



# **Marriage and Civil Partnership and Employment**

A Guide for Employers

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# 1. Introduction

This guide is designed to help employers understand the impact of the Equality Act 2010 on employment policy, with a focus on issues related to marriage and civil partnership. It contains advice on key aspects of policy and practice illustrated by relevant legal cases and scenario examples, so that you can easily recognise areas of risk. The Equality Act also covers discrimination in relation to the provision of services and public functions, but this and other sections of the Act are not within the scope of this guide.

Most employers have amended the policies that guide their employment practice to comply with UK and European equality legislation as it has developed over the years. So, for many, the biggest challenge is now to challenge custom and practice and overcome long-held views, stereotypes and assumptions about the characteristics of different workers.

When considering your approach to equality and inclusion, you should firstly consider where your organisation wants to be on the spectrum between compliance and best practice. We encourage you to aspire to best practice, rather than just comply with the law. Our view is that if you adopt good practice you will be in a much stronger position to defend yourself if challenged, and complying with the legislation will be much easier.

Every organisation is different and we cannot provide definitive solutions which cater for every situation, only suggestions which may help you decide what suits you best. And we are not providing legal guidance: we recommend you seek authoritative advice when introducing new policies or changing old ones. Further information and advice can be found on the Acas and EHRC websites, and our through our legal partners: [DAC Beachcroft](#), [Eversheds](#) and [Lewis Silkin](#) who have leading employment lawyers with recognised expertise in employment and discrimination law.

## 2. The Equality Act 2010 and marriage and civil partnership

### 2.1 Introduction

The Equality Act 2010 drew together all previous legislation on discrimination, including the Sex Discrimination Act 1975. It is designed to protect people in employment and places responsibilities on employers and some other third parties to ensure this.

Certain “protected characteristics” are identified by the Act, and marriage and civil partnership is one of them.

Same-sex marriage was legally recognised in England, Wales and Scotland in 2014.

### 2.2 Summary

A person who is married or in a civil partnership is protected under The Equality Act 2010.

Its usual to know that neither marriage or civil partnership are defined under the Equality Act 2010. However the Act is understood to cover; people who are married in a legal-recognised union, either in an opposite sex or same-sex couple. A civil partnership is a

legally recognised and registered relationship between two people of the opposite sex only (except for the Isle of Man but this is not recognised in the rest of the United Kingdom) under the Civil Partnership Act 2004, and may include a partnership registered outside the UK. People who are married or in a civil partnership are still protected if one or both people in the relationship are changing their gender, and if they stay in a legally recognised relationship and meet certain legal criteria.

Protection under the Act extends only to those who are married or in a civil partnership; those who are unmarried or single are not protected, nor are those who intend to marry or form a civil partnership. Similarly, those who have divorced or who have had their civil partnership dissolved are not protected.

People who are married or in a civil partnership share the protected characteristic; it covers equally, for example, a married woman and a man in a civil partnership.

The Act prohibits:

- Direct discrimination;
- Indirect discrimination;
- Victimisation

An employer must not directly discriminate against or victimise a person:

- When deciding who to offer employment;
- In the terms on which an applicant is offered employment;
- By not offering the candidate employment;
- In the way they are given or not given access and/or opportunities for promotion, transfer or training, or for receiving any other benefit, facility or service;
- By dismissing them (including constructive dismissal and the expiry and non-renewal of a fixed term contract); or
- By subjecting the employee or ex-employee to any other detriment as a result of their being married or in a civil partnership.

### **2.3 Who is Protected?**

The Equality Act 2010 provides protection against direct and indirect discrimination, harassment and victimisation in the fields of employment and vocational training to:

- **Job applicants and those applying for vocational training**

The Act applies not only to those who are going to work for you, but those who will undertake vocational training with you, such as apprentices. Similarly, its scope extends to those seeking professional or trade union membership.

- **Employees, both of unlimited duration and fixed term**

Employment (being in an employment relationship) means being employed under a contract of employment (or apprenticeship) and contracted personally to work. The length of contract is irrelevant – it can be indefinite or have an end date, for example, the end of a project.

