

Religion or belief:

a guide to the law

About this publication

What is the aim of this publication?

'Religion or belief: a guide to the law' provides an overview of the protections offered by the Equality Act 2010 and the Human Rights Act 1998 of people with or without a religion or belief. It answers commonly asked questions such as what is indirect discrimination and can it ever be justified, and how much employers are expected to know about religion or belief in order to fulfil their legal obligations.

Who is it for?

This guide is for employers across the private and public sectors.

Why has the Commission produced this?

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006 to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights.



**Equality and
Human Rights**
Commission

Equality Act 2010

The Equality Act 2010 makes it unlawful to discriminate against someone because of religion or belief, or because of a lack of a religion or belief. For example, the Act protects Christians if they are discriminated against because of their Christian beliefs. It also protects those who are discriminated against because they are not Christians, regardless of whether they have another religion or no religious belief.

The Act applies to all aspects of employment, the provision of goods, services and education, the use or the disposal of premises, the exercise of public functions, and the treatment by an association of its members and guests.

It applies to all employers and service providers, whether they are public or private sector bodies, and regardless of their size. It protects employees and other workers against discrimination in selection for employment, during employment, in dismissal and post-employment. It similarly protects actual or potential service users against discriminatory treatment by service providers. It explains the different kinds of unlawful discrimination, such as direct discrimination, indirect discrimination, harassment and victimisation. Finally, the Act sets out some exceptions to the normal rule against non-discrimination. For example, it explains when it is not unlawful to specify that applicants for a job must have a particular religion or belief.

For more detailed explanation of how the Act applies to employment and service providers, see the Equality and Human Rights Commission's **Statutory Code of Practice on Employment** and **Statutory Code of Practice on Services, Public Functions and Associations**.

Human Rights Act 1998

The Human Rights Act 1998 says that all public authorities and other bodies carrying out public functions, such as care services, have to act consistently with the European Convention on Human Rights. One of these rights, Article 9, protects freedom of thought, conscience and religion. It protects all religions and a wide range of philosophical beliefs including atheism, humanism, agnosticism, veganism and pacifism.

Article 9 gives all individuals an absolute right to hold or change a particular religion or belief. It also says that people have a 'qualified' right to manifest that religion or belief, for example in the way they dress or behave. Because the right to manifest a religion or belief is qualified it can be limited in some situations, such as to protect public safety and the rights and freedoms of others.

For example, it would be lawful for a hospital to have a policy restricting the kind of religious jewellery staff can wear on wards if the aim of the policy is to protect the health and safety of patients, and these restrictions are proportionate to that aim.

I am a private sector employer – must I comply with the Human Rights Act 1998?

If you are a private sector employer carrying out public functions – for example, a security firm contracted by a public body to transport prisoners – then the Human Rights Act applies directly to you when carrying out those public functions. If you do not exercise public functions then the Act applies indirectly as the courts have to interpret UK laws to comply with Article 9 wherever possible. For example, when an employment tribunal is deciding whether a private sector employer has discriminated against an employee because of religion or belief, it will use Article 9 to help it decide how the Equality Act 2010 should apply to the case.

Which religions are protected by the Equality Act 2010?

The Act says that ‘religion means any religion’, but doesn’t include a definition of religion. The courts have interpreted this as including any religion of sufficient seriousness which has a clear structure and belief system.

The Act therefore protects religions such as Christianity, Judaism, Islam and Hinduism, as well as others such as Baha’i, Jainism, Rastafarianism and Zoroastrianism. A religion need not be mainstream or well known to be protected under the Act.

In addition, denominations or systems of belief within religions, such as Methodism or Sabbatarianism within Christianity, or Sunni or Shia within Islam, are likely to be religions for the purposes of the Act.

The Act says that ‘religion includes... a lack of religion’. This means that people without a religion, such as atheists, humanists and secularists, are protected under the Act. It also means that a person who has a particular religion will be protected if they are discriminated against because they lack another, different religion.



Which beliefs are protected by the Equality Act 2010?

The Act does not include a definition of belief other than ‘belief means any religious or philosophical belief’ and includes a lack of a particular belief. The courts have developed a definition of belief through the cases they have decided.

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
- be a belief and not just an opinion or viewpoint based on the present state of information available
- be about a weighty and substantial aspect of human life and behaviour
- attain a certain level of cogency, seriousness, cohesion and importance, and
- be worthy of respect in a democratic society, not incompatible with human dignity and not in conflict with fundamental rights of others. For example, Holocaust denial, or the belief in racial superiority are not protected.

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



What is direct discrimination because of religion or belief?

Direct discrimination is when someone is treated worse than someone else in a similar situation because of religion or belief. For example, an employer refuses to employ a job applicant because they are Buddhist even though they are the best-qualified candidate.

