



RESOURCE MANUAL - **EMPLOYMENT EQUALITY ACTS 1998 AND 2004**



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Preface:

Congress believes in equal rights for all workers and is committed to combating all forms of discrimination and promoting equality. It is widely recognised that the workplace is a strategic entry point to free society from discrimination and so Congress places great emphasis on supporting our affiliate trade unions in representing the interests of a very diverse membership.

The extent of equality and anti-discrimination legislation has improved in recent times and shows there is a growing climate of equality and support for anti-discrimination action. Yet, despite being unlawful, discrimination occurs in the world of work every day and leads to isolation, abuse and victimisation. Recent cases won by affiliated unions show that unions are working to meet the challenges of representing a diverse workforce.

This resource summarises the key elements of the Employment Equality Act, 1998 as recently amended by the Equality Act 2004. They are known together as the Employment Equality Acts 1998 and 2004.

It is hoped that this Congress Guide will provide additional assistance to unions in fighting discrimination and in ensuring equality.

Congress would like to take this opportunity to thank Dave Ellis for his work in drawing up this Guide.

December 2004



part 1

INTRODUCTION



1 PURPOSE OF MANUAL

This manual provides trade union officials with a comprehensive guide to employment equality legislation in order to support their work of informing, advising and representing members on issues covered by the legislation. The manual therefore deals with the Employment Equality Act 1998 and the amendments to that Act introduced by the Equality Act 2004. The manual aims to make the legislation accessible by explaining it, as far as possible, in jargon-free language. In addition the manual provides practical assistance in ensuring compliance with the legislation.

2 BACKGROUND TO LEGISLATION

European treaties provide that men and women should receive equal pay for equal work. In Ireland equal pay legislation first came into force in 1975. The Anti Discrimination (Pay) Act 1974 provided that there cannot be unfavourable treatment in relation to pay between men and women. Over the past 25 years there have been significant developments to our equality legislation importantly the Employment Equality Act 1998 came into operation in 1999 and replaced the Anti-Discrimination (Pay) Act 1974 and the Employment Equality Act 1977. Prior to the 1998 Act, an earlier piece of legislation on employment equality was referred by the President to the Supreme Court to test its constitutionality and the court found that legislation unconstitutional. This was, in part, due to the nature of the duty that the legislation imposed on employers to accommodate people with disabilities. As a consequence the legislation had to be reintroduced in an amended form and it subsequently became the Employment Equality Act 1998. More recently the 1998 Act was amended by the Equality Act 2004. The Equality Act 2004 seeks to implement the provisions of the amended Gender Equal Treatment Framework, Framework Employment Directive and Race Directive.

OVERVIEW OF LEGISLATION

3 The Employment Equality Act 1998 is more comprehensive than the Acts it replaced. For example, the grounds for discrimination covered by the legislation have been extended beyond gender /marital status and now cover: -

- Gender
- Marital status
- Family Status
- Age
- Disability
- Sexual Orientation
- Religion
- Race
- Membership of the Traveller community



The legislation prohibits discrimination on any of the above grounds. The prohibition applies to job advertisements, recruitment, terms and conditions of work, including pay, promotion, training, dismissal and selection for redundancy. The legislation also covers harassment, victimisation, the procurement of discrimination, the liability of employers, positive action and membership of trade unions. Explanations for all these terms are provided in the manual.

The Acts have established two bodies to promote equality and ensure compliance with its provisions. The Equality Authority, which works to promote equality and assist people in bringing complaints under the legislation. The Equality Tribunal, which hears cases of alleged discrimination on the grounds listed in the legislation. In addition the Acts provide for the involvement of the Labour Court and the Circuit Court in certain aspects of equality cases.

