

Religion or belief in the workplace

A guide for
UCU members
and reps

It is important that terms and conditions and other workplace practices take into account a worker's religion or protected belief.

UCU branches and members will seek to ensure that the beliefs and/or religious observances of all members are met by the employer and within the branch.

The Law

The two main pieces of legislation that protect religion or belief at work are the Equality Act 2010 and the Human Rights Act 1998.

The Human Rights Act 1998 gives a person the right to hold a religion or belief and change their religion or belief. Furthermore, it gives them a right to show that belief, but not if that display or expression interferes with public safety, public order, health or morals, or the rights and freedoms of others.

More specific guidance on the regulations in Northern Ireland can be found here

<https://www.equalityni.org/ECNI/media/ECNI/Publications/Individuals/ReligiousDiscriminationGuide2010.pdf?ext=.pdf>

The Equality Act 2010 covers protections in this area which can broadly be divided into:

- ➡ religion and religious belief, and
- ➡ philosophical belief

The act protects workers from discrimination, harassment and victimisation because of religion or belief.

DIRECT DISCRIMINATION

Direct discrimination applies to all protected characteristics including religion or belief.

Direct discrimination is treating someone less favourably than another person because of a protected characteristic that they have.

For example, it's refusing to employ an individual because they are a Sikh or disregarding a Sikh for promotion because of their religion.

Direct discrimination cannot be legally justified.

Discrimination by association and by perception are types of direct discrimination.

DISCRIMINATION BY ASSOCIATION

This is treating someone less favourably because they associate with an individual who has a protected characteristic.

For example, treating someone less favourably because they spend their spare time socialising with people of a certain religious group, even though they don't hold the same religious beliefs.

DISCRIMINATION BY PERCEPTION

This is treating someone less favourably because it's perceived that they have a protected characteristic, whether they do or not. For example, not recruiting someone because it's thought they have a certain religious belief when they don't.

INDIRECT DISCRIMINATION

Indirect discrimination occurs when:

- 1 a provision, criterion or practice is applied to all, and;
- 2 it puts a group with a protected characteristic at a disadvantage when compared with another group
- 3 an individual is put at a disadvantage
- 4 the employer cannot show it to be a proportionate means of achieving a legitimate aim.

For example, if a uniform policy requires all individuals to dress in the same way without modification and this means that some people can't wear an item of clothing they regard as part of their faith.

This could be indirect discrimination unless it can be shown to be objectively justified. To be objectively justified you must show two things.

- 1 The first is that there is a genuine organizational need – a legitimate aim – behind the rule.
- 2 The second is that the means of achieving that aim are proportionate. For example, maintaining a staff uniform so that all personal trainers are easily identifiable would be a genuine organisational need but it is unlikely to be proportionate for the fitness centre to only have the options of shorts as a uniform.

VICTIMISATION

Victimisation occurs when someone is treated less favourably because they've made or supported a complaint or raised a grievance under the Equality Act 2010. It also applies if it's thought that they have made a complaint.

A comparator isn't required for a claim of victimisation. Post-employment victimisation can occur – for example, refusing to give a reference to someone who had made a complaint under the Equality Act 2010.

HARASSMENT

Harassment is 'unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile,

degrading, humiliating or offensive environment for that individual'.

The conduct does not need to be deliberate or intentional to count as harassment.

There is no specific legislation making employers liable for harassment that comes from a third party. However an employer can still be liable as a result of numerous other legal duties, for example breach of contract, direct discrimination and under the Protection from Harassment Act 1997. This, and good practice, mean that employers should continue to take steps to protect employees from all forms of harassment.

Exemptions to the law

In some circumstances there may be an Occupational Requirement to employ a person of a particular religion or belief.

In these instances, exceptions from the law are permitted covering selection, promotion and training. The employer must be able to show that there's a genuine need, taking account of the type of work.

For example, an NHS Trust may seek a Roman Catholic healthcare chaplain who can administer end of life care prayers to Roman Catholic patients, whereas it would not be acceptable to specify that a hospital cleaner must be of the Catholic faith.

There's also an exemption for 'employers with an ethos based on a religion or belief'. This allows employers to place advertisements for jobs requiring a person to be of specific religion or belief as long as it can be objectively justified. To rely on an objective justification defence, the employer, service provider or other organisation must show that its policy was for a good reason – that is 'a proportionate means of achieving a legitimate aim'. For example that the religious requirement must be crucial to the post.

POSITIVE ACTION

Employers can take positive action, for example to address under-representation or other forms of disadvantage within the workforce.