- **Self-employed and contract workers**

A contract worker is any individual who is employed by one company but supplied to another to work. This includes secondees. If a company has a contract direct with a 'self-employed' worker, then the Equality Act will protect that individual.

- **Temporary, fixed-term and agency workers**

Temporary or agency workers who are employed by agencies, are protected from discrimination by the agency employing them, which has obligations under the legislation. However, the end user company will also be required to protect the workers from discrimination. The Act also covers employment agencies and organisations offering career or vocational advice and guidance. They need to comply with the legislation in how they treat their own employees, those who are placed with clients (on a temporary or contract basis) and those who use their services, for instance, whilst job seeking.

- **Office holders, Crown officials, Police officers, Company Officials and non-executive Directors**
- **Partners**
- **Ex-employees**

When an individual has left your business and then asks for a reference, you must not include remarks or comments about their status as married or in a civil partnership. You are not allowed to withhold a reference because someone has made a claim of discrimination.

The definition of "worker" is thus wider in the Act than in some other legislation. It includes those employed by you and also those contracted to work for you personally. Throughout this guide, "employee" means someone who is contracted to you under a contract of employment, and is, therefore, someone to whom you may wish to give benefits such as long service awards. "Worker" means anyone who is furthering your business, but not under a contract of employment. For example, you may have a temp from an agency to cover a job during an employee's sickness absence. That person will not be employed by you, as you are paying an agency to supply them, but while they are with you, they are a worker under the definition in the legislation.

We recommend you seek legal advice if you are at all uncertain over who is and isn't covered by the legislation; as a general principle it is good practice not to discriminate against anyone connected with your business.

The Act does not cover

- **Volunteers** - Unpaid volunteers are not specifically covered by the Act, although some who are appointed by the Government are (for example, magistrates, because of their status as office-holders). Where unpaid work "forms part of a paid employment relationship" it is likely that the individual will be protected by the Act, such as someone in an unpaid vocational training relationship, like a student teacher on work experience or someone on a work placement.

#### Relevant legal case

The Court of Appeal has confirmed that an unpaid volunteer, working under an agreement which was "binding in honour only and not a contract of employment" is not protected against discrimination. Arguments that the European Framework Directive, which covers discrimination in "employment and occupation", should be interpreted to cover volunteers failed, with the court noting: "The Directive does not, therefore, seek to give effect to the principle of non-discrimination in all areas of human activity. It limits the scope to what might, in general terms, be described as activities in the labour market." (X v Mid Sussex Citizens Advice Bureau)

The Act may cover:

- **Overseas workers** - Unlike previous discrimination legislation, the Equality Act 2010 does not specify its territorial scope. The Act therefore leaves it to tribunals to determine whether the law applies, depending for example on the connection between the employment relationship and Great Britain.

## 2.4 Direct Discrimination

Direct discrimination is where someone treats someone else less favourably than they would treat other people, because they are married or in a civil partnership.

In an Employment Tribunal, the evidence must demonstrate that the claimant has been treated less favourably and that the treatment was a direct result of their being married or in a civil partnership.

What constitutes less favourable treatment is a matter for the tribunal to decide. A person is treated less favourably if he or she is put at a disadvantage compared to others. Sometimes the disadvantage is obvious e.g. where he or she is refused a job, but other times it will be less obvious e.g. they were excluded from an opportunity.

Where there is no actual comparator in similar circumstances and there is evidence to support a suggestion of discrimination, the tribunal will create a hypothetical comparator to show how a person of the other group would have been treated.

Where less favourable treatment is found, the next step is to show that the reason the treatment was less favourable was because of marriage or civil partnership. This does not

have to be the only reason for the less favourable treatment but it must have been an important factor.

Discrimination by association and discrimination by perception do not apply in the case of the protected characteristic of marriage and civil partnership.

