

Employment Discussion Scenarios

Scenario 1 - Airline Employee



Jeff works for an airline.

One of the perks of the job is a discount card for travel on any of the company's flights.

Jeff's married colleagues were given discount cards so that their wives or husbands could also get discount travel on company flights.

Jeff who is in a civil partnership asked for a card for his partner.

The company refused saying that this privilege is only available to the wives or husbands of married employees.

Scenario 2 – Withdrawn Job Offer



I applied for a job recently and was asked to attend for interview.

I got a follow-up phone call to say that I had scored the highest marks and would be sent a

written job offer. The caller said that they would want me to start work at the beginning of April.

I told them that I could start as soon as they wanted and that I was delighted because I will really need the money when my baby is born at the end of August.

I got a letter the following week telling me that my application had been unsuccessful.

Scenario 3 – Timber Company applicant



I applied for one of two posts of sales representative in a local timber company.

As I have 30 years experience in the industry I felt that I was a strong candidate for one of the posts.

The advertisement specifically stated that candidates needed to have “youthful enthusiasm” and when I telephoned the company to express my interest, I was asked my age. On hearing that I was 58 years old the Company Director commented that I was the same age as he and asked whether I thought I still had the drive and motivation to be successful in the trade.

During the first interview I was again asked to convince the Director that I still had the drive and motivation to be successful in a sales position and that I am still hungry enough to succeed.

I was invited to a second interview with this director and another director who remained passive for most of the interview and did not engage in two-way conversation with me. I was asked questions again referring to my age and the following week I received a letter stating that my application had been unsuccessful.

Scenario 4 – Civil Servant



I have worked for the Civil Service for 5 years.

We get regular circulars about job vacancies and a couple of weeks ago I noticed a job advertised that I know I could do and it would be a promotion for me.

I sent in my application form and got notice back that the selection process involves a written test as well as an interview.

I contacted the Human Resources Manager in charge of the recruitment exercise and told him that it would be difficult for me to take part in the written exercise because I have a visual impairment and was registered blind several years ago.

The HR manager suggested that I should withdraw my application.

Scenario 5 – Workforce under-representation



Following a recruitment exercise for an Operations supervisor the selection panel were undecided between 2 candidates one of whom was a Roman Catholic and the other a Protestant.

As the company had identified an under-representation of Protestants in the workforce they choose to appoint the Protestant candidate.

Scenario 6 – Teaching posts



Jane qualified as a Teacher 5 years ago and has been teaching most of that time except for two years when she stayed at home to look after her young son.

She applied for a job in a local school and while waiting for interview met Bob who had also applied.



Bob told Jane that he had been teaching for three years since he qualified.

The school had two vacancies so Bob and Jane were both appointed to jobs at the same level.

Jane found out that Bob was given a starting salary a pay point above the minimum based on his salary in his previous job. Jane on the other hand was started on the bottom pay point.

Scenario 7 – Employee made redundant



For 3 years I have been employed by a company that makes PVC windows. I am contracted to work 40 hours per week at a rate of £9 per hour.

Three months ago my employer told me that he was having some new PVC cutting equipment installed and because no work could be done until the equipment was in place I was being laid off for 6 to 8 weeks. Last week I found out that I was the only one of 3 people laid off.

I rang my employer yesterday to ask when I would be coming back to work. He told me that I had been made redundant three months ago rather than laid off because he couldn't afford my £9 per hour wages.

He said that he had been able to start 2 experienced Polish workers at a rate of £5.50 per hour.

If he had asked, I would have been willing to work at a reduced hourly rate in order to retain my job.

Scenario 8 – Turkish employee



I came from Turkey to live in Northern Ireland and was employed as Store Manager at an off-licence.

For over a year 2 customers swore at me and called me obscene names every time they came into the shop. They told me to “go home” and said that Turks were taking Northern Ireland people’s jobs.

I told my boss and the company’s Human Resources people about this but I was advised not to contact the PSNI in case it became a community problem. I was told that if I contacted the PSNI it would not be good for me or for the company and that I would probably have to leave my job and my home. They told me that the two customers could not be prevented from coming in and that when they did I should hide in the back of the shop.

Because the lock on the back gate of the premises was broken and the security lights were not working I was afraid to go out to the back store at night. One night an armed masked man came through to the back of the shop and grabbed another male member of staff. I believe that he thought it was me, and that it had been arranged by the 2 customers who were abusing me.

I resigned because I was worried for my safety and because the company refused to do anything about the abuse or transfer me to another location.

Discussion Leader's Notes

Scenario 1 - Airline Employee

In December 2003 legislation outlawing discrimination on grounds of sexual orientation in employment and vocational training was introduced to meet the requirements of the European Framework Directive.