UCU members and religion or belief

UCU members are advised that it is important not to make assumptions about an individual's religion or belief. Speaking directly to a colleague is always the best way to determine their religious belief. Create a climate in which members can discuss their religion or belief. The first step to ensuring the employer takes this issue seriously is for the branch to create space on the agendas of branch and committee meetings to discuss this particular issue. Support may also be found in your regional office or nationally by contacting Christopher Nicholas, Equality Support Official (cnicholas@ucu.org.uk)

Some of the areas to consider when looking at religion or belief include

- 1 Social Events/branch meetings
- 2 Religious Holidays
- 3 Dress

- 4 Food
- 5 Fasting
- 6 Prayer

1 Social Events/branch meetings

Ensure that those responsible for organising social events, both formal and informal, do not do so in a way that is exclusionary to those with different needs linked to religion or beliefs. For example, it is important to make sure that social events are not exclusively centred around alcohol consumption. Example: The branch has an informal meeting every Friday night in the local pub near the workplace. A Muslim activist does not drink and feels uncomfortable in that kind of venue. As a result, the activist never attends any of these informal branch meetings. The branch may want to consider alternative meeting arrangements. Similarly, the branch will want to consider dietary requirements of those in attendance where food is being provided. Options for vegan members, for example, as veganism is a protected belief.

2 Religious Holidays

Most workplaces allow time off for Christian festivals but many fail to take into consideration other religions. Try to win the right to time off for different religious festivals. Seek an agreement that wherever possible important workplace meetings and other events are not timetabled to coincide with important religious festivals. The employer should be providing training on this issue. It is important that in order to avoid workplace resentment full details of these agreements are made clear to everyone. For example, an agreement may allow employees from other religions to take religious holidays off in addition to their annual leave as long as they make that time up at a later date or take the time off as unpaid leave. This should be made clear to other employees, so they do not feel their colleague is receiving more holiday than them. Remember that some workers who are not Christians may wish to work at times when many of the workforce would like time off, therefore this can work to the benefit of the whole workforce and the employer.

While there is no obligation to automatically be granted time off for religious holidays or festivals the employer should consider the request sympathetically and be reasonable and flexible where possible. Refusing the request without a good business reason could amount to discrimination.

3 Dress

UCU welcomes the variety of appearance brought by individual styles and choices. The wearing of items arising from particular religious norms is seen as part of this welcome diversity.

The only limitations to the above may occur when:

- ➔ Health and safety requirements may mean that for certain tasks specific items of clothing such as overalls, protective clothing etc need to be worn. If such clothing produces a conflict with an individual's belief the issue should be sympathetically considered by the line manager with the aim of finding a satisfactory outcome.
- ➔ Clothing displaying slogans which are discriminatory (eg racist or sexist) causes offence.

- ➔ There are particular legislative requirements. In Northern Ireland, dress or symbols that associate individuals with a particular religion or belief group are regulated. Items of clothing which may be related to sectarianism would be considered problematic and fall under the regulations i.e. football shirts. In the case of dress or symbols associated with other minority religion or belief groups, this was not seen to be an issue, and the dress code raised no specific issues about wearing other garments associated with minority religions.
- ➔ Particular educational ceremonies or practices, such as graduation, require the wearing of traditional outer garments. In such instances the institution would be expected to ensure that the traditional garb allows the wearer to fulfil their cultural or religious affiliations.

Exam verification/identification may require institutions to conduct identity checks. Such checks must always be discreet and conducted in a manner which respects the religious, social or cultural norms of the individual. This may be done, for example, by carrying out a visual check against photographic ID where arrangements, wherever reasonably possible, are put in place for authentication procedures to be conducted in a private room by staff of the same sex as the individual concerned.

4 Food

Canteen menus should cater for different religious needs and beliefs. Ensure that canteen staff receive the appropriate support and training to cater for different religious diets and that all food is labelled clearly. At the very least make sure there are always vegetarian and vegan options on canteen menus. Ensure that the same rules are applied to outside events using outside caterers. The branch may seek to work closely with other campus/workplace unions to achieve the above aims. It might be useful to conduct a survey of the workforce to find out if they have any specific requirement in this area.

5 Fasting

Some religions require their followers to fast at certain times of the year. Try to seek an agreement that fasting will be dealt with sympathetically and that UCU members and students who are fasting be allowed to work and study flexibly during these periods. They may well prefer to commence/finish work at different times and to work reduced lunch hours.

6 Prayer

Some religions require their followers to pray at different times of the day. Try to get employers to agree to provide prayer facilities, usually a quiet room. Ensure that other colleagues are made aware of an individual's need to pray and that they foster a climate of respect and understanding. Please note that Muslims will require washing facilities enabling them to clean their hands, face, arms and feet before prayer.

If the employer does not have a place for a dedicated prayer or multi-faith room, it should discuss with the branch how else it might be able to help – for example, would they accept using a place as a temporary prayer room at certain times of the day? The employer should be made aware that refusing a request for a place to pray, when it provides other comparable facilities for staff, is likely to be discriminatory.

PHILOSOPHICAL BELIEF

A belief means any religious or philosophical belief and includes a lack of a particular belief. A belief need not include faith or worship of a god or gods, but it must affect how a person lives their life or perceives the world. For a philosophical belief to be protected under the Act it must be:

- ➔ genuinely held
- ➔ not just an opinion or point-of-view based on current information
- ➔ a weighty and substantial aspect of human life and behaviour
- ➔ clear, logical, convincing, serious, important, and
- ➔ worthy of respect in a democratic society, compatible with human dignity and not conflicting with the fundamental rights of others.

