



GUIDANCE ON
EMPLOYMENT EQUALITY
REGULATIONS 2003

RELIGION OR BELIEF



Guidance

Employment Equality Regulations 2003 – Religion or belief

The Employment Equality (Religion or Belief) Regulations came into force on 2 December 2003. The Regulations make it unlawful to discriminate against workers because of religion or similar belief.

Summary

The regulations apply to all areas of employment including recruitment, terms and conditions, promotions, transfers, dismissals and training.

In the spirit of our commitment to inclusion and equality for all, the District Council have 'enhanced' the Regulations, to include service delivery. Therefore, our service users are covered by these regulations.

They make it unlawful on the grounds of **religion** or **belief** to: FAQ 1

- Discriminate **directly** or **indirectly** against anyone. FAQ 2
- Subject someone to **harassment**. FAQ 3
- **Victimise** someone because they have made or intend to make a complaint or allegation or have given or intend to give evidence in relation to a complaint of discrimination on the grounds of religion or belief. FAQ 4
- Discriminate or harass someone in certain circumstances after the working relationship has ended. FAQ 5

Exceptions may be made in certain (very limited) circumstances if there is a **genuine occupational requirement** for the worker to be of a particular religion or belief in order to do the job or to comply with the religious belief or ethos of the organisation. FAQ 6

Terminology – Frequently Asked Questions

FAQ 1

What is the definition of 'religion' or 'belief'?

The Regulations cover religion, religious belief and similar philosophical beliefs. Religion or belief is not explicitly defined in the Regulations. There are certain factors which are likely to be taken into account when a Tribunal is deciding what is a 'religion or belief'. These include:

- collective worship
- a clear belief system
- a profound belief affecting the way of life or view of the world

The list below shows some of the most commonly practiced religions and beliefs in Britain. They are listed in alphabetical order for ease of reference only. There are many more and this list should not be considered to be exhaustive.

Agnostic	Jainism
Baha'i	Judaism (Jews)
Budhism	Paganism
Christianity	Rastafarianism
Druidry	Sikhism
Hinduism	Wicca
Humanism	Zoroastrianism
Islam (Muslims)	

FAQ 2

What is the difference between direct and indirect discrimination?

Direct Discrimination

An employee or job applicant must not be treated less favourably than others because they follow, are perceived to follow, or do not follow a particular (or any) religion or belief.

It is unlawful to:

- decide not to employ someone
- dismiss them
- refuse to provide them with training
- deny them promotion
- give them adverse terms and conditions

because they follow, or do not follow, a particular religion or belief.

An example of Direct Discrimination

At interview it becomes clear that a job applicant is a Muslim. Although the applicant has all the skills and competencies required of the job, the organisation decides not to offer him the job because he is a Muslim. This is direct discrimination.

Indirect Discrimination

An organisation must not have selection criteria, policies, employment rules or any other practices which although are applied to all employees, have the effect of disadvantaging people of a particular religion or belief, unless the practice can be justified. Indirect discrimination is unlawful whether it is intentional or not.

An example of Indirect Discrimination

An organisation has a dress code which states that men may not wear ponytails. This may indirectly disadvantage Hindu men, some of whom wear a Shika (a small knotted tuft of hair worn at the back of their head, as a symbol of their belief). This policy could be considered to be discriminatory.

FAQ 3

What is 'harassment'?

Harassment is unwanted conduct which has the **purpose** or **effect** of:

- violating a person's dignity
- creating an intimidating, hostile, degrading, humiliating or offensive environment

It may be intentional and obvious, such as bullying, or it may be unintentional behaviour which is not intended to be malicious, but is nevertheless upsetting.

It could include nicknames, teasing and name calling. It may be about the individual's religion or belief or it may be about the religion or belief of those with whom the individual associates. It may not be targeted at the individual, but could consist of a culture where, for example, religious jokes appear to be tolerated.

FAQ 4

What is 'victimisation'?

Victimisation is when an individual is treated detrimentally because they have made a complaint or intend to make a complaint about discrimination or harassment or have given or intend to give evidence relating to a complaint about discrimination or harassment. They may be denied promotion or training, or treated badly by their colleagues.

FAQ 5

In what circumstances could an organisation harass or discriminate against someone after the working relationship has ended?

It is unlawful for an employer to discriminate against a former employee after the working relationship has ended. However, this will be unlawful only if it can be said that the act is closely linked to the former relationship. The most likely instance where this will be relevant will be where an employer refuses to give a reference because of someone's religion or belief.