The Employment Equality (Sexual Orientation) Regulations (NI) 2003 made it unlawful for employers to discriminate against employees and job applicants on the grounds of sexual orientation. It is unlawful for an employer to discriminate in recruitment and selection, in the terms and conditions of employment, and by dismissing an employee or causing him/her any other detriment.

The Civil Partnership Act 2004 gave same-sex couples the same legal recognition of their partnership as married couples. As a result same sex couples who are civil partners must be treated the same as married couples on a wide range of legal matters including:

- Employment benefits
- Tax
- Most State and occupational pension benefits
- Income related benefits, tax credits and child support
- Inheritance and tenancy agreements
- Protection from domestic violence
- Immigration and nationality purposes
- Parental responsibility for partner's children

- Responsibility for reasonable maintenance of one's partner and their children.

In the airline employee scenario the discount travel card given to the wives or husbands of married employees would amount to an employment benefit and therefore refusing employees in civil partnerships would be contrary to The Employment Equality (Sexual Orientation) Regulations (NI) 2003 and The Civil Partnership Act 2004. An Industrial Tribunal is likely to find that the employer has unlawfully discriminated against Jeff.

Scenario 2 – Withdrawn Job Offer

The Sex Discrimination (NI) Order 1976 as amended makes it unlawful to discriminate on grounds of pregnancy. There is no need to compare a pregnant woman's treatment to anyone else, not even how she would have been treated had she not been pregnant. It is direct discrimination to treat a female worker or applicant less favourably on the grounds of her pregnancy. The woman in this scenario should take her case to the Industrial Tribunal within 3 months of the act of discrimination taking place.

Scenario 3 – Timber Company applicant

The Employment Equality (Age) Regulations (Northern Ireland) 2006 came into force on 1st October 2006, making it unlawful for employers and others to discriminate on grounds of age in the areas of employment, vocational training and further and higher education.

It is unlawful for an employer to discriminate in recruitment and selection, in the terms on which employment is offered, or by refusing to offer a person employment.

In this scenario the job advertisement uses the terms “drive” and “motivation” that are more often associated with young people, and the use of the term “youthful enthusiasm” would suggest that the company intends to discriminate against older applicants.

The complainant in this scenario states that one director “remained passive” during the second interview. It is good practice for 2 or more people to be **actively** engaged in interview (otherwise what is the point of a second person being on an interview panel if he/she is not participating).

This scenario is a prima facia case of direct age discrimination.

Scenario 4 – Civil Servant

The Disability Discrimination Act 1995 makes it unlawful for employers to discriminate against disabled people in recruitment, whilst employed (e.g. in opportunities for promotion, transfer, training or any benefit) and after employment has ceased (e.g. by giving a poor reference, referring to the person's disability as being a hindrance). Employers also have a duty to take reasonable steps to prevent disabled people being placed at a substantial disadvantage in any of these aspects of employment compared with people who are not disabled – this is known as the employer's duty to make 'reasonable adjustments'. What is 'reasonable' will depend on a number of factors but amongst these factors an Industrial Tribunal will look at the size of the organisation and the cost of making any adjustment. More will be expected of larger employers.

In the Civil Service scenario, when the applicant made the Human Resources Manager aware that he/she was a disabled person the manager should have discussed with the applicant the type of adjustments that he/she would need to be able to participate in the recruitment exercise. An alternative method of completing the test should have been explored or indeed consideration given to waiving the test for this particular individual. Making the disabled person withdraw from the recruitment process would amount to unlawful disability discrimination.

Scenario 5 – Workforce under-representation

Every employer in Northern Ireland with 11 or more employees must register with the Equality Commission, monitor the community background and gender of its applicants and employees, carry out a 3 yearly review of the composition of its workforce (including people who applied for jobs but were unsuccessful and people who have left the employment of the company) and report their findings to the Equality Commission. A company that discovers from their 3 yearly review that a particular community in Northern Ireland is under represented in its workforce has a duty to develop a programme of steps that it will take to encourage people from that community background to apply for jobs in the company. This is known as affirmative action programme. Examples of affirmative action include the adoption of an equal opportunities policy or harassment policy. Job advertisements will often include statements such as:

- *“We are an equal opportunities employer and we welcome applications from members of both the Catholic and the Protestant Community”*; or
- *“We are an equal opportunities employer. The company has an under-representation of the Protestant Community and as part of our affirmative action policy we would particularly welcome applications from members of that community background”*.