## **2.5 Indirect discrimination**

Indirect discrimination occurs when you apply an unjustified 'apparently neutral provision, criterion or practice' which puts or could put people who are married or in a civil partnership at a particular disadvantage, compared with others.

You can try to objectively justify indirect discrimination but you should ensure that you can do this before allowing the discrimination to occur.

To make a claim for indirect discrimination, the claimant must be able to show that the application of the provision, criterion or practice, disadvantages or would disadvantage people who are married or in a civil partnership. The choice of the pool for deciding on disadvantage is a matter for the Employment Tribunal but it should be sufficiently wide to include all those who may be affected.

Once the pool for comparison has been decided, it is necessary to establish whether people sharing the protected characteristic of marriage and civil partnership are disadvantaged by the provision, criterion or practice, to assess its potential discriminatory effect.

Once the claimant has proved that there is a particular disadvantage to the group in which they belong, they must then show that they have also suffered that disadvantage as an individual. This could be the denial of an opportunity, rejection or exclusion but it wouldn't include a sense of injustice on its own.

## **2.6 Harassment**

Although the harassment provisions of the Equality Act 2010 do not extend to cover marriage and civil partnership, those who are in a civil partnership who are subjected to acts of harassment, may be able to make a claim of direct discrimination or harassment under the protected characteristic of sexual orientation.

Under the Protection of Harassment Act 1997, the employer may be vicariously liable for a course of conduct by one of its employees that amounts to harassment. The harassment may consist of bullying, intimidation or harassment and does not need to be based on a protected characteristic. Employers need to ensure that they have in place an anti-bullying policy that is well publicised to all workers and properly enforced. The employer must also act as soon as they become aware that bullying is occurring.

## **2.7 Victimisation**



Victimisation occurs when someone is subjected to a detriment because they have done a “protected act” or their employer believes they have done so or may do so in the future. The person concerned could claim a detriment if they were put at a disadvantage or could reasonably consider their position to have been made worse. A threat to the person concerned might also be considered a detriment, but an unjustified sense of grievance would not.

The following are protected acts:

- Bringing proceedings under the Equality Act;
- Giving evidence or information in connection with proceedings under the Act;
- Doing anything which is related to the Act’s provisions;
- Making an allegation (whether or not express) that someone has contravened the Act.
- Making or seeking a relevant pay disclosure to or from a colleague

Victimisation can never be justified.

#### Example

“All I said was I thought we should stop picking on him because he’s in a civil partnership. He’d had enough. He made a claim in an employment tribunal; I was a witness for him and then I didn’t get promoted.”

The complainant does not need to compare his or her treatment to that of a real or hypothetical person to establish victimisation. Under the Equality Act, to establish victimisation the complainant simply needs to show that he or she was subjected to a detriment in the above circumstances.

An individual is protected from victimisation even if the allegation turns out to be wrong, providing that it was made in good faith.

The motivation of the person committing the act of victimisation may be conscious or unconscious. Those committing the alleged act of victimisation must have knowledge of the protected act.

Liability for acts of victimisation may also extend to acts committed after the end of the working relationship, for example refusing a reference request.

## **2.8 Instruction to Discriminate**

The Act prohibits a person from instructing, causing or inducing another person to discriminate, harass or victimise a third person. The Act also gives an opportunity for both the recipient of the instruction and the intended victim to make a claim, whether or not the

instruction is carried out, provided that the recipient of the instruction or intended victim suffers a detriment as a result.

It is unlawful to tell or instruct others to discriminate on your behalf. This is sometimes known as 'knowingly aiding' discrimination.

## 2.9 Liability

An employer is vulnerable to claims, as well as the individual who carried out the discrimination. Vicarious liability means that you are potentially responsible for any discriminatory act carried out by one of your workers while they are working for you, and that you are liable if you either knew or approved of their actions. This means both you and the individual who carried out the discrimination or harassment, may have to defend your actions.

Employers will have a defence against an act done by one of their employees or agents if they can show they took all reasonable steps to prevent such conduct. This could include having an appropriate policy and proof that the policy has been implemented, including appropriate communication and training.