It is also direct discrimination if someone is treated worse than someone else in a similar situation because they lack a particular religion or belief. For example, an atheist employee is always given a lower bonus than Christian colleagues despite performing at least as well as those colleagues.

What is discrimination by association?

It is unlawful direct discrimination to treat someone worse than someone else in a similar situation because of their association with another person who has a particular religion or belief. That applies even if the person who is treated worse does not share that religion or belief. For example, a restaurant refuses a couple who are not Hindus a table because they are with a Hindu couple. The Hindu couple would have a claim of direct discrimination because they are refused a table due to their religion. The other couple could also bring a claim of direct discrimination because they have been refused a table due to their association with the Hindu couple.

What is discrimination by perception?

It is unlawful direct discrimination to treat someone worse than someone else in a similar situation because they are perceived to have a particular religion or belief. For example, an employer wrongly assumes a job candidate is a Muslim because of their name and rejects their application on this basis. The candidate will be able to claim direct discrimination even though they are not in fact a Muslim.

The same will apply if the reason for someone being treated worse is a perceived lack of a religion or belief.

Can direct discrimination be legally justified?

No it cannot, unless there is an explicit exception in the Act. These exceptions rarely apply.

For example, the Act says that in certain very limited circumstances it is not unlawful direct discrimination to specify that having a particular religion or belief is an occupational requirement for a job. If the occupational requirement exception applies it would not be unlawful to refuse to employ someone because they do not have the specified religion or belief. The Act also allows exceptions to the general rule against direct discrimination in the provision of services. For example, non-commercial religion or belief organisations may restrict those to whom they provide goods and services so long as certain legal conditions are met.

Because these are exceptions to the fundamental principle that direct discrimination is unlawful, the Act sets out strict conditions which have to be met before they can be used.

What is indirect discrimination in relation to religion or belief?

Indirect discrimination occurs where a provision, criterion or practice – such as a rule or policy – is applied to everyone but particularly disadvantages a group of people who share a certain religion or belief as well as a particular person in that group. An example would be a fitness centre requiring all personal trainers to wear a uniform that includes shorts, and no alternative is provided. This may conflict with some people's religious beliefs about modesty in dress and would potentially indirectly discriminate against an employee in that group who shares those beliefs.

A provision, criterion or practice which has that effect will be unlawful unless it can be shown to be objectively justified.

Can indirect discrimination be justified?

Yes. A rule or policy that has an indirectly discriminatory effect is not unlawful if it is objectively justified. This means satisfying a court or tribunal that the provision, criterion or practice is a proportionate means of achieving a legitimate aim.



What is a legitimate aim?

In most cases it will be possible to show that a potentially indirectly discriminatory rule has a legitimate aim. Almost all genuine organisational needs will meet this test. Examples which have been accepted by the courts include the need to:

- protect the health and safety of fellow employees, customers or service users
- provide sufficient staff cover to meet contractual or legal requirements
- have sufficient staff cover to meet business demands
- maintain a brand or company image
- ensure neutrality in delivering public services, and
- ensure compliance with equal opportunities policies.

The courts have said that cost alone cannot be a legitimate aim, but costs in addition to another factor can. This means, for example, an employer cannot justify an indirectly discriminatory rule simply by arguing that it is cheaper to discriminate.

What might be a proportionate means of achieving a legitimate aim?

What is proportionate will depend on the facts in each situation. It involves a court or tribunal balancing the effect of the rule or policy against the reasons for applying it. In practice, a central question is often whether there is an alternative way of achieving the aim of the rule or policy which doesn't have the discriminatory impact, or which lessens it.

For example, an employer requires all employees to work on Sundays. An employee asks not to work on Sundays for religious reasons as this would disadvantage them and others who share their religion. In these circumstances the employer would need to consider:

- the impact on the business if the rule is not applied to this employee (for example, work rotas may be flexible enough to allow employees to swap Sunday working for other shifts so there is no real impact on the business)
- the impact on the employee's colleagues, who may have to cover additional duties, and
- the costs, the effect on resource allocation and the other implications of agreeing to this request.

The more serious the consequences for the employee, the greater the onus on the employer to find a way of granting a request. For example, if an employee will be forced to resign due to being unable to comply with the rule to work Sundays, a court will require good evidence from the employer that alternative ways of achieving the aim of the rule requiring Sunday working could not be found.

To show that the rule is objectively justified, it is not enough for an employer or service provider just to show that it acted reasonably. But, in practice, it will be easier for an employer to show that there was objective justification for a rule where steps were taken to investigate and seriously consider the options at the time the request was made.

What is harassment related to religion or belief in the workplace?

Harassment occurs where an employer or employee engages in unwanted conduct related to religion or belief (or lack of a religion or belief) which has the purpose or effect of violating another person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person. The Act makes two types of harassment related to religion or belief unlawful.

The first is when somebody intends to harass another employee. For example, a member of staff has set up a weekly interfaith group for all employees and regularly criticises all members of staff who decide not to attend, warning them of the consequences of not having any particular religion or belief.