A wide variety of beliefs are protected including highly controversial or offensive beliefs, but this does not include extreme beliefs such as a belief in racial superiority.

Beliefs such as humanism, pacifism, veganism and the belief in human-made climate change are all protected.

Case rulings may decide whether something is a belief or not. For example, following the Forstater Employment Appeal Tribunal ruling of June 2021 Gender critical beliefs are protected as a belief in law.

The same case also highlighted that, 'a trans person could potentially bring a claim for harassment related to... a philosophical belief that gender identity is paramount and that a trans woman is woman.¹'

Supporting a football team or loyalty to your native country are not protected beliefs.

All protected beliefs are equal – whether religious or philosophical – so one protected belief cannot override another. And an employee can be protected because they do or do not hold a particular philosophical belief, regardless of any other religious or philosophical belief they may or may not hold.

The Equality Act does not give a list of philosophical beliefs. However, philosophical beliefs are being added, or claims ruled out, as cases go before employment tribunals.

For example, a climate change environmentalist, an opponent of foxhunting and a supporter of BBC broadcasting have had their beliefs recognised in their individual cases. However, it is important to understand that whether someone's beliefs, principles, teachings or doctrines amount to a 'belief' in an individual case depends on all the particular facts of the case and whether that belief affects how the person lives their life.

MANIFESTING RELIGION OR BELIEFS IN WORK

The fact that a religion or belief is protected does not mean that comments or actions based on such beliefs cannot breach equality laws and employment policies designed to protect workers. How a protected belief is expressed or manifested can be discriminatory and amount to unlawful harassment or discrimination.

Employers will be liable (subject to any defence under s.109(4), EqA) for acts of harassment

and discrimination against workers committed in the course of employment.

Colleagues may want to talk about their religion or belief at work; others may feel that this is not appropriate. The right to freedom of expression is protected by law, but it can be limited in some circumstances such as to protect the rights of others.

EXAMPLE: I CAN SAY WHAT I LIKE

Frank has expressed his views on a work forum that religion is unnecessary and that he can't see why people are 'stupid enough to believe in such things'. This has upset many members of staff who have taken down his post. He's requesting that it is put up again because he has a right to express his beliefs.

An employer can have a policy which places limits on discussions about religion or belief at work. Any restrictions on freedom of speech or manifesting religion or belief should be proportionate. It's unlikely to be proportionate or practicable to ban discussion of religion or belief altogether.

If employers do not take reasonable steps to prevent harassment occurring then they will be liable for their employee's actions.

LIMITATIONS

A worker is entitled to have a religion or belief even those that are highly controversial or offensive.

However, that does not mean workers with a religion or belief have an unlimited right to freedom of expression.

Freedom of expression can be restricted to protect the rights of others. An example of an appropriate use of this restriction is where a worker expresses views which discriminate, harass, or incite violence or hatred against other persons or groups.

Sexist, homophobic or transphobic comments relate to characteristics which are protected under the Equality Act 2010, so making such comments could amount to unlawful harassment or discrimination.

If a worker expresses their religion or belief at work in a way that amounts to unlawful harassment or discrimination it may result in the employer taking disciplinary action and, ultimately lead to dismissal.

If an employer does not take reasonable steps to prevent harassment occurring, then they could be liable for their employee's actions.

See <https://www.equalityhumanrights.com/en/advice-and-guidance/religion-or-belief-expressing-personal-views-and-beliefs> EHRC guidance for further information.

APPROACHING THE EMPLOYER

A useful tip when approaching the employer to improve the working conditions for those members whose specific needs around religion or belief are not being met is to foreground your request with the Public Sector Equality Duty (PSED). The three aims of the overarching General Duty of the PSED are:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

All further, higher, adult and prison education establishments are subject to and must evidence how they meet this duty. More information on the Duty can be found here <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty>

THE ROLE OF THE REP

- Union reps have a key role to play in supporting colleagues with a religion or belief and those without. They also have a role to play in ensuring that employers meet their legal obligations and consider any religion or belief requests.
- A key part of your role is to offer a supportive point of contact for members, regardless of what their situation or concerns may be.
- Religion or belief issues can often be sensitive so it's important that members know that you are there to offer support. As always, you are not expected to be an expert but a confidential and trustworthy ear to provide guidance and reassurance.
- In your role as a union rep you probably already have built up an array of skills that will be applicable to a religion or belief.
- Listening skills, sensitivity, confidentiality and trust are all key to your role. Knowing what support networks exist around you is equally important.
- Remember, not everyone will observe practices in the same way so never make assumptions about what a colleague may want or the requests they may make.
- Be member-led here - clear communication is key. If you are unsure of anything consult a union member who has expert knowledge in this area.
- Understanding what workplace policies are currently in place will be a good starting point in knowing what changes can be made. As a rep, you have an important role to work with the employee and employer to help find solutions.
- But don't worry, you aren't expected to know all of this by heart. If you are unsure, contact your union for guidance.

https://learning.elucidat.com/course/5c73fe79ee736-609a4c4dbbb88#pa_5ae822c17bb99_p162b4312c22-accordion__body-2