HOW TO USE THIS MANUAL

Each of the nine grounds of discrimination covered by the legislation is dealt with separately. For example, if you need to know about family status discrimination, the section dealing with that ground contains information that is common to all grounds, such as the definition of direct and indirect discrimination. In addition, the section covers matters that are specific to the particular ground covered, including a definition of “family status”. You can check on each ground of discrimination by referring to:

Part Two Detailed description of each discriminatory ground

Section One	<i>Gender</i>
Section Two	<i>Age</i>
Section Three	<i>Disability</i>
Section Four	<i>Family Status</i>
Section Five	<i>Marital Status</i>
Section Six	<i>Race</i>
Section Seven	<i>Religion</i>
Section Eight	<i>Sexual Orientation</i>
Section Nine	<i>Traveller Community</i>

There will, of course, be cases of discrimination that involve a complaint based on more than one ground, for example, gender, race and disability.

In addition, the manual covers more general topics, which are relevant to each ground and the wider equality agenda.



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The Equality Authority

Equality reviews

Equality inquiries

Positive action

Promoting an intercultural workplace – good practice

Codes of Practice - sexual harassment / harassment

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Right to information

Time limits

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Preparing a case

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Presenting a case

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part 2

DETAILED DESCRIPTION OF EACH DISCRIMINATORY GROUND



Gender

■ What is meant by "gender"?

Discrimination on the basis that one person is a woman and the other is a man. The definition also includes a transgender/sexual.

■ What is meant by "discrimination"?

The prohibition on discrimination applies to both **direct** and **indirect** discrimination?

Direct discrimination occurs where a person is treated less favourably than another is, has been or would be treated and they are of different sexes. The basis for the discrimination may exist at present, have existed but no longer exists, or may exist in the future. Discrimination also occurs where a person is treated less favourably because a particular gender is attributed or imputed to that person. Finally discrimination may occur where a person is treated less favourably due to an association with another person, where such treatment would have been discrimination against that other person on the gender ground.

Gender discrimination also includes a situation where a woman is treated, contrary to any legislative provision, less favourably than another employee on a ground related to her pregnancy or maternity leave.

Indirect discrimination occurs where an *apparently neutral provision* in reality puts a person of a particular gender at a particular disadvantage compared with others. However discrimination does not occur where the provision can be independently justified as having a legitimate aim and the means being used to achieve that aim are appropriate and necessary. Statistics may be used to decide whether indirect discrimination exists or not.

■ What areas of employment does the Act cover?

The Act prohibits discrimination on the gender ground in relation to:

- Access to employment,
- Conditions of employment,
- Pay for "like work",
- Training or experience for or in relation to employment,
- Promotion or re-grading, or
- Classification of posts.



Conditions of employment to which the Act applies include overtime, shift work, short time, transfers, layoff, redundancies, dismissals and disciplinary measures.

The prohibition on discrimination applies to employees and prospective employees.

■ When dealing with an equal pay claim what is meant by “like work”?

Two employees do “like work” if:

- (a) both perform the **same work** under the same or similar conditions, or each is interchangeable with the other in relation to the work,
- (b) the work performed by one is of a **similar nature** to that performed by the other. Any differences between the work performed (or the conditions under which it is performed) by each employee are either of small importance or occur with such irregularity as not to be significant, or
- (c) the work performed by one is **equal in value** to the work performed by the other, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

Where under (c) above the work done by the complainant is in fact greater in value to that done by the comparator employee, the work is still regarded as being of equal value for the purposes of an equal pay claim.

The Act states that an agency worker may only be compared with another agency worker.

■ Can an employer prevent the Act from applying to an employee?

No, unless covered by one of the permitted exemptions, provisions in agreements which result in different rates of pay based on the gender ground are unenforceable. Likewise any provisions which result in discrimination on the gender ground are also unenforceable. “Agreements” refer to collective agreements, employment regulation orders and registered employment agreements.

Even if a written contract of employment does not contain an equality clause, which prohibits discrimination on the gender ground, the Act states that such an equality clause is taken to be included. This means that where two employees do work which is substantially the same, one contract cannot be less favourable on the ground of gender compared to the other. Where a contract is less favourable the offending term(s) is altered to remove the discrimination. An employer can defend a difference in contracts by proving that the difference is genuinely based on a non-discriminatory ground.



