

View from the Chair; Business Newsletter; 2 August 2022 Geraldine McGahey, Chief Commissioner, Equality Commission NI

Pride in the workplace

Belfast Pride took place last Saturday and marked the end of a week of Pride events across Belfast.

It's a timely reminder for employers to look at the laws that protect lesbian, gay, bisexual and trans people in Northern Ireland from unlawful discrimination.

Firstly, sexual orientation discrimination laws. These prohibit discrimination on the grounds of sexual orientation in employment and when providing services. In our experience, the allegation most frequently made against employers is that gay, lesbian or bisexual people have been subjected to harassment by co-workers. A common feature of industrial tribunal cases is employers' failure to take reasonably practicable steps to prevent such behaviour from happening, which can lead tribunals to hold such employers liable for the discriminatory actions of their employees.

Secondly, in relation to gender reassignment, discrimination is also prohibited in employment and service-provision under the sex discrimination legislation. Trans people are protected against unlawful discrimination on that ground if they intend to undergo, are undergoing or have undergone gender reassignment. That terminology is important because statutory law doesn't refer to other terms that are in common usage, such as 'transgender' or 'non-binary' or 'gender identity', although that doesn't necessarily mean that people who so describe themselves do not have the law's protection. Legal cases relating to gender reassignment discrimination are less common than those relating to sexual orientation, but they are no less serious.

So there is a wide array of clear protections against unlawful discrimination available to LGBT people. There are also some areas where peoples' legal rights deriving from different legal provisions interact.

For example, employers and service-providers usually maintain some single-sex spaces, such as male-only or female-only toilets, changing rooms or hospital wards. Sex discrimination law allows this because it recognises that some spaces and situations exist where women may suffer serious embarrassment, or where they may reasonably object, if they were obliged to share the same facilities with men at the same time, and vice versa. This may have implications for some trans people in

some contexts, should they wish to use the facility that corresponds to their acquired gender. In situations like this, it is important for employers and service-providers to try to find the appropriate balance that protects the dignity of all.

Another example is that, among the various philosophical beliefs that are protected by equality law in the field of employment, the Employment Appeals Tribunal has determined that holding so-called 'gender critical beliefs' may be protected too, similar to how holding religious beliefs and many political opinions are protected. A person with a 'gender critical belief' usually holds a view that someone's sex - whether they are male or female - is biological and immutable. However, no matter what an employee's beliefs are, all employees are protected by the law from harassment in the course of their employment and have a right to be treated with dignity and respect. In that respect, there are limits on how far a person who holds gender critical beliefs may manifest those in many situations, such as when engaging with work colleagues or when delivering services to the public in the course of their work.

I know that employers want to get it right, they will want to do what is required of them by the law and to create really inclusive workplaces. In order to do this, employers need to make clear the standards of behaviours that are expected of all of their employees. This can best be done by ensuring that they have equality and diversity policies in place, that all staff are aware of these policies and their own roles and responsibilities within these.

If you're a service provider, it is also important that you have relevant policies in place, that staff are trained and that you listen to the needs of your service users. There's a real positive of getting it right - you will please your service users and it's good for business too.

The Commission provides ongoing advice to employers and recently we updated our employer guidance, developed with the Labour Relations Agency, on promoting inclusive workplaces. We also provide training on this.