The second is when the unwanted conduct is not intended to harass others but has that effect. This means that it is not necessarily a defence to a harassment claim to say that the harasser 'did not mean it'. The Act itself sets out the relevant factors in deciding whether conduct has a harassing effect. These are the perception of the person being harassed, the other circumstances of the case and whether it is reasonable for the conduct to have that effect. This means that not all conduct considered as harassment by an employee will be unlawful.

For example, an employee who is a strong believer in man-made climate change is offended by comments made by a colleague disputing the reality of man-made climate change during a discussion. The colleague does not intend to harass him but the employee claims that the comments create an intimidating, hostile, degrading, humiliating or offensive environment for him. The comments will only be unlawful harassment if it is reasonable for the comments to have that effect. In this example, that is unlikely to be the case. The comments are part of a one-off discussion between colleagues. The situation could be different if the colleague made repeated comments to the employee ridiculing his belief or if the comments were expressed in particularly derogatory language.

An employer is liable for harassment by their employees unless it can show it took all reasonable steps to prevent it, for example by having clear policies setting out what behaviour is unacceptable and training its employees on those policies.

Are the harassment provisions in the Act relevant when delivering a service?

No. The harassment provisions in the Act do not apply to religion or belief in services or public functions. For example, a Muslim man visits his local takeaway regularly. Every time he goes in, one of the staff makes comments about him not eating pork. He finds this offensive and upsetting. As staff make the comment when delivering a service to him he would not be able to bring a claim of harassment under the Act. However, those comments are likely to amount to direct discrimination if he can show he was treated worse in the way the service was provided because of religion or belief.

What is victimisation related to religion or belief in the workplace?

Victimisation in the workplace occurs when someone suffers a detriment as a result of having complained about discrimination or of having helped someone else with a discrimination claim. For example, an employee complains that her religious employer has discriminated against her because she has no religion or belief. At a later date, the employee is turned down for promotion because, although she has all the necessary skills and experience, she is seen as a 'troublemaker'. If the employee can show that she has been turned down because of her earlier complaint about discrimination, this would be victimisation under the Act.



What is victimisation related to religion or belief when delivering a service?

Victimisation in service delivery is where someone suffers a detriment as a result of having complained about discrimination or of having helped someone else with a claim. For example, a customer is barred from a restaurant because she previously alleged that waiting staff treated her less favourably because of her particular religion. The customer could bring a claim against the service provider for discrimination and victimisation under the Act. So could someone else who complained about the discriminatory treatment of the customer and who was also barred from the restaurant as a result.

Do I need to be an expert on religion or belief to fulfil my legal obligations as an employer or service provider?

No, employers and service providers are not expected to be experts in religion or belief issues. However, you will in some circumstances need to understand enough about a religion or belief to enable you to make a decision about what you need to do to comply with the Equality Act 2010. For example, if an employee asks for a change to a dress code for religious reasons you will need to understand why this is being asked for, what the change is and the consequences if it cannot be made. Unless you understand these factors you will not be able to take them into account in assessing whether it would be indirectly discriminatory not to allow the change. This does not mean you need to be an expert in religion or belief but it does mean that you will need to ask the employee about these issues.

What is the Public Sector Equality Duty (PSED) and how does this relate to religion or belief?

The Public Sector Equality Duty (PSED) applies to all public bodies and other organisations carrying out public functions. It is made up of a general equality duty supported by specific duties. The general duty is the same for England, Scotland and Wales, but the specific duties for each of these three countries are different. The general duty requires those carrying out public functions (for example, a security firm contracted by a public body to transport prisoners) to have due regard to the need to:

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

This means organisations covered by the duty must integrate considerations of equality and good relations into their day-to-day business. The PSED applies to the protected characteristic of religion or belief. Having due regard to advancing equality of opportunity means a public body must consider the way in which the needs of people with different protected characteristics might be met or how barriers that prevent them from equality of opportunity in employment or access to public services could be removed. Having due regard to the need to foster good relations means a public body must consider how to tackle prejudice and promote understanding between different groups.

The duty therefore requires public bodies to consider how they could positively contribute to the advancement of equality of opportunity for and good relations between people of different religions and beliefs. It requires this to be considered in the design of policies, including those that are internal, and the delivery of services, and for these to be kept under review. The duty does not require a public body to meet all of the specific needs of different groups.

For more information on the PSED, please see our [guidance](#).

Contacts

This publication and related equality and human rights resources are available from the Commission's website: **www.equalityhumanrights.com**

For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

Website **www.equalityadvisoryservice.com**

Telephone **0808 800 0082**

Textphone **0808 800 0084**

Hours **09:00 to 19:00 (Monday to Friday)**
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Questions and comments regarding this publication may be addressed to:
correspondence@equalityhumanrights.com.

The Commission welcomes your feedback.

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