

CHAPTER 14: DISCRIMINATION AND HEALTH AND SAFETY

QUESTION 1

Discuss the protected characteristics under the Equality Act 2010.

Answer: Section 4 of the Equality Act 2010 (EA 2010) sets out the areas of discrimination protected by the Act. These are age or age group, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Most of the characteristics are symmetrical which means which means people are protected if they are younger or older, women or men. But marriage and civil partnership is not a symmetrical characteristic and does not apply to single people. Disability is also not symmetrical and it is acceptable to treat a disabled person 'more favourably' than a person who is not disabled.

Disability is where the impairment has 'a substantial and adverse long-term effect on the person's ability to carry out his normal day-to-day activities'. The disability can be mental or physical. An employer has a duty to make reasonable adjustments for disabled people. Gender reassignment relates to people who are transsexual. People are protected from discrimination if they have proposed, started, or completed a process to change their sex. The person does not have to have had medical intervention; it is sufficient if they just have the intention to live as someone of the opposite sex.. Race includes colour, nationality, or ethnic origins. Religion or belief includes lack of belief; therefore atheists are covered from being discriminated against.

QUESTION 2

Explain the differences between the different types of prohibited conduct.

Answer:

The main types of prohibited conduct are; direct discrimination, associative discrimination, perceptive discrimination, indirect discrimination, harassment, victimization. Direct discrimination is where someone with a protected characteristic is treated less well than someone (either real or hypothetical) without that characteristic. For example, a person is treated less well because they happen to be black or female. Associative discrimination is where a person has been discriminated against because of someone else (with a protected characteristic) that he is associated with. Perceptive discrimination is where a person has been discriminated against because people *perceive*, or *believe* that he has the protected characteristic. Indirect discrimination where the employer may not even realize that he is discriminating, but is in fact doing something that makes it more difficult for one group of people to comply with than another. Harassment is unwanted conduct, which is related to a protected characteristic and has the purpose or effect of creating an intimidating, hostile, degrading, humiliating, or offensive environment for the complainant or violating his dignity. Harassment may also be sexual harassment or treating someone less favourably than someone else because he or she has either submitted to or rejected sexual harassment, or harassment related to sex or

gender reassignment. Victimization is where someone is treated less favourable because they complained about discrimination or supported someone else in their complaint, in 'good faith'.

QUESTION 3

Jo is a transsexual who has undergone surgery to change her sex from male to female. She applies for a job as a hairdresser, but is rejected because the owner of the salon thinks that she does not really look the part. Does she have any legal remedy? Would your answer be any different if she applied for a job as a changing room assistant?

Answer:

Direct discrimination because someone has changed gender is discriminatory, and cannot be justified. If the treatment is because of the change of gender, and not because of how Jo does her job, then this would be discrimination. If the changing room is a female one, Jo is to be treated as a female, and should be allowed to do the job. The employer may be able to argue an occupational requirement, but this is unlikely to succeed.

QUESTION 4

Sarah is a Druid. She wants to have time off to celebrate the summer solstice at Stonehenge, but her employer refuses. At about the same time, he allows some Muslims to take a few days off for Eid. Advise Sarah.

Answer:

Druidism counts as a religion for the purposes of the Equality Act. The employer has to treat all religions equally. Sarah can bring a claim comparing herself to the Muslims, as the summer solstice counts as a religious festival for Druids. However, it depends on when she asked for this leave. If, for example, Sarah's Muslim colleagues had asked for their leave several months ago, and their absence will make the employer short-staffed, but Sarah only asked yesterday for time off next week, then the employer can argue that the refusal was not because of her religion, but because she asked for the leave late and he was short-staffed. This is not a justification, but the fact that she cannot show that any discrimination was 'because of' her religion.