

Equal Respect

The rights of employees to equal treatment and respect regardless of their race



Overview

To protect against discrimination on grounds of race, several Acts have been introduced over the years – the Race Relations Act 1976, the Race Relations Amendment Act 2000 and the Race Relations Act 1976 (Amendment) Regulations 2003. This last set of Regulations is particularly significant, because it specifically includes harassment if the discrimination is on the grounds of the employee's race, or ethnic or national origins only.

When is discrimination unlawful?

This factsheet focuses on the provisions of the Race Relations Act 1976 and the Race Relations (Amendment) Regulations 2003 relating to race discrimination in employment. It is important to note that discrimination in other areas is also covered by the Act, such as discrimination in education or in the provision of services.

Additionally, since the Race Relations Amendment Act 2000 came into force, it is unlawful for a public authority to discriminate when carrying out any of its functions.

To establish a claim for unlawful race discrimination at work, the employee must be able to prove that they were denied opportunities within or for employment (for example, opportunities for promotion, transfer, training or other benefits), or that they have been subjected to any other detriment. 'Detriment' means being put at a disadvantage. The legislation creates four types of discrimination: direct, indirect, harassment and victimisation.

Race Relations Act 1976

Direct discrimination – In order to prove a claim of direct discrimination within employment, you need to show that:

- You have been less favourably treated than a person not of your race* has or would have been treated in similar circumstances, and
- That this treatment was on grounds of race,* and
- That you were subject to a disadvantage or detriment as a result of that treatment.

The discrimination need not have been on grounds of your own race, it can be on grounds of a third party's race. Further, discrimination on the grounds of race can include discrimination based on the perpetrator's perception of your race. *race/racial grounds in this context includes colour, race, nationality, national or ethnic origins.

Victimisation – Discrimination by way of victimisation occurs when a complainant is treated less favourably than another person has or would be treated in similar circumstances, because the employer believes or suspects the complainant

- Has raised a complaint of race discrimination against the employer or any other person; or
- Given evidence or information in connection with proceedings for race

discrimination against the discriminator or any other person under the Act; or

- Otherwise done anything in relation to the discriminator or any other person under or by reference to the Race Relations Act; or
- Made allegations that the discriminator or any other person has committed an act which contravenes the Race Relations Act

Race Relations Act 1976 (amendment) Regulations 2003

These regulations came into force on 19th July 2003. They only cover cases based on race, ethnic or national origins. They do not cover cases where the discrimination is on the grounds of colour or nationality. It is advisable to take expert advice before submitting a claim form to the Tribunal.

Indirect discrimination – The Regulations insert a new definition of indirect discrimination where an employer discriminates against an employee. If it applies to that person an arrangement or requirement (known technically as a 'provision criterion or practice') which is applied or would be applied equally to persons not of the same race or ethnic or national origins but:

- Which puts or would put persons of the same race or ethnic or national origins as that employee at a particular disadvantage when compared with other persons,
- Which puts that employee at a disadvantage, and
- Which the employer cannot show to be a proportionate means of achieving a legitimate aim

This new definition could extend to practices which tend to discriminate and the wording is arguably less restrictive than the wording 'condition or requirement' found in the Race Relations Act 1976. The more restrictive definition of indirect discrimination applies to cases of discrimination on grounds of colour or nationality. An example of indirect discrimination would be setting a requirement for recruitment to a post that English is a first language, or for qualifications to be held which are only obtainable in the UK.

Harassment

A complainant can only claim 'harassment' under the new definition if their claim is on the grounds of race, ethnic or national origins. The definition does not apply if the complaint is of harassment on grounds of colour or nationality. In this case a claim would need to be brought by way of a claim for direct discrimination (see above).

Harassment is defined as occurring where, on the grounds of race or ethnic or national origins, a person engages in unwanted conduct towards another which has the purpose or effect of:

- Violating that other person's dignity or
- Creating an intimidating, hostile, degrading, humiliating or offensive environment for her/him.

