



Sex discrimination and equal pay law in Northern Ireland - a short guide

Equality Commission

FOR NORTHERN IRELAND

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This short guide provides some information about sex discrimination and equal pay law in Northern Ireland. It does not attempt to describe every detail and should not be taken as an authoritative statement of the law. Further information is available from the Equality Commission. Details of some of our other publications and how to contact us are given at the back of this booklet.

The Equality Commission for Northern Ireland

The Equality Commission for Northern Ireland has responsibility for enforcing the **Sex Discrimination Order 1976 (as amended)** and the **Equal Pay (Northern Ireland) Act 1970 (as amended)**. It also has a legal duty to work towards the elimination of sex discrimination, to promote equality of opportunity between the sexes and to keep the working of the legislation under review.

The law

The Sex Discrimination (Northern Ireland) Order 1976, as amended by the Sex Discrimination (Northern Ireland) Order 1988, the Sex Discrimination (Indirect Discrimination & Burden of Proof) Regulations (Northern Ireland) 2001, the Employment Equality (Sex Discrimination) Regulations (Northern Ireland) 2005 and the Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2008, makes it unlawful to discriminate against an individual on grounds of his or her sex in the following key areas:

- employment;
- training and related matters;
- education;
- provision of goods, facilities or services; and
- the disposal and management of premises.

The Sex Discrimination Order includes protection from discrimination for married people and registered civil partners in employment and training; and for women in relation to pregnancy and maternity in both employment and the provision of goods, facilities and services. The **Gender Reassignment Regulations (Northern Ireland) 1999** amended the Sex Discrimination Order to make it unlawful to discriminate on grounds of gender reassignment (sex change) in employment and training. Regulations introduced in 2008 extended protection from discrimination on grounds of gender reassignment to the provision of goods, facilities and services and the disposal and management of premises.

A separate piece of legislation, the **Equal Pay Act (Northern Ireland) 1970 (as amended)**, makes discrimination on grounds of sex unlawful in the area of pay.

What is sex discrimination?

In anti-discrimination law, discrimination is not simply unfairness. To be discriminated against means to be treated less favourably than others because of a personal characteristic such as gender, age, race, etc.

Sex discrimination is less favourable treatment on grounds of sex, marital/civil partner status, gender reassignment, pregnancy or maternity. This does not include sexual orientation. Separate legislation which deals with discrimination on grounds of sexual orientation was introduced in December 2003 and January 2007.

The Sex Discrimination (NI) Order outlines different types of discrimination:

- **Direct discrimination** is where someone is treated less favourably than others in the same or similar position and the grounds for that treatment is sex, marital/civil partner status or gender reassignment.

Example – A female candidate is not appointed to a post even though, at interview, she achieved a higher score than the successful male. The employer based its decision on discriminatory assumptions about the woman's ability to carry out the job.

- **Indirect discrimination** in employment exists where a provision, criterion or practice is applied or would apply equally to men and women but:
 - which puts or would put women at a particular disadvantage when compared with men;
 - which puts her at that disadvantage; and
 - which cannot be shown to be a proportionate means of achieving a legitimate aim.

Example – In a factory, a new roster requires the early shift to start at 4 am. This affects 100 shift workers, of whom only five are women. One of the five women, a lone parent, cannot get a child minder so early. As she cannot meet the employer's requirement, she is forced to give up her job. None of the men is disadvantaged by the new roster. A tribunal may find that the woman was indirectly discriminated against because the new roster puts women at a particular disadvantage (as women are more likely than men to be the primary providers of childcare) and the individual complainant was actually disadvantaged by it. The

employer would have to show that the requirement to start work at 4 am was a proportionate means of achieving a legitimate aim.

Indirect discrimination is often inadvertent. For example, the following could be indirectly discriminatory if they are not found to be justified:

- a change in working hours or location imposed by the employer;
- a requirement for employees to be mobile;
- a requirement to work overtime without notice;
- a contractual obligation or a practice of undertaking long hours;
- a requirement to work without set hours, but as and when required.

To avoid a complaint of indirect sex discrimination, employers will need to be able to objectively justify a provision, criterion, practice or policy which causes a particular disadvantage by showing that:

- a) the requirement meets a legitimate business aim, and
- b) it is a “proportionate” – or appropriate and necessary – means of meeting that aim.

If the reasons for the provision, criterion, policy or practice satisfy these two criteria, it is unlikely to constitute unlawful sex discrimination.

- **Victimisation** means treating someone less favourably than others because they have, for instance, complained of sex discrimination or they have assisted someone else to do so.

Example – An employer refuses to offer one of its employees overtime because he was a witness at a tribunal hearing for a colleague claiming sex discrimination against the employer.

- **Pregnancy or maternity leave discrimination** – It is unlawful for an employer or vocational training provider to discriminate against a woman because she is pregnant or because of maternity leave. There is no need for a comparator in complaints of discrimination on grounds of pregnancy or maternity leave.