Those who may be liable for prohibited conduct under the Equality Act 2010 include:

- **Employers** - in relation to job applicants, employees and ex-employees where:
  - The employer discriminates against a job applicant or discriminates against, harasses or victimises an employee in employment;
  - The employer's employees discriminate against a worker during the course of their employment unless the defence of having taken all reasonable steps to prevent discrimination applies; or
  - The employer's agent discriminates, unless all reasonable steps were taken to avoid it.
- **Employees**- who discriminate during the course of their employment will be personally liable. An employee may be named as a respondent in a discrimination claim and can be ordered to pay compensation even if their employer can show that it satisfied the reasonable steps defence. In this case it is not necessary to show that the employee knew that the act was unlawful.
- **Agents** – i.e. those who make work available for people employed by someone else when:
  - They discriminate against contract workers; or
  - The principal's agent discriminates.

- **Others** - who knowingly help another person to do an unlawful act of discrimination.

#### Example

"I knew her manager wasn't happy about her having got married and was making the odd snide remark about her lack of commitment to work and the impact it might have on her career but I didn't think it was a big issue. "

#### Comment

The courts are likely to resolve issues of vicarious liability, but experience from other discrimination legislation shows that it is not how you react to a situation but what you did in advance. You can't wait for an incident before rolling out training or awareness raising programmes. If you hear of instances of discrimination or learn about discriminatory behaviours, you cannot ignore them. This would be seen as condoning discrimination.

### **Occupational Requirements**

Employers may in certain circumstances lawfully restrict a job to people who are married or in a civil partnership.

The Equality Act contains an exception from direct discrimination in recruitment, opportunities for promotion, transfer or training, or dismissal where a requirement to have a particular protected characteristic applies.

An occupational requirement will apply where, considering the nature or context of the work, the employer shows that:

- Being married or in a civil partnership is an occupational requirement;
- The application of the requirement is a proportionate means of achieving a legitimate aim; and
- Either the person to whom the requirement is applied is not married or in a civil partnership or the employer has reasonable grounds for not being satisfied that that is the case.

The requirement must be there to achieve a genuine aim and the burden of showing that the exception applies rests with the employer, who is trying to rely on it.

The requirement that it must be a proportionate means of achieving the aim may mean that, even if an occupational requirement applies to some of the duties of a job, the exception could not be relied upon if there are others of the required group who could do these duties, if the work were rearranged.

Occupational requirements should be identified at the beginning of the recruitment, training or promotion process, before the vacancy is advertised. Advertisements and material sent to potential applicants should clearly show that the employer considers that a genuine

occupational requirement applies and this should be re-emphasized during the selection process.

Each job for which an occupational requirement may apply must be considered individually and it should never be assumed that just because there was an occupational requirement for one job that there will be for another, similar job. The occupational requirement should also be re-assessed every time a position becomes vacant to ensure that the occupational requirement still applies.

## **2.11 Other Exceptions**

### Religious requirement

There is an exception in the Equality Act 2010 where employment or appointment to a personal or public office is for religious purposes. This exception would apply where the employer requires that a member of staff is married or in a civil partnership where they can show that:

- The employment is for the purposes of an organised religion.
- The application of the requirement engages the compliance or non-conflict principle; and
- The person to whom the employer applies the requirement does not meet it or the employer has reasonable grounds for not being satisfied that the person meets it.

The non-compliance principle is engaged if not taking any action would result in conflict because of the nature or context of the employment. E.g. The requirement to be married or in a civil partnership can be applied to avoid conflict with the strongly held religious views of a large considerable number of the religion's followers.

The requirement must be absolutely critical to the post, not just one of several factors. The exception is intended to cover a very narrow range of employment situations, involving the recruitment of ministers and lay positions, which exist to represent a religion. The exception could not be used when recruiting a cleaner because the role does not involve representing the religion.

### Benefits based on marital status

Benefits which are restricted on the basis of a worker's marital status are lawful provided that workers who are in a civil partnership have equal access.