■ Is an employer responsible for discrimination by a member of staff?

An employer is liable for discrimination on the gender ground committed by one of his/her employees. This is the case whether or not the discrimination occurred with the employer's knowledge or approval. This is known as "vicarious liability" and covers not only the actions of employees but also those of agents or persons acting with the employer's authority. An employer does however have a defence if s/he can show that reasonable steps were taken to prevent gender discrimination by his /her employees.

■ Are there any exemptions or exceptions to the prohibition of discrimination on the gender ground?

(a) Failure to perform duties - There is no gender discrimination where an employer does not recruit, promote, retain or provide training or experience where the employee will not undertake his/her duties, or accept conditions attaching to those duties or the employee is not fully competent and available to undertake the duties or fully capable of undertaking the duties.

(b) Certain criminal behaviour - There is no gender discrimination where an employer does not recruit, retain or promote an individual because the employer is aware, on the basis of a criminal conviction of that individual or other reliable information that the individual engages in or has the propensity to engage in sexual behaviour that is unlawful. This particularly applies where the employment involves access to minors or to other vulnerable persons.

(c) Occupational qualification - A difference of treatment based on gender in respect of access to employment in a particular post does not amount to discrimination where by reason of the particular job or the context in which it is carried out, the gender of the employee is a genuine and determining occupational requirement. In addition the objective in the difference of treatment must be legitimate and the requirement proportionate. Employment in this context includes any training leading to it.

(d) Pregnancy & adoption related matters - The legislation does not affect the beneficial treatment for women in connection with pregnancy, maternity, breastfeeding or adoption.

(e) Private households - The prohibition on gender discrimination does not apply to *access to employment* for the provision of personal services in another person's home where the services affect the private or family life of persons living in that home. However once in employment the prohibition does apply to all aspects of such employment, for example, pay, conditions, harassment and termination of employment.

(f) Garda, Prison and emergency services - All persons employed in such services must be fully competent and available and capable to undertake their duties.



■ Is harassment and sexual harassment prohibited?

Yes, the legislation prohibits harassment and sexual harassment of an employee by a fellow employee, by the employer. It also prohibits harassment and sexual harassment by a client, customer or other business contact of the employer.

The harassment can occur in the workplace or in the course of the employment such as conferences or training events outside the workplace.

Harassment also occurs where the employee is treated differently due to his/her acceptance or rejection of the harassment, even if the harassment did not occur in the workplace or in the course of the employment.

Sexual harassment includes any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, including words, gestures or the production, display or circulation of written words, pictures or other material. The conduct must have the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. The 2004 Act emphasises the working environment and has added to the definition the purpose or effect of creating a hostile and degrading environment for workers.

An employer will have a defence to a claim of harassment and sexual harassment, other than by the employer, if s/he can prove that reasonably practical steps were taken to prevent the victim being sexually harassed. Likewise if reasonably practical steps were taken to prevent the victim being treated differently due to the acceptance or rejection of the sexual harassment or, if such treatment occurred, reasonable steps have been taken to reverse the effects of such treatment.

The prohibition also covers situations where a person is seeking to use or using any service provided by an employment agency, or participating in vocational training.

■ Is positive action allowed in relation to gender?

Yes, the legislation allows measures aimed at ensuring full equality in practice between men and women in their employments. This applies in particular to making it easier for an under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.



■ **Is procuring discrimination on the gender ground prohibited?**

Yes, the legislation makes it an offence for a person to procure or attempt to procure another to discriminate against another on the gender ground. Procurement means one person persuades or pressurises another person to discriminate on the gender ground, for example, an employer persuades his / her manager not to employ women.