Example – It is unlawful sex discrimination to dismiss a female employee or to single her out for redundancy because she is pregnant or on maternity leave. A refusal to allow a pregnant employee to take additional rest breaks which are advised by her doctor is likely to be unlawful.

The Sex Discrimination Order also makes it clear that it is unlawful to treat a woman less favourably because she is pregnant, or because of her maternity, when providing goods, facilities and services, and in the disposal or management of premises.

- **Harassment** - The 2008 amendments to the Sex Discrimination (NI) Order expressly prohibit sex harassment, sexual harassment and gender reassignment harassment in the field of employment and in the provision of goods, facilities and services and the disposal and management of premises.

Harassment is defined as actions or behaviour which have the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

Sex harassment occurs when a person engages in unwanted or offensive conduct that is related to sex/gender; for example, a male manager referring to a female colleague as a "bimbo" or "airhead", or making other disparaging or belittling comments about women.

Sexual harassment occurs where a person subjects another to unwanted conduct of a sexual nature, for example, inappropriate sexual contact or lewd comments.

Gender reassignment harassment is also unlawful. A person is protected from discrimination if they are intending to undergo gender reassignment, are going through the process, or have undergone gender reassignment in the past. If a manager deliberately persists in referring to a male-to-female transgendered team member as 'him' and 'he', in the full knowledge that the person finds it embarrassing and upsetting, this would be harassment.

Liability for harassment

Complaints of sexual harassment may be made against the employer as well as against the harasser. In certain circumstances individual employees can be held personally liable to pay compensation awards. Sexual harassment may also be a criminal offence that can result in imprisonment, a heavy fine or both.

Employers are liable for any sexual harassment committed by their employees in the course of their employment, even if they did not know about the harassment or would not have approved of it, had they known. Employers can successfully defend a sexual harassment case only if they can show that they took such steps as were reasonably practicable to prevent the harassment happening.

Employers are also liable for repeated harassment of an employee by third parties (such as clients or customers) if they fail to take reasonably practicable steps to prevent the harassment.

For further information on what reasonably practicable steps an employer can take, see the Model Harassment Policy and Procedure and Harassment and Bullying in the Workplace, both of which are available on the Commission's website - www.equalityni.org.

Employment provisions

The Sex Discrimination Order outlaws discrimination by all employers and other bodies and organisations, regardless of size. Other bodies and organisations include:

- employment agencies and bodies which confer qualifications which are needed to facilitate employment;
- sub-contractors;
- trade unions and employer organisations;
- vocational training providers;
- those with the statutory power to select employees for others;
- those who have the power to select office holders;
- office holders;

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- barristers; and
 - partnerships.

It is unlawful for an employer, body or organisation to discriminate:

- in **recruitment and selection** including the arrangements for deciding who should be offered employment; in the terms on which employment is offered; or by refusing or deliberately omitting to offer a person employment;
- in the **terms and conditions** of employment;
- in relation to **access to benefits** including opportunities for promotion, transfer and training and any other benefits or the refusal of those opportunities;
- by **dismissing** an employee or causing him or her any other detriment.

It is important to note that, in relation to vocational training, this includes all forms of unpaid, practical work experience. For example, a refusal to offer female students a work experience placement in a male dominated organisation would be unlawful if the reason related to stereotyped views about how females would fit in.

In certain circumstances, former employees have rights under the Order. For example, it is unlawful for an employer to refuse to provide a work reference for a former employee on grounds of sex.

Exceptions

The employment provisions of the Order do not apply where being a woman or a man is a genuine occupational qualification (GOQ) for a job. For example, a woman or a man might be needed for a specific purpose such as a modelling or acting role. A woman might be needed to provide counselling services to female victims of domestic violence.

The Sex Discrimination Order also permits discrimination in employment for the purposes of an organised religion in relation to a requirement which is applied so as to comply with the doctrines of the religion.

Scope

The Sex Discrimination Order covers sex discrimination in employment in Northern Ireland if the employee does his/her work wholly or partly in Northern Ireland, or does his/her work wholly outside Northern Ireland and:

- i. the employer has a place of business at an establishment in Northern Ireland;
- ii. the work is for the purposes of the business carried out at the establishment; and
- iii. the employee is ordinarily resident in Northern Ireland at the time when s/he applies for or is offered the employment or at any time during the course of the employment.

Example – A woman who is working abroad for a fixed period is treated less favourably than male colleagues in the same role by being denied access to some of the benefits available to them. She could use the Order to bring a claim of discrimination as long as her employer has a place of business in an establishment in Northern Ireland, the work she carries out is for the purposes of that business, and, but for the work abroad, she would normally reside in Northern Ireland.

