of discrimination phone: 0845 604 6610

textphone: 0845 604 6620

In Wales

Helpline phone: 0845 604 8810

textphone: 0845 604 8820

www.equalityhumanrights.com

Advisory Centre for Education (ACE)

For advice on discrimination in schools

Helpline open Monday to Friday 2 to 5pm

phone: 0808 800 5793

www.ace-ed.org.uk

The Advisory, Conciliation and Arbitration Service (ACAS)

To find your nearest public enquiry point

phone: 08457 474747

www.acas.org.uk

Age Concern

phone: 0800 00 99 66

www.ace.org.uk

Department for Business, Enterprise and Regulatory Reform

www.debrri.gov.uk/

Employment Tribunal Service

Employment Tribunal enquiry line

phone: 08457 95 9775

www.employmenttribunals.gov.uk

The Gender Trust

For transgender people

phone: 0700 0790 347

www.gendertrust.org.uk

Stonewall

For lesbians, gay men and bisexual people

phone: 020 7881 9440

www.stonewall.org.uk

Terrence Higgins Trust

For people living with HIV or AIDS

phone: 0845 1221 200

www.tht.org.uk

Third Age Employment Network

phone: 020 7843 1590

www.taen.org.uk

For the Code of Practice on Age Diversity in Employment, contact the Age Positive Team within the Department for Work and Pensions

phone: 0113 232 4444

www.agepositive.gov.uk

The Community Legal Service

The Community Legal Service has been set up to help you find the right legal information and advice to solve your problems.

You can get help through a national network of organisations, including Citizens Advice Bureaux, Law Centres, many independent advice centres and thousands of high street solicitors. All of these services meet quality standards set by the Legal Services Commission. Look for the Community Legal Service logo, shown below.

Many of the organisations offer some or all of their services for free. If you cannot afford to pay for advice you may be eligible for financial support through the Community Legal Service Fund (Legal Aid). You can order leaflets about funding from the LSC leaflet line on 0845 3000 343. You can also use a Legal Aid eligibility calculator on the website: www.communitylegaladvice.org.uk.

Community Legal Service



The Legal Services Commission (LSC)

The Community Legal Service and the Community Legal Service Fund are managed by the Legal Services Commission. To find out more about us visit our website at www.legalservices.gov.uk or find the details for your local Legal Services Commission office in the phone book.

legal services

COMMISSION

The leaflets are only available online at: www.communitylegaladvice.org.uk

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Advice Guides

G1 A Step-by-Step Guide to Choosing a Legal Adviser (available in hard copy)

G2 A Step-by-Step Guide to Legal Aid (available in hard copy)

The leaflets are produced in English and Welsh and are only available online.



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