There is an exception in relation to benefits given to married people only where the right to the benefit was accrued before 5<sup>th</sup> December 2005 and after that date, to married people and civil partners only.

## Group insurance schemes

The Act allows employers to treat people who are married or in a civil partnership differently with regard to insurance or risk based matters where the difference is based on reliable actuarial or other data and is reasonable in all circumstances.

### **2.12 Positive Action**

There are provisions in the Act which justify positive action in certain circumstances, if it is aimed at helping you to achieve a diverse workforce.

More detail can be found in the enei Employer Guide to Positive Action.

### **2.13 Burden of Proof**

One party in an Employment Tribunal will have the benefit of assumption, which means that the tribunal will assume their position is correct if it is not proved otherwise. The other party has the burden of proof, which means they have to give evidence to convince the tribunal of their position.

Usually, an accused party is considered innocent until the other party proves them guilty. However, discrimination law sets down a general principle that discrimination claims are subject to what is **commonly** known as a reverse burden of proof. **This means that the complainant has the benefit of assumption and it is up to the Tribunal to decide, based on all the facts,** whether it can infer or conclude, in the absence of an adequate explanation, that you have committed an act of discrimination or harassment. You have the burden of proving that you did not commit an act of discrimination or harassment. If you cannot, then the tribunal must uphold the complaint.

### **2.14 Unenforceable Terms**

Terms that constitute, promote or provide for treatment or behaviour that is prohibited under the Equality Act 2010 are unenforceable.

The Act also prohibits contracting out from its provision, except where the contract in question settles a complaint and is either made with the assistance of a conciliation officer or constitutes a qualifying compromise agreement.

### **2.15 Guidance and Codes of Practice**

The Government Equalities Office and the Equality and Human Rights Commission have produced a wide range of explanatory material and non-statutory guidance on the Equality Act.

The EHRC has also produced statutory Codes of Practice on the employment provisions of the Equality Act 2010 and on Equal Pay.

The Codes set out clearly and precisely what the legislation means and to apply legal concepts in the Act to everyday situations. They draw on precedent and case law and explain the implications of every clause in technical terms.

Some of the information contained within the Codes has been included within this guide, but you should read the original documents for a comprehensive review.

### **3. Recruitment and Selection**

#### **3.1 Legal Summary**

The Equality Act allows you to seek and recruit competent and capable workers. It is how you define competence and how you select on that basis where issues will arise.

Employers cannot discriminate in recruitment because someone is married or in a civil partnership. All decisions should be based on whether a candidate has the skills to do the job.

#### **3.2 Recruitment Agencies**

When you use an agency either to select and place workers or to supply temporary or contract workers to work within your business, your business could be liable for 'end user' claims of discrimination. Don't assume that a professional and credible agency will follow best practice. An agency will work in the way they believe to be the most efficient and this may involve making assumptions about the type of candidate they target, to reduce the time spent filling your position.

There may also be claims of "instructions to discriminate" levelled at employers who are careless in how they handle and brief suppliers.

Have a formal contract with those on your preferred supplier list to ensure they can provide evidence of non-discriminatory practice in recruitment and selection. Good agencies will be aware of The Equality Act 2010 and will understand your concerns.

#### **3.3 The Application Process**

You should consider what information you request from your candidates at the application stage to ensure that your approach cannot be considered to be discriminatory.

The use of a bias free application form will minimise the risk of discrimination creeping in to recruitment selection. A "tear off" equal opportunity monitoring form will provide you with monitoring information- the enei bias free application form.

#### **3.4 Selecting and Appointing**

Sifting and selection of candidates needs to be based on competence, capability, skill, ability and relevant experience. Those carrying out application sifts will need to understand that marriage or civil partnership is not a lawful criterion for choosing between candidates.

