



Sex Discrimination and Equal Pay in Northern Ireland - A Short Guide

Equality Commission

FOR NORTHERN IRELAND

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

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

There are two main pieces of legislation on sex discrimination in Northern Ireland although a mixture of regulations, European Directives and case law informs the law in this area.

The Sex Discrimination (Northern Ireland) Order 1976 (as amended) applies to both women and men and makes discrimination on grounds of sex unlawful in the following areas:

- employment
- vocational training
- education
- the provision of goods, facilities and services
- housing.

The Sex Discrimination Order also makes it unlawful to discriminate against married people in employment. Associated regulations, the Gender Reassignment Regulations 1999, protect transsexuals and those who are undergoing gender reassignment from discrimination in employment and training.

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

What is sex discrimination?

Discrimination is not simply unfairness. To be discriminated against means to be treated less favourably than others. Sex discrimination is less favourable treatment on the grounds of sex or marital status. This does not include sexual orientation. Separate legislation which deals with discrimination on grounds of sexual orientation was introduced in December 2003.

The Sex Discrimination (NI) Order 1976 outlines three 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 or marital status. An example might be where a female candidate at a job interview is asked about her domestic and childcare arrangements while a male candidate is not and the male candidate is subsequently appointed even though the woman is clearly the better applicant.
- **Indirect Discrimination** in employment exists where an apparently neutral provision, criterion or practice disadvantages a considerably larger proportion of the members of one sex and cannot be justified by objective factors unrelated to sex. An example of this would be where an advertisement for a counter assistant in a shop seeks someone who is at least 5 feet 10 inches tall.
- **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. An example of this would be where an employee loses overtime bonuses because s/he was a witness for someone claiming sex discrimination against their employer.

People who believe that they may have suffered unlawful discrimination may take legal action through an industrial tribunal or court.

Employment provisions

The Sex Discrimination Order applies to all employers, including sub contractors and franchises, regardless of size. It is unlawful for an employer 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.
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Sexual harassment

Sexual harassment is "unwanted" or uninvited sexual conduct or other unwelcome conduct with sexual connotations which affects the dignity of women or men at work. It can include unwelcome physical, verbal or non-verbal conduct. Such harassment is unlawful and discriminatory.

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. For further information on what reasonably practicable steps an employer can take, see *Sexual Harassment at Work* and the *Model Harassment Policy*, both of which are available from the Equality Commission or on our website - www.equalityni.org

Maternity rights

Detrimental treatment of an employee in connection with pregnancy or maternity may be unlawful sex discrimination. Employees have the right not to be subjected to unfair treatment on the grounds of pregnancy, childbirth or maternity leave. It is unlawful to dismiss a pregnant employee or single her out for redundancy for reasons connected with pregnancy or maternity. In addition, pregnant employees who have given notification to their employer are entitled to time off for antenatal care and for maternity leave.

Do these provisions apply only to employers?

No, bodies and organisations other than employers are also prohibited from discriminating including:

- vocational organisations, for example, trade unions and professional bodies
- employment agencies and bodies which confer qualifications which are needed to facilitate employment
- people providing vocational training or services
- partnerships
- people for whom work is done under contract
- people with the statutory power to select employees for others.

Are there any exceptions to the order in relation to employment?

Yes, 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, or a woman or a man might be needed for reasons of privacy or decency.

Equal pay

The 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
- 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.

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.

Goods, facilities and services

The Sex Discrimination Order makes it unlawful to discriminate against an individual on grounds of sex in the provision of goods, facilities and services, including the sale or management of land or property. This includes refusal of a service or a lower standard of service. 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 education, instruction or training
 - the service of a profession, trade or business or any local or other public authority.
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Education

Schools, colleges and other educational establishments cannot discriminate on grounds of sex. They cannot refuse admission and they cannot refuse to provide the same education or services on the grounds of a person's sex. The Sex Discrimination Order also imposes 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.

Making a complaint

People who believe that they have been subjected to sex discrimination in employment have the right to make a complaint to an industrial tribunal. Complaints about discrimination in other fields within the Order are heard in the County Court.

Anyone who believes they may have been the victim of unlawful discrimination should seek advice as soon as possible as **time limits** apply to legal proceedings. Complaints relating to discrimination in employment should be made to an industrial tribunal within **3 months** of the date of the act of discrimination. In certain exceptional cases the tribunal might extend this deadline. However, simply not knowing that there were deadlines is insufficient reason for an extension of the deadlines. Complainants should therefore seek advice as soon as possible.

Complaints relating to discrimination in the fields of goods, facilities and services must be made to the County Court within **6 months** of the date the discrimination took place.

The Equality Commission can provide free and confidential **advice and assistance** to people who believe they have been discriminated against for a reason relating to their sex. Assistance by the Commission ranges from simply giving advice to arranging for legal representation in some cases. The Commission does not decide whether discrimination has in fact occurred; this is for an independent industrial tribunal or court to decide.

Help for employers and service providers

The Equality Commission provides free general advice to employers and service providers on recommended good practice under the sex discrimination and equal pay legislation. It can also provide training to employers on sex discrimination issues and has a range of publications, including Codes of Practice, to help employers and service providers understand their responsibilities in this area. The Commission's library service is available to employers and the general public. Most publications are free and many are on our website – www.equalityni.org

Further information

The following publications are all available free of charge from the Equality Commission:

- *Removing Sex Bias from Recruitment and Selection [Code of Practice]*
- *Sexual Harassment at Work*
- *Model Equal Opportunities Policy*
- *Model Harassment Policy and Procedure*
- *Equal Pay Code of Practice*
- *Equal Pay Review Kit*

The Commission also produces guidance in the other equality areas for which we are responsible - religious belief and political opinion, disability, race, sexual orientation and statutory duty. Check our website for further details or contact our Information and Advice team.

Contacting the Commission

If you need help or advice or would like to find out more about the Equality Commission and its work, contact us at

The Equality Commission for Northern Ireland
Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP

Telephone: 028 90 500 600
Fax: 028 90 248 687
Textphone: 028 90 500 589
Email: information@equalityni.org
Website: www.equalityni.org

You can also use **Typetalk** to contact us.