Other unlawful acts

The Sex Discrimination Order makes it unlawful to apply discriminatory practices, publish discriminatory advertisements, instruct or put pressure on a person to do anything contrary to the Order by discriminating in employment or other fields, or to knowingly aid another person to carry out such acts.

Employers are also liable for acts of discrimination committed by their employees in the course of their employment, whether or not the acts were done with the employer's knowledge or approval, unless they can show that they took such steps as were reasonably practicable to prevent the discrimination occurring.

Positive action

Positive action refers to a variety of lawful measures designed to counteract the effects of past discrimination and help eliminate sex stereotyping and job segregation in employment. Employers or training bodies may take positive action to offer encouragement to members of one sex to take up jobs if there have been few or no members of that sex employed in that particular job over the previous twelve months. For example, this might include advertising to encourage women to apply for job vacancies or providing single sex training courses. Where lawful positive action is used to encourage the under-represented sex to apply for jobs or training, it is still unlawful to favour them at the point of selection. The Commission can provide advice and guidance on taking positive action.

Equal pay

Equal pay law is meant to help ensure that women and men in the same employment are treated equally in pay and other terms and conditions of employment. Under the **Equal Pay Act (Northern Ireland) 1970 (as amended)**, employees may claim equal pay with colleagues of the opposite sex where they are in the same employment and are doing:

- work which is the same or broadly similar (known as “like work”);
- work related as equivalent under a job evaluation scheme;
- work which is different but which is of “equal value” in terms of the demands of the jobs.

The Equal Pay Act includes terms of the contract of employment such as piece work, overtime, bonus payments, holidays, free accommodation and pensions.

The law allows an employer to defend an equal pay case by showing that the difference in pay between male and female employees is genuinely due to some material factor other than the difference of sex.

The Equality Commission has a range of publications on Equal Pay which can be obtained by contacting our Enquiry line (028 90 890 890) or on our website www.equalityni.org.

Goods, facilities or services

The Sex Discrimination Order makes it unlawful to discriminate against an individual on grounds of sex and gender reassignment in the provision of goods, facilities or services and the disposal or management of property.¹ This includes refusal of a service or a lower standard of service. Discrimination of this kind is unlawful whether the service is paid for or not. Examples include:

- access to and use of any place which members of the public are permitted to enter;
- accommodation in a hotel, boarding house or other similar establishment;
- facilities by way of banking or insurance or for grants, loans, credit or finance;
- facilities for entertainment, recreation or refreshment;
- facilities for transport or travel; and
- the services of a profession, trade or business or any local or other public authority.

¹ The SDO was amended in 2008 to implement the EU Gender Directive (Directive 2004/113/EC). The 2008 Regulations introduced changes which apply to the provision of goods, facilities and services and the disposal and management of premises but excluded changes in other areas.

Example – A woman is offered a loan on less favourable terms than male applicants. This is likely to be unlawful sex discrimination.

Example – A supermarket only has baby changing facilities in the women's toilets which means that men cannot change their children when out shopping. This is potentially sex discrimination as the supermarket is not providing the service equally to men and women.

The Sex Discrimination Order applies to discrimination by those who provide goods, facilities or services to the public and does not apply where the transaction is of a purely private nature, for example, entertainment or refreshment provided to members of a genuinely private club.

The Sex Discrimination Order includes a number of exceptions that allow facilities or services to be provided on a single-sex basis. This means that facilities or services can be provided to women only or men only. It also allows for different treatment of transsexual people on grounds of gender reassignment. The treatment must be a proportionate means of achieving a legitimate aim.

Education

Schools, colleges and other educational establishments cannot discriminate on grounds of sex. It is unlawful for the body responsible for an educational establishment to discriminate:

- as regards terms of admission to the establishment;
- by refusing or deliberately omitting to accept an application for admission;
- in the way it offers a pupil whom it has admitted to the establishment access to any benefits, facilities or services, or by refusing or deliberately omitting to afford such access; or
- by excluding such a pupil from the establishment or treating such a pupil unfavourably in any other way.

The Sex Discrimination Order places a general duty on bodies responsible for educational establishments in the public sector to ensure that facilities and ancillary benefits are free from sex discrimination.

An exception is made for admission to single-sex schools and admission to single-sex boarding accommodation in co-educational schools.

Disposal and management of premises

It is unlawful for anyone selling or managing property or premises to discriminate against a person on grounds of their sex or gender reassignment. For example, it would be unlawful for a landlord to refuse to rent to or to evict someone because of their gender or gender reassignment. It is also unlawful for a landlord to harass a tenant or prospective tenant on grounds of their sex or gender reassignment. However, there are exceptions in relation to small dwellings where the landlord occupies the premises.

