

THE NEW DIVERSITY LAWS

Welcome to the latest issue of the Swiftwork newsletter. In this edition we provide a need-to-know guide to the latest diversity legislation. We also highlight the new opportunity for some employers to reclaim their statutory maternity, paternity and adoption payments from the Inland Revenue in advance of actually paying them out.

It has long been illegal to discriminate against employees or job applicants on grounds of their sex, race or disability in the UK. Now, to bring us in line with EU legislation on equal treatment, the government is moving to extend the same protection to people on the basis of their ages, beliefs or sexual preferences.

At the beginning of December 2003 two new sets of Regulations took effect, making it illegal to discriminate in employment or training on the grounds of religion or belief or sexual orientation.

THE REGULATIONS OUTLAW

- ◆ **Direct discrimination** – treating someone less favourably than others because of their sexual orientation or religious belief
- ◆ **Indirect discrimination** – applying a criterion or practice that disadvantages someone of a particular sexual orientation or religious belief and which is not justified in objective terms
- ◆ **Harassment** – unwanted conduct that violates someone’s dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment.
- ◆ **Victimisation** – treating people less favourably because of action they have taken under the new legislation or in connection with it (such as bringing a formal complaint or giving evidence at a tribunal hearing).

The legislation provides protection throughout the employment relationship – during the recruitment process, in the workplace, on

dismissal and, in certain circumstances, after the employment has finished. It applies to terms and conditions, pay, promotion, transfers, training and dismissals.

RELIGION OR BELIEF

The government has not provided any tight definition of religion or belief, simply including: “any religion, religious belief, or similar philosophical belief”. Political beliefs are specifically excepted. Fringe religions such as Rastafarians or Scientologists are likely to be covered, meaning that you will have to be careful to make sure you understand the special requirements of any of your employees with more obscure beliefs.

Some commentators have also suggested that vegetarianism could qualify as a “similar philosophical belief” meaning that if you provide employees with food and did not serve a vegetarian option, you would be risking a discrimination claim. The government conciliation service Acas says that while the law does not put any firm obligation on employers to make special arrangements to

provide space or time in the workplace for prayers or other religious observance, they should try and treat requests sympathetically and allow employees to schedule their annual leave on religious festivals where the business will not be harmed. Any dress code should be checked to see that it does not disadvantage a religious group that insists on a specific form of dress or head covering.

Employers can only justify discrimination where they can show there is a "genuine occupational requirement" for someone to have or not have a religious belief, such as the need for a chaplain in a prison or hospital to be Christian if they are ministering to mainly Christian patients.

SEXUAL ORIENTATION

The Regulations protect people from discrimination or harassment whether they are oriented towards the same sex, the opposite sex or both, a definition that takes in gay men, lesbians, bisexuals and heterosexuals. The law also takes in perceptions of sexual orientation, so it protects people who are assumed to be a particular sexual orientation even where the assumption is wrong. It also covers the discrimination against employees on the grounds of the sexual preference of the people - friends or family - they associate with.

One way to help avoid discrimination claims is to ask your employees about their sexual orientation as part of an equal opportunities questionnaire (while respecting their right to withhold the information) and to make clear to staff the organisation's policy on discrimination and the minimum standards of behaviour expected in this area, so that any harassment or discrimination is the individual's liability and they will be subject to disciplinary procedures.

BURDEN OF PROOF

New legislation has also shifted the burden of proof in discrimination cases, not just on religion and sexual preference but also on disability, race and sex. This means that once the person making the complaint has made a case, the burden is on the employer to prove that they did not commit the act of discrimination or harassment.

AGE DISCRIMINATION

Age regulations are set to come into force in October 2006 outlawing discrimination in employment and vocational training. The government is still working out the details, but the text is likely to introduce the same restrictions on direct and indirect discrimination, victimisation and harassment used in the existing discrimination law.

ADVANCE MATERNITY, PATERNITY & ADOPTION PAY

You may have seen recent DTI press advertisements showing a pregnant woman with the heading: "Relax, this doesn't have to hurt your business one bit". One of the government's soothing concessions to employers coping with employees exercising their rights to maternity, paternity and adoptive leave is the possibility of claiming back the statutory payments before even forking out.

Most employers are now well aware that they have to pay qualifying employees Statutory Maternity Pay (SAP), Statutory Paternity Pay (SPP) and Statutory Adoption Pay (SAP). Since these payments are effectively employers administering a benefit on behalf of the state, they can reclaim payments from the Inland Revenue by deducting the amounts from their tax and National Insurance contributions.

Large employers are reimbursed 92% of the SMP, SPP and SAP they have paid out, and smaller firms get 104.5% if their total National Insurance liability (including employees' contributions) in the previous tax year was no more than £40,000. The extra reimbursement is to compensate smaller employers for the work in making the payments. The Inland Revenue estimates that around 60% of employers qualify for the higher rate.

Under the new measure, where the amount you are due to pay out in SMP, SPP and SAP to employees is more than the total amount you will be able to recover from the payments of tax, NI contributions and other payments you are due to make to the IR Accounts Office for any year, you can request reimbursement of the payments in advance of actually paying them. Local tax offices will have more details of how to claim advance payments.

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MORE INFORMATION

The relevant section of the Employment Act 2002 is available at:

<http://www.legislation.hmso.gov.uk/acts/acts2002/20020022.htm>

The draft Regulations are available at:

<http://www.dti.gov.uk/er/review.htm>

More flexible working topics can be found in the newsletter:

<http://www.flexibility.co.uk>

HOW SWIFTWORK CAN HELP

SwiftWork, as the specialists in flexible working can:

- ◆ advise on flexible working practices appropriate for your organisation
- ◆ help draft a policy framework
- ◆ provide flexible working guidelines for managers and staff
- ◆ provide training for managers in managing flexible working
- ◆ provide training in managing locations independent teams
- ◆ provide training for employees in responsible flexible working
- ◆ provide a complete, on-going, HR back-up service

If you would like any more information about the issues raised in this newsletter or on any aspect of flexible working,

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