

Promoting a Good & Harmonious Working Environment



A Guide for Employers and Employees

Equality Commission

FOR NORTHERN IRELAND

In 1989 the Fair Employment Code of Practice first recommended that employers, in order to advance equality of opportunity, should aim to:

“promote a good and harmonious working environment and atmosphere in which no worker feels under threat or intimidated because of his or her religious belief or political opinion”.

In the intervening years, times have undoubtedly changed and much has been achieved. Indeed, in many workplaces these matters are no longer areas of significant contention.

However employers should not assume that such issues cannot be a cause of dissension, and so the broad principles and associated duties of care remain. In other words, an employer must continue to take all reasonable steps to ensure that those who work in the organisation, or come in contact with it (as a client, customer or user of its services or facilities), do not feel threatened or intimidated on grounds of religious belief or political opinion.

This guide is aimed at all employers, whether large or small, public sector or private sector - and for all types of employees. It has been brought together to provide practical advice to assist in promoting and sustaining a good and harmonious working environment.

The basis for the advice is the Fair Employment and Treatment (NI) Order 1998. This Order places an obligation on both employers and employees to take all reasonable steps to prevent harassment, defined by law as “unwanted conduct which has the purpose or effect of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment”.

While fair employment case law has mainly related to the two traditional community backgrounds in Northern Ireland, it should not be forgotten that the underlying principles of harassment apply to all forms of religious belief and political opinion, and the guide ought to be read with this in mind. Furthermore, while the focus of this guidance is on religious belief and political opinion, it is hoped that the overarching principles for helping to promote and sustain a good and harmonious working environment may also be considered in terms of all aspects of identity where similar legal duties apply. For example, the principles may apply to harassment that is related to race, gender, disability, sexual orientation and age.

Along with the guide there are many other sources of available advice. For example, public authorities should consider this advice within the broader contexts of their duties to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations on the grounds of religious belief and political opinion under Section 75 of the Northern Ireland Act 1998, and/or their good relations strategy.

If you would like more detailed advice on relevant policies and procedures, including those dealing with harassment and the promotion of equality of opportunity, then please contact the Equality Commission.

Corporate and Individual Responsibility

Responsibility rests with each employer to provide and promote a good and harmonious working environment. To create and sustain such an environment there is a need to build practical working procedures on a foundation of sound policies. These policies and procedures should operate hand-in-hand to promote equality of opportunity, and are best underpinned by corporate equal opportunities and anti-harassment statements and policies to this effect, together with a Joint Declaration of Protection signed by both management and employees' representatives.¹

Along with corporate responsibilities, each individual employee must also carry personal responsibility for making these policies and procedures come to life. With this in mind, where an employer has taken all reasonably practicable steps to prevent actions occurring, including the implementation of these policies through ongoing communication and training strategies, but they still happen then it is right and proper that those who choose to engage in unwanted and unreasonable conduct should expect to bear personal responsibility for their actions.

The Tribunal has acknowledged both corporate and individual responsibility, extending not only to those who work for the organisation but also to third parties and including those who engage with it, for example, by using or delivering services, or as clients or customers.

¹ *A Joint Declaration of Protection is a commitment by the employer and trade union to promoting equality of opportunity and a good and harmonious working environment. A model Joint Declaration of Protection is available in the Commission's publication: "A Unified Guide to Promoting Equal Opportunities in Employment".*

What is “Good and Harmonious”?

A good and harmonious working environment is one where all workers are treated with dignity and respect, and where no worker is subjected to harassment by conduct that is related to religious belief or political opinion. Again the same principles will apply with regard to the promotion of a good and harmonious working environment on grounds of race, gender, disability, sexual orientation and age. Commonsense dictates that what will define a good and harmonious working environment may change over time and place. In addition the context of each situation warrants consideration, for example what may be perceived as light hearted banter or horseplay in one context may be considered more sinister in another. In relation to considering the nature of ‘banter’ the Tribunal has acknowledged that while banter can and does occur, there should be no place in the workplace for conduct that has the potential to disrupt an harmonious working environment - or to intimidate or embarrass any worker because of his or her religious beliefs or political opinions.

This of course does not mean that working environments must always be devoid of anything that happens to be more closely associated with one or other of the two main communities in Northern Ireland. While the Commission recognises that some employers will still choose to promote their workplace environment as a “neutral” space, it is important to recognise that the two concepts “harmonious” and “neutral” are not inextricably linked. In other words an “harmonious” working environment does not necessarily need to be a “neutral” one.