■ **Does the Act prohibit the victimisation of an employee who brings a complaint of discrimination on the gender ground?**

Yes, the Act prohibits the victimisation, that is the dismissal or other adverse treatment in relation to the person taking the complaint or others, including shop stewards or other trade union representatives assisting with the complaint. The protection applies to a person:

- (a) making a complaint,
- (b) bringing proceedings,
- (c) representing or supporting a complainant,
- (d) whose work has been compared with that of another employee for the purposes of the legislation,
- (e) being a witness in any proceedings under equality legislation,
- (f) opposing by lawful means an act which is unlawful under equality legislation,
- (g) giving notice of an intention to do any of these things.

“Equality legislation” in this context includes both employment equality and equal status legislation.

Victimisation includes dismissal or other adverse treatment by the employer.

How can an employee enforce rights under the Act?

- Enforcement is by bringing a complaint before the Equality Tribunal - or Circuit Court; see Part Four for further details.



AGE

■ What is meant by "age"?

The Act prohibits discrimination on the ground of age with the exception of people under the age of obligatory school attendance. The exception in regard to people over 65 contained in the Employment Equality Act 1998 was removed by the Equality Act 2004. As a result there is now no upper age limit in relation to the prohibition on discrimination, subject to the exemptions set out below, for example, the fixing of different ages of retirement of employees or classes of employees.

■ What is meant by "discrimination"?

The prohibition on discrimination applies to both **direct** and **indirect discrimination**.

Direct discrimination occurs where a person is treated less favourably than another is, has been or would be treated and they are of different ages. The basis for the discrimination may exist at present, have existed but no longer exists, or may exist in the future. Discrimination also occurs where a person is treated less favourably because a particular age is attributed or imputed to that person. Finally discrimination may occur where a person is treated less favourably due to an association with another person, where such treatment would have been discrimination against that other person on the age ground.

Indirect discrimination occurs where an *apparently neutral provision* in reality puts a person of a particular age at a particular disadvantage compared with others. However discrimination does not occur where the provision can be independently justified as having a legitimate aim and the means being used to achieve that aim are appropriate and necessary. Statistics may be used to decide whether indirect discrimination exists or not.

■ What areas of employment does the Act cover?

The Act prohibits discrimination on the age ground in relation to:

- (a) Access to employment,
- (b) Conditions of employment,
- (c) Pay for "like work",
- (d) Training or experience for or in relation to employment,
- (e) Promotion or re-grading, or
- (f) Classification of posts.



Conditions of employment to which the Act applies include overtime, shift work, short time, transfers, layoff, redundancies, dismissals and disciplinary measures.

The prohibition on discrimination applies to employees and prospective employees.

■ When dealing with an equal pay claim what is meant by “like work”?

Two employees do “like work” if:

- (a) both perform the **same work** under the same or similar conditions, or each is interchangeable with the other in relation to the work,
- (b) the work performed by one is of a **similar nature** to that performed by the other. Any differences between the work performed (or the conditions under which it is performed) by each employee are either of small importance or occur with such irregularity as not to be significant; OR
- (c) the work performed by one is **equal in value** to the work performed by the other, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

Where under (c) above the work done by the complainant is in fact greater in value to that done by the comparator employee, the work is still regarded as being of equal value for the purposes of an equal pay claim.

The Act states that an agency worker may only be compared with another agency worker.

■ Can an employer prevent the Act from applying to an employee?

No, unless covered by one of the permitted exemptions, provisions in agreements which result in different rates of pay based on the age ground are unenforceable. Likewise any provisions which result in discrimination on the age ground are also unenforceable. “Agreements” refer to collective agreements, employment regulation orders and registered employment agreements.

Even if a written contract of employment does not contain an equality clause, which prohibits discrimination on the age ground, the Act states that such an equality clause is taken to be included. This means that where two employees do work which is substantially the same, one contract cannot be less favourable on the ground of age compared to the other. Where a contract is less favourable the offending term(s) is altered to remove the discrimination. An employer can defend a difference in contracts by proving that the difference is genuinely based on a non-discriminatory ground.