### **3.5 Feedback**

Good practice is to provide feedback to failed candidates. However, those supplying feedback should be trained to understand the risks of careless or ill thought through comments. Just as in interviews, statements about pregnancy, career gaps as a result of maternity leave or comments about the suitability of a role 'at your stage in life' etc., could be interpreted as discriminatory and support a possible claim.

## **4. Managing People**

The Equality Act protects employees throughout their working lives. This means you could be vulnerable to claims if you discriminate in any area of employment including training, progression or promotion.

### **4.1 Equality Policies**

You should develop a policy, which meets your organisational goals, whether this is focused on eliminating discrimination or using inclusion to achieve business success.

Ensure marriage and civil partnership status is included in your equal opportunity statement or policies, particularly if you list the protected characteristics. Failure to do so could be interpreted as a lack of concern on issues related to this protected characteristic.

Try to develop approaches to deal with discrimination and general education of your workforce, that provide support to employees, rather than simply providing a list of things that they shouldn't do. Sometimes we are not even aware of our own prejudices and need help to understand them. We have all been exposed to situations in our lives, which have formed unconscious bias that affects the way we see the world and react to different situations without knowing it.

Once a policy has been agreed, it is important to train staff on your expectations and procedures. A key element of this training should be to explore the day-to-day prejudices and assumptions about different groups of people, including pregnant workers.

In large organisations, it may take some time for all managers to be fully trained and made aware of their new responsibilities, as well as the risks from mistakes. Communication is the key to effective culture change. You should as a matter of course roll out a 'zero tolerance' programme on discrimination and associated banter.

### **4.2 Managing Difference**

Managers should be encouraged to talk to and treat their workers equally, but also to acknowledge and recognise difference and adjust their behaviour accordingly. All those who reach management levels and have responsibility for other workers should be trained.

Difference should be part of the normal team dynamic. Everyone needs to get on together and accommodate each other's different behaviour and approach. You need to watch out for inappropriate behaviour from the team.

### 4.3 Performance Management

Motivating workers is a key factor of future success. Employers need to think now about how to motivate, enthuse and encourage creative thinking and productivity.

It is often thought that performance management is a process more suited to large organisations. The truth is that performance management can just be regular conversations between an employee and their manager. These can be daily, weekly, monthly or even quarterly.

As bias reduces, hidden talent can emerge. A good manager will help all workers perform to their best whatever their difference and will not assume that reduced performance or poor performance is pregnancy or maternity related.

#### Appraisal

Reasonable and realistic targets must be set for all workers and they should be supported to achieve them.

Regular monitoring of performance scores will support you to identify possible bias. You should, at least, profile those marked as poor performers to help identify whether there is potential management bias.

When monitoring performance management outcomes, you should:

- Regularly discuss and agree training and development needs as part of a performance management/appraisal system.
- Build participation in training on a regular basis into the process.
- Focus performance management on objective measures and outputs to ensure there is no bias.
- Check that criteria for measuring performance work in practice is objective.
- Include performance or behaviours on diversity as criteria in the process.
- Review how employee performance or behaviours on diversity are rewarded or recognised as this could help promote the right behaviours.
- Be able to monitor managers who have a 'discretionary' allocation for performance measurement to ensure there is no bias.
- Monitor poor performance and profile those individuals to check the process is not inherently biased.
- Ensure the performance management process is transparent by giving workers access to the outcomes or findings of managers.



- Encourage or support diversity by including it as a key performance indicator (KPI) or similar competency for senior managers.
- Give managers equality objectives against which they are measured.

To ensure there is no confusion in the future, it is best to keep a simple record of any conversation based on objective and factual information which is dated and signed by both the you and the employee. This will also help to track progress over time. If you fail to record a conversation about performance, any further drop in performance will mean you have to start again with your process, which wastes time unnecessarily.

### Training

The Equality Act covers training whilst in employment, whether the employer or an external supplier provides the training. It is unlawful to exclude someone from training on the grounds of that they are married or in a civil partnership or to treat them differently when they are receiving training (unless this is covered by the positive action provisions.)