Exceptions

There are exceptions to the general principle of sex discrimination and the Sex Discrimination Order exempts:

- benefits conferred by charities on members of a specific sex;
- acts relating to participation as a competitor in certain sporting events which are confined to competitors of one sex;
- acts relating to the treatment of a person with regard to an annuity, life assurance policies, accident insurance policies or similar matter involving the assessment of risk;
- access to women only or men only facilities for training for work, in the specific circumstances described;
- allowing a minimum membership of one sex in elective bodies such as trade unions;
- affording or facilitating access to benefits, facilities or services in certain circumstances;

- acts done to protect women in compliance with the requirement of an existing statutory provision, for example in relation to pregnancy or maternity;
- acts done to safeguard national security, or to protect public safety or public order;
- acts which relate to the provision or disposal of accommodation or premises of small dwellings;
- any special provision for women only or men only in the constitution, organisation or administration of a political party or anything done to give effect to such special provisions;
- allowing voluntary bodies to restrict its membership, and the benefits, facilities and services it provides to members, to one sex;
- acts relating to the provision of communal accommodation.

Making a complaint

Employment-related complaints

Anyone who believes they have been discriminated against on grounds of sex can lodge a complaint with an industrial tribunal. There are **time limits** for lodging a claim. The **time limit** can be as short as **three months** less one day from the date of the act complained about. In exceptional cases, a tribunal has the discretion to extend a time limit but simply not knowing that there were deadlines is an insufficient reason for granting an extension. It is therefore important to seek advice as soon as possible about any matter that could be the subject of an industrial tribunal claim.

Claims brought under the Equal Pay Act must be lodged with the industrial tribunal either while the complainant is still in the job to which the claim relates or **within six months** of leaving that job.

All employers should have procedures to deal with workplace grievance and disciplinary matters. In most cases, if a person fails to use or complete their employer's grievance procedure in relation to a complaint of discrimination, the tribunal can reduce any award of compensation by up to 50%.

For more information relating to grievance procedures, please contact the Labour Relations Agency – tel: 028 90 321 442. The Equality Commission can provide further advice about pursuing discrimination complaints.

Non-employment complaints

Complaints relating to discrimination in respect of education, premises, the provision of goods, facilities or services, or where an employment relationship has come to an end must be made to the County Court within **six months** of the date the discrimination took place.

Where a complaint relates to certain public sector educational establishments, there is a requirement to give two months' notice to the Department of Education and, in these circumstances, the time limit is extended from six to eight months.

Advice and assistance

The Equality Commission can provide **free and confidential** advice and assistance to people who believe that they have been discriminated against on grounds of sex – see contact details at the end of this booklet.

Assistance by the Equality Commission may range from giving information or advice to arranging for legal representation in some cases. The Equality Commission does **not** decide whether discrimination has occurred; this is for an independent industrial tribunal or court to decide.

Help for employers and service providers

The Equality Commission can provide general information, advice and training to employers, vocational training providers, service providers, education providers and others on sex discrimination and equal pay law and on recommended good practice – see contact details at the end of this booklet. The following relevant publications are available on our website - www.equalityni.org:

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- Removing Sex Bias from Recruitment and Selection (Code of Practice), 2003
 - Harassment and Bullying in the Workplace, 2006
 - Model Equal Opportunities Policy
 - Model Harassment Policy and Procedure
 - Model Equal Pay Policy
 - Code of Practice on Equal Pay (under revision)
 - Equal Pay Review Kit – Step by Step Guidance, 2003
 - Series of Equal Pay Briefings
 - Unified guide to promoting equal opportunities in employment.

The Equality Commission also has a range of publications on other areas of equality/discrimination law: religious belief and political opinion; sexual orientation; race; disability; age; section 75 equality and good relations duties on public authorities; disability duties on public authorities.

Publications can be provided in alternative formats and languages on request according to our Access for all policy.

All our publications and further information for individuals, service providers and employers are available on our website www.equalityni.org.

Other relevant legislation

Section 75 duties on public authorities

Under Section 75 of the Northern Ireland Act 1998, public authorities are required, in carrying out their functions in Northern Ireland, to have due regard to the need to promote equality of opportunity between various groups³, including between men and women. This duty is in addition to obligations under the Sex Discrimination Order.

For more information on the Section 75 duties, please contact the Commission's Enquiry line – 028 890 890 or see our website – www.equalityni.org.

³ Other groups are those of different religious belief, political opinion, racial group, age, marital status or sexual orientation; persons with a disability and persons without; and persons with dependants and persons without.

Contacting the Equality Commission

If you need help or advice about sex discrimination or equal pay, or any other aspect of equality law, please contact us. We provide free and confidential information and advice to individuals, employers and service providers. We can also provide training for employers and service providers.

Enquiry line: 028 90 890 890 (for all information or advice enquiries)
Reception: 028 90 500 600
Textphone: 028 90 500 589
Fax: 028 90 248 687
Email: information@equalityni.org
Website: www.equalityni.org

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