The very restrictive nature of a “neutral” environment may give rise to other problems for employers. As one example, if an employer has a policy that is so rigid that it prohibits workers from wearing marks of religious observance of the sort that believers commonly wear (such as crosses, kippot, turbans or Muslim veils), then that may indirectly discriminate against persons of a particular religion, or who are members of particular racial groups. The risk of this will be particularly high where employees are genuinely obliged by the tenets of their religions to wear such emblems and so find themselves in a dilemma as their religious duties conflict directly with the conditions of their employment.

For employers, it is likely to be easier to justify a policy, and thus avoid acts of unlawful indirect discrimination, where the policy is not unconditionally strict and seeks only to prohibit the display of emblems which have the potential to disrupt the harmonious working environment. Where the wearing of an emblem, particularly a religious one, is not likely to cause such disruption, then it may be difficult to justify a restriction unless there are other substantive grounds (e.g. “health and safety” reasons may justify restrictions in certain circumstances).

Consequently, employers may find it preferable to facilitate diverse expressions of identity in a sensitive way which does not disrupt a good and harmonious working environment. Such an approach should be founded on choices that are reasonable, fair and appropriate at that time and in that place. Ultimately it will be for each employer to reach an informed decision as to where and when such boundaries should be set with the guidance outlined below intended to assist this decision-making process.

Tribunal decisions have identified some practices that are or may be unacceptable, with each case being dealt with on its own facts.² They have, for example, made clear that while the Tribunal should have no time for those who seek out each and every sectarian manifestation about which to complain, at the same time employees should not have to tolerate constant reminders or suggestions that particular religious beliefs or political opinions have a special place in their workplace, whether by design or through custom and practice. In all these debates there has to be an honest acknowledgment that circumstances can never be ignored.

² For example, see the cases of *Brennan –v- Short Brothers Plc* [1995] (which concerned displays of various flags and emblems) and *Johnston –v- Belfast City Council* [2000] (which concerned a portrait of the Queen).

Symbols with the potential to disrupt a good and harmonious working environment

Given the changing times in which we live, the following advice cannot be taken as definitive but is informed by existing case law in this area as well as the Commission's practical experience in providing advice and guidance to employers over many years.

Personal Emblems

There are some individual emblems and symbols that, through their history and associations, and whether intended or not, have come to have a significance that has the potential to make those of a different identity feel uncomfortable or unwelcome.

In this category are likely to fall a variety of symbols and emblems with the potential to cause disharmony, and especially those that have been directly linked to community conflict in Northern Ireland and/or to local politics. These include:

- *Football shirts, e.g. Rangers and Celtic*
- *Badges and insignia linked to paramilitary or political organisations, e.g. buttonholes, tattoos*
- *Badges and insignia, e.g. Easter Lillies, Orange symbols*
- *Posters, displays, tracts, emblems, screensavers, ringtones etc. linked to the above*

This list is not exhaustive but indicative of the types of emblems that have been problematic in the past. Once more, any current decision must acknowledge individual circumstances.

Also bear in mind that in many other contexts these and other symbols may be wholly acceptable - for example, football shirts worn at a football match, or political emblems displayed in the context of political events or institutions. However, within the workplace and at workplace organised events such emblems may have the potential to cause unnecessary tension and be divisive.

Workplace Emblems

Likewise there are certain symbols and emblems which, if their display is sanctioned within the workplace, may help create an environment that is perceived to be more welcoming to one community than the other, whether intended or not. These may include:

- *Posters, pictures, portraits and displays that contain or incorporate emblems more closely associated with one or other of the communities; or*
- *Religious tracts and emblems*

Once more at any particular point in time it is impossible to provide a definitive list of “do’s and don’ts” with regard to such symbols, given their variety and the range of situations in which they are found. Instead, the Commission would hope that decisions made by employers in relation to workplace emblems are supported by sound and objective rationale in keeping with their underlying equality policies. With this in mind, the Commission recommends that where an employer is seeking to provide or maintain fair participation, or to ensure that all services and facilities are widely utilised by all sections of the community, there is sensitivity concerning displays wholly or mainly associated with one section of the community.