You are responsible for the discriminatory actions of individual employees, unless you can prove otherwise. Those who work for you on a contractor or temporary basis should be informed of your policies as soon as they start working with you. All external training suppliers should be vetted to ensure that they are compliant with the Equality Act. The induction training of new employees should automatically include training on discrimination legislation in particular.

All employees should be regularly encouraged to up-grade their skills and knowledge. You should be able to monitor training take up to ensure that it reflects the company profile.

You will probably have regular appraisal or performance meetings at which training and development needs should be discussed with employees. Managers need to be aware because someone is married or in a civil partnership that should not be a factor when discussing training needs or when nominating workers for training or career progression. Where training (and promotion) is based on self-development or self-nomination systems, managers and colleagues should be positive and supportive and not make discriminatory remarks or prejudice the decisions of others.

#### Example

"I was very upset when I failed the board. When I asked why I wasn't being promoted, they said I hadn't been on the right courses. They started to look a bit worried, when I told them I'd asked to go on them, but my boss had refused, saying there wasn't any point as I was now married and lacked commitment."

#### Comment

This scenario would be directly discriminatory as the member of staff failed to be promoted as a result of her marriage.

## Career Progression

All promotions and internal appointments should be treated in the same way as external appointments, with a full and rigorous evaluation to ensure they are not biased.

There is a lot of anecdotal evidence that promotions are more about who you know and how you play the system and that best practice on equality is often lost. Some employers use service and/or seniority in identifying suitable individuals for promotion, which could be interpreted as discriminatory. Cultural change should encourage a move away from these traditional methods.

## **5. Pay and Benefits**

### **5.1 Legal Summary**

The Equality Act 2010 states that an employer must not discriminate against a person as to the terms on which they offer the person employment.

### **5.2 Insured Benefits**

The Act allows employers to treat employees who are married or in a civil partnership differently with regard to insurance or risk based matters, in respect of either premiums or benefits, where the difference is based on reliable actuarial or other data and is reasonable in all circumstances.

### **5.3 Pensions**

The Act provides that an occupational pension scheme must be taken to include a non-discriminatory rule.

## **6. Leavers**

### **6.1 Legal Summary**

The legislation does not stop employees resigning or leaving their job. You may dismiss an employee provided they have a 'fair reason for dismissal', under the Employment Rights Act 1996. Fair reasons include gross misconduct, redundancy, capability and "some other substantial reason".

### **6.2 Post Termination**

It is important to remember that ex-employees can still bring a claim of discrimination, if they believe they have been discriminated against during or after employment. Bear this in mind, particularly when considering reference requests.

An act of discrimination or harassment committed after the working relationship has come to an end will be unlawful if it would have been unlawful during the course of employment where the discrimination or harassment arises out of or is closely linked to that employment. E.g. a complaint could be brought about discrimination during an appeal about a dismissal,

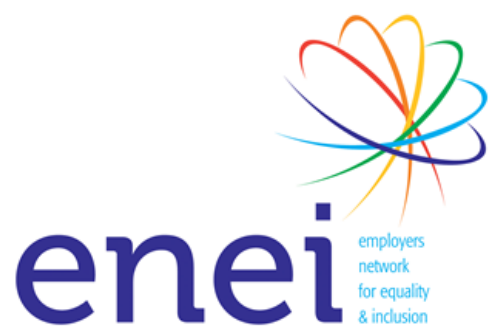
even though the employment has ended or if the employer refuses to provide a reference. If an employer normally provides benefits to ex-employees, a complaint of discrimination could be brought.

## **7. Monitoring**

Understanding the profile of your workforce and their views about work will help you devise and implement your people strategy, to ensure you are getting the most from the talented people you employ. It will also help you defend an Employment Tribunal claim if one is made.

If a claim of discrimination or harassment is made, tribunals are likely to look at various aspects of your practice to establish if discrimination has taken place. They could look at statistics; policies, procedures and how you apply them in practice, particularly if that practice is implemented inconsistently.

More about equality monitoring can be found in the enei Employer Guide to Monitoring.



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