Example

Three months after presenting a discrimination complaint to a tribunal, an employee 'A' leaves. His manager is approached by another employer for a verbal reference. The manager says he cannot recommend 'A' on the grounds that he did not 'fit in' because he could not go to the pub with his colleagues as his religion forbade consumption of alcohol. 'A' who was well liked by his colleagues does not get the job.

FAQ 6

What is a 'genuine occupational requirement'?

In very limited circumstances it will be lawful for an employer to treat people differently if it is a genuine occupational requirement that the job-holder must be of a particular religion or belief. In these circumstances an employer needs to ensure:

- that being of a particular religion or belief is a **genuine** and **determining** occupational requirement (i.e. there is a real business need).
- It is **proportionate** to apply that requirement in the particular case (i.e. that it is necessary, and there is no alternative means available).
- The person to whom the requirement is applied does not meet it, or;
- The employer is not satisfied, and in all the circumstances it is reasonable for them not to be satisfied, that the person meets it.

Where employers believe a genuine religious occupational requirement applies to a post, this should be made clear in the advertisement. The reasoning should also be explained in any application pack and during the selection process.

Examples

A faith school may be able to show that being of a particular faith is essential to the credibility of its headteacher and, therefore, a genuine occupational requirement. However, they may not be able to justify a similar requirement for their maintenance of secretarial staff.

Putting the Regulations into Practice – Frequently asked questions

1. *Do employers have to provide time and facilities for religious or belief observance in the workplace?*
 - This will depend on what is 'reasonable'. Managers should try to respond positively and flexibly by exploring possibilities, rather than outright rejection of suggestions.
 - Managers should encourage dialogue, by engaging with those employees who are requesting facilities for religious observance and working through possibilities and options together, negotiating what is feasible.
 - Managers should deal with requests in a manner that it is **consistent** with other requests for flexibility that they may receive i.e. an employee asking for time for breastfeeding.
 - There may be a vacant or under-used room available, which could be used for prayer. Alternatively, managers could allow staff time off to visit their place of worship.

2. *How should requests for additional leave, for religious observance, be managed?*
 - An employee may request holiday in order to celebrate festivals or attend ceremonies or they may request that their rest break coincides with their religious obligations to pray at certain times of the day.
 - Managers should sympathetically consider these requests and every effort should be made, within the imperatives of service delivery, to enable employees to have unpaid leave/flexi/annual leave in order to observe religious festivals.
 - Requests for flexibility, regardless of the reasons for the request, should be given consideration, bearing in mind the needs of the service. Managers should carefully consider their criteria for deciding who and who should not be granted leave and balance the needs of the business with the needs of their staff.
 - Managers should take care not to disadvantage those workers who do not have any specific religion or belief.
 - Employees should be encouraged to give as much notice as possible when requesting leave in order for managers to arrange cover, as is the case when an employee requests leave for any other reason.
 - Managers should encourage dialogue with employees, and work with them to find ways in which the needs of the organisation and those of individuals can be met.

3. *What dress/appearance implications might there be?*
 - Staff may welcome the opportunity to wear clothing consistent with their religion. General dress codes, which conflict with religious requirements may indirectly discriminate, unless they can be justified.

4. *Would it be reasonable for a manager to ask for proof that an employee belongs to a particular faith, when an employee is seeking some form of flexible working arrangements?*
- This will depend on the circumstances. If they feel that the employee is making claims, which raise concerns, the manager is expected to act on these doubts. This is no different from circumstances where an employee asked to repeated dependency leave, for example.
 - It is essential that queries are conducted in a sensitive and respectful manner and that it is **consistent** with queries a manager might make in relation to concerns to other employment issues.
 - Managers should consider arranging Cultural Diversity training for staff and managers alike to give a greater understanding and awareness of the many diverse religions and their key festivals.

Other sources of useful information

ACAS Guide

Following initial consultation, ACAS has published draft good practice guidance to assist employers in implementing this legislation.

- Employment Equality (Religion or Belief) Regulations 2003 Draft Guidance Document

This can be obtained from the ACAS website: <http://www.acas.org.uk/art13.html>

Employers Organisation

The Employers Organisation has produced a Guide to the new regulations related to religion, belief and sexuality.

This can be found on their website:

<http://www/ig-employers.gov.uk/diversity/belief/index/html>

Other Useful Websites:

A – Z of World Religions

www.histoportal.com/religion.html

BBC Religion

www.bbc.co.uk/religion/

BBC World

www.bbc.co.uk/worldservice/people/features/world_religions/index.shtml

Religious holidays and festivals

www.interfaithcalendar.org