The Commission is often asked for its opinion with regard to the flying of the Union Flag at workplaces. We remain of the view that the flying of the Union Flag must be viewed within the context in which it is flown or displayed.³ Factors affecting the context include the manner, location and frequency with which flags are flown. The Union Flag is the national flag of the United Kingdom and, arising therefrom, has a particular status symbolising the constitutional position of Northern Ireland. On the other hand, the Union Flag is often used to mark sectional community allegiance. There is a world of difference between these two approaches. Thus, for example, while it is acceptable and appropriate, in the Commission’s view, for a local Council to fly the Union Flag at its Civic Headquarters, the rationale for its display at every Council location, facility and leisure centre would be questionable.

³ *The Flags Regulations (NI) 2000 is of limited relevance as it applies to government buildings and not to bodies including hospitals, schools, non-departmental public bodies, councils and private companies; separate Regulations (Police Emblems and Flags Regulations (NI) 2002) apply only to NI police stations.*

Symbols which are not likely to disrupt a good and harmonious working environment

For Employees

There are many ways in which we convey our religious or political identity to others. In this category would fall emblems that may be associated primarily with one religion or community but are not directly linked to community conflict.

Such marks of identity are unlikely to be regarded as creating an intimidating or hostile working environment. There are many examples of such emblems, including:

- *Marks of religious observance, insignia associated with organisations attached primarily to one religion, community or culture (e.g. crosses, crucifixes, ashes, kippot, turbans, Muslim veils, pioneer pins, Christian Union badge, fáinnes, dreadlocks)*
- *Marks of remembrance, celebration or commemoration (e.g. poppies, shamrock)*

Whether any mark of religious observance is regarded by a particular faith or religious belief system as “obligatory” or a matter of personal preference may be open to debate and could be a factor to be considered by an employer in certain circumstances. As previously noted, when these and other marks of identity are displayed with decorum (and, if appropriate, during the designated time) and with a sense of due proportion then they are unlikely to create or sustain a hostile environment. It would be unacceptable however if an individual was made to feel uncomfortable for wearing or not wearing any of these particular emblems or if these emblems were being flaunted before or forced on someone for not wearing them. At the same time, there may be occasions where the display of a particular item may be inappropriate for reasons relating to a genuine occupational requirement (e.g. health and safety) and these other factors must also be taken into account.

For Employers

It is important for an employer to keep in mind not only the corporate or collective image that is created by presenting displays or emblems associated primarily with only one community or part of the workforce but also the impact these actions may have on good employee relations.

It is also important to reflect on the purpose or function of the organisation. For example if its function and remit is of a “political” or “religious” nature it may be acceptable and indeed expected that there may be some reminders of the nature of the organisation or its role in the community. Likewise if the primary function of the organisation is, for example, a nursing home, community group etc., it may well be that the actual function will also to some extent shape the environment. Obviously it would not be acceptable for such an environment to be threatening, hostile or unwelcoming for employees.

Employers may also consider that different protocols should apply when employees are facing the public. For example, the organisation may wish to ensure that no section of the community perceives a “chill factor” when interacting with its representatives, and certain standards or dress codes may then be applied. Once more these standards and codes should be dictated by reasonableness and commonsense.

The use of languages other than English, for example in corporate logos and communications, will not, in general, constitute an infringement of a good and harmonious working environment. However in keeping with other elements of this guidance, decisions on this must rest with the employer and should be based on relevant policies and procedures that are proportionate, reasonable and appropriate to the context in which the organisation operates. They should also be compliant with the requirement and principles of equality of opportunity. Such decisions may also be affected by the terms of the European Charter for Regional or Minority Languages.

And Finally

While the guide deliberately aims to provide you with practical advice and avoids using a welter of legal jargon, nevertheless corporate and individual obligations under the anti-discrimination legislation cannot be ignored. Through case law, the tribunals have already established that a number of emblems described earlier have the potential to create a hostile environment, and employers should bear this in mind when promoting best practice.

Make no mistake, these can be difficult and sensitive issues to deal with, as indeed are so many issues falling within the scope of the Fair Employment and Treatment (NI) Order 1998, the Race Relations (NI) Order 1997 and other anti-discrimination legislation. The primary focus of this guide has been on religious belief and political opinion but the broad principles that have been outlined here can be applied to other grounds of difference such as race, sex, disability, sexual orientation and age. If you would like more detailed advice please don't hesitate in contacting us.

Notes

Equality Commission

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