Burden of proof

It has long been recognised as difficult for those bringing discrimination claims to find evidence to support their case. To combat this, the Regulations allow that if the Claimant provides clear facts which could enable the Tribunal to conclude that discrimination has occurred, in the absence of an adequate non-race based explanation from the employer, the Tribunal can draw an inference of discrimination.

Where an employer has failed to comply with relevant statutory Codes of Practice, the Tribunal may also draw inferences from this failure. For example, an employer may have failed to follow the Codes of Practice in relation to the way in which they have investigated the employee's grievance or recruited an individual to a post.

Questionnaire

An individual can also serve a questionnaire on their employer within 21 days of lodging a claim at an Employment Tribunal. The questionnaire can be used to ask the employer useful questions about the allegations, statistics, policies and comparators. If the employer fails to reply to the questionnaire within eight weeks or is evasive in its replies, the Tribunal may draw an inference of unlawful race discrimination.

Time limits

Most claims will need to be brought in the employment tribunal within 3 months less one day of the treatment you are complaining about. Where that treatment amounts to a continuing course of conduct by your employer, the claim may be brought within three months less one day from the end of the conduct. Please note that in most cases, this time limit will no longer be extended where an internal grievance is lodged first as the rules relating to this have recently changed. You may also need to follow the ACAS Code of Practice on Discipline and Grievance Procedures (which can be downloaded from the ACAS website). This is aimed at assisting parties to resolve disputes within the workplace. If your claim is successful but the tribunal considers that you have failed to comply with the Code, your compensation could be reduced by up to 25%. (There are also penalties on the employer if they do not comply with the Code).

Please note that the time limit for bringing a claim is not affected by compliance with the ACAS Code. If your claim relates to matters that happened before 6th April 2009, or if it relates to matters that occurred ongoing through 6th April 2009 and you have lodged a grievance or tribunal claim about it, then different rules may apply in relation to grievance procedures and time limits. These issues can be complicated and you should take prompt legal advice if you think you may have a claim.

If you have been dismissed and you feel that dismissal was on grounds of discrimination, again you must lodge your claim in the employment tribunal within 3 months less one day of the date of dismissal. Please note that this time limit will no longer be extended even where an internal appeal procedure is ongoing as the rules relating to this have recently changed in relation to most cases. (Where your employer has disciplined or dismissed you, or taken steps in compliance with the old statutory disciplinary procedures, prior to 6th April 2009 then the old rules will apply). Again you will need to follow the ACAS Code of Practice on Discipline and Grievance Procedures and the same penalties for non-compliance will apply as set out above.

An act of discrimination which extends over a period of time is treated as having been 'done' at the end of that period. An act may extend over a period of time if it takes the form of some policy, rule or practice. It can sometimes be possible to argue that a continuing campaign of harassment, or a continuing regime of discriminatory conduct, amounts to one act extending over a period of time. However these are complex arguments and it is wise to err on the side of caution in calculating the time limit. A Tribunal does have the power to consider a claim that is brought out of time, if in all the circumstances of the case it considers it is just and equitable to do so. However you should not rely on this.

Remedies

If a complainant is successful in their complaint of unlawful discrimination, the Tribunal may grant whichever of the following remedies it considers 'just and equitable':

- A declaration on the rights of the parties;
- A recommendation that the Respondent takes a particular course of action;
- Compensation (plus interest).

Compensation may include awards for injury to feelings, aggravated damages, loss of congenial employment, and any actual and/or future financial loss, for example loss of earnings and pension losses. There is no limit on the amount of compensation that can be awarded in respect of financial losses, but a complainant will only be compensated for the losses which they can show were directly caused by the unlawful discrimination as found by the Tribunal.

Contact Us

Please feel free to discuss your own position and concerns. Contact your nearest Russell Jones & Walker office or call:



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