

***View from the Chair; Business Newsletter; Tuesday 30 July 2019
by Dr Michael Wardlow, Chief Commissioner, Equality Commission NI***

Reducing your risks – how employers can use the ‘reasonable steps’ defence

The last place any employer wants to be is in front of an Industrial Tribunal defending a complaint of unlawful discrimination or harassment, but if it happens, you will be at a great disadvantage if the evidence shows you acted passively and made no prior efforts to prevent the unlawful acts occurring. This happened recently, when an employer failed not only to train an employee in its harassment policy, but did not even provide him with a copy.

As an employer, you will normally be held responsible for any unlawful acts of discrimination and harassment committed by your employees in their course of their employment. This is the case even if you do not know about the breaches or approve of your employees’ actions.

But should an unlawful act occur, you can reduce the risk that you will be held legally responsible for it if you can show that you took reasonably practicable steps to prevent the act occurring. This is the ‘reasonable steps’ defence.

Circumstances of course vary, but there are some key things you should have in place to show that you have taken reasonable steps to prevent unlawful discrimination in your organisation. So what are ‘reasonable steps’?

- Aim for a good and harmonious workplace environment. Harassment and discrimination can flourish if the culture of the workplace is wrong. In the best workplaces, this sort of behaviour would be unthinkable. To get started, you should have in place policies on the different areas of discrimination, including harassment. We are here to help you with developing policies and have downloadable templates to simplify the process.
- Lead by good example. Show that you take the commitments outlined in your equal opportunity policies seriously by consistently applying them yourself. This should be done not merely by yourself and your senior managers but by all your line managers.
- Get your message across. Inform your managers and employees about how you expect them to behave and about the importance of complying with your policies. Do not rely on the written word alone. Be proactive: speak to your employees too and check that they know what you expect of them.
- Provide training in equal opportunities! This is another aspect of getting the message across. It is important that all employees, but especially key employees, such as managers and those who make recruitment and selection

decisions, are familiar with equal opportunities principles and with your policies and procedures. The best way to ensure that this is so is to provide training that is appropriate to each employee's role.

- Ensure your grievance/investigation procedures make it easy for your employees to report incidents of discrimination or harassment and include a procedure for dealing fairly and effectively with a complaint. It's important to take complaints of harassment or discrimination seriously and let staff see that they are investigated fairly. Don't hesitate to take disciplinary action where it is warranted – it may deter others from committing further acts of discrimination and harassment.

The reasonable steps defence is not always easy – being an equal opportunities employer is a continuous task and you must not be complacent.

The Commission provides expert training on many aspects of equality law as it relates to employment and running a business. Our training is free of charge. Visit www.equalityni.org/training for more information and details of how to book. We also have free and confidential advice available on the website and by phone on 02890 500600.