These are examples of welcoming statements. The purpose of the welcome statement is to increase the pool of people to be considered

for the job. Even though applications from members of a particular community background are welcomed, recruitment must be on the basis of the best person for the job regardless of their religious belief and / or political opinion. Positive discrimination in favour of an applicant of a particular religious belief and/or political opinion is unlawful.

In Scenario 5 – Workforce under-representation the company acted unlawfully by appointing the Protestant on the basis of his religious belief. In a situation where a recruitment panel is undecided about which applicant to appoint, a further objective means of deciding who the best person for the job is must be put into action – for example a second interview with more searching questions that are relevant to the job being recruited.

Scenario 6 – Teaching posts

Under the Equal Pay Act (NI) 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 that is different but has been rated as equivalent under a job evaluation scheme (known as “work rated as equivalent”);
- Work which is different but which is of equal value in terms of the demands of the job (known as “work of equal value”).

The law applies equally to men and to women. It is about comparisons. Employees who feel they have less favourable terms and conditions than members of the opposite sex may issue a claim for equal pay in an industrial tribunal.

A “Like work” claim is one taken by a worker who is comparing what she/he is paid with what a person of the opposite sex gets paid for doing the same or similar job. An example of same work would be women and men bank cashiers working at the same counter. An example of broadly similar work would be a female cook who prepares lunches for the directors and a male chef who cooks for employees in the canteen. For work to be “broadly similar” there must be no differences of practical importance.

Jobs are considered to be of “equal value” when the demands made (such as effort, skill and decision-making) are the same even though the jobs are different. Examples are female domestic assistants in hospital and male porters, assembly workers and labourers, technicians and clerical workers, and social workers and engineers.

In Situation 6 – Teaching posts, it appears that Jane was started on a lower pay point than Bob because she had two years out of the job market to look after her young son. Bob and Jane were both appointed to jobs at the same level which could be seen as like work under the terms of the Equal Pay (Northern Ireland) Act and Jane could therefore lodge an equal pay claim.

A difference in starting salaries can have a long-term detrimental impact as Bob stays ahead in salary. When Bob and Jane come to retire, Bob would get a bigger pension because it is based on final salary and length of service.

Scenario 7 – Employee made redundant

The Race Relations Act 1976 (as amended) makes less favourable treatment on grounds of race also colour, nationality, ethnic or national origin or on grounds of being a member of the Irish Traveller community unlawful.

As with recruiting employees, clear objective criteria must be used to select employees for redundancy. In this scenario it is not clear what criteria were used. The fact that the employer told the former employee that he had been able to start 2 Polish workers at a much lower rate of pay suggests that he unlawfully discriminated against him on grounds of his race.

The 2 Polish workers are said to be “experienced” which indicates that they may be over the age of 21 years. If this is the case, not only has the employer unlawfully discriminated against them by paying them less wages, he is in fact paying them at a rate below the national minimum wage (currently £5.93 for 21 year olds and above).

Scenario 8 – Turkish employee

The anti-discrimination laws prohibit discrimination and harassment in the fields of employment and occupation. These laws apply to all employers.

In a work context, harassment is defined as unwanted conduct affecting a person's dignity or which creates an intimidating, hostile, degrading, humiliating or offensive environment for them. The conduct may be related to age, sex, race, disability, religion, political opinion, sexual orientation, nationality or any personal characteristic of the individual and it may take the form of persistent events or an isolated incident.

Racial harassment can include racist jokes, banter, insults, literature, isolating individuals, being condescending or deprecating about the way people dress or speak, picking on them unnecessarily, or generally creating a hostile or intimidating atmosphere because of the person's race, colour, nationality or ethnic or national origin.

Employees can be harassed in the course of their work by third parties such as customers or people undertaking work for their company e.g. contractors, agency workers etc.

Harassment detracts from a productive working environment. It can affect the health, confidence, morale and performance of all those affected by it including anyone who witnesses or knows about the unwanted behaviour. All this can have a direct impact upon the profitability and efficiency of a company.

An employer owes a duty of care to all their employees and where possible, reasonable steps must be taken to protect employees from all

acts of harassment. Such steps include having appropriate policies and procedures in place to deal with acts of harassment. Employers may be able to defend a racial harassment case successfully if they can show that they took reasonably practicable steps to prevent the harassment.

In this scenario the reasonable steps for the the company to take to protect the employee would have included:

- Fixing the lock at back on the back gate of the premises and making the premises secure;
- Developing / implementing an anti-harassment policy and making sure that customers as well as employees are aware of the consequences of acts of harassment;
- Speaking to the customers involved and if necessary barring them from shop; and
- Supporting the employee in reporting the incidents to the PSNI.