■ **Is an employer responsible for discrimination by a member of staff?**

An employer is liable for discrimination on the age ground committed by one of his/her employees. This is the case whether or not the discrimination occurred with the employer's knowledge or approval. This is known as "vicarious liability" and covers not only the actions of employees but also those of agents or persons acting with the employer's authority. An employer does however have a defence if s/he can show that reasonable steps were taken to prevent age discrimination by his /her employees.

■ **Are there any exemptions or exceptions to the prohibition of discrimination on the age ground?**

There are a number of exceptions and exemptions allowed for by the legislation and these are as follows:

Failure to perform duties - There is no age discrimination where an employer does not recruit, promote, retain or provide training or experience because the employee concerned will not undertake his/her duties, or accept conditions attaching to those duties. The exemption also applies to situations where the employee is not fully competent and available to undertake the duties or fully capable of undertaking the duties.

Certain criminal behaviour - There is no age discrimination where an employer does not recruit, retain or promote an individual because the employer is aware, on the basis of a criminal conviction of that individual or other reliable information, that the individual engages in or has the propensity to engage in sexual behaviour that is unlawful. This particularly applies where the employment involves access to minors or to other vulnerable persons.

Family benefits - Age discrimination does not occur where an employer provides a benefit to an employee in respect of events relating to that employee's family. Also included in this exemption is a benefit on the occasion of a change in the marital status of an employee or a benefit to help somebody who has the care of another person.

Retirement - Age discrimination does not occur where different ages are fixed for the retirement (whether voluntary or compulsory) of employees or for different classes of employees.

Certain recruitment conditions - Age discrimination does not occur where in any job a maximum age for recruitment takes account of the cost or period of time involved in training a recruit and the need for the recruit to be effective in the job for a reasonable time prior to retirement.



Length of service arrangements - Age discrimination does not occur where an employer provides different pay or conditions based on seniority or length of service in a particular position.

Certain residence, citizenship or language requirements - Age discrimination does not occur where conditions as to residence, citizenship or proficiency in the Irish language are required for holding office in the civil service (including the Gardai or Defence Forces) or in a local authority, harbour authority, health board or vocational education committee.

Certain qualification requirements - Age discrimination does not occur where, in relation to a particular post, there is a requirement to hold a specified qualification which is a generally accepted qualification for such posts in the State. Likewise a body controlling entry into a profession, vocation or occupation may require a person to hold a particular qualification "which is appropriate in the circumstances."

Private household - The prohibition on age discrimination does not apply to *access to employment* for the provision of personal services in another person's home where the services affect the private or family life of persons living in that home. The prohibition does apply to all other aspects of such employment, for example, pay, conditions and termination of employment.

Recruitment - The prohibition does not apply where an employer sets a minimum age, not older than 18, for recruitment to a post.

Fixed Term contracts - An employer may offer a person over the compulsory retirement age for the employment concerned a fixed term contract

Occupational Benefits - Occupational benefits refers to any benefiting employees in relation to illness, incapacity or redundancy. Occupational pension schemes are not included. In relation to occupational benefits, an employer is allowed to fix ages for admission, use age criteria in actuarial calculations or provide different rates of voluntary severance pay taking into account the period between the age of an employee who is leaving and his/her compulsory retirement age. However an employer in availing of these exceptions cannot engage in gender discrimination.

Occupational requirements - A difference of treatment based on age where by reason of the particular job or the context in which it is carried out, the age of the employee is a genuine and determining occupational requirement. In addition the objective in the difference of treatment must be legitimate and the requirement proportionate.



Garda, Prison and emergency services - All persons employed in such services must be fully competent and available and capable to undertake their duties. If the Minister for Justice, Equality & Law Reform orders that the age profile of any of these services is such as to affect its operational ability, recruitment may exclude the age ground. Discrimination on the age ground does not apply to employment in the Defence Forces.

■ **Is harassment on grounds of age prohibited?**

Yes, and in this context **"harassment"** means any form of unwanted conduct in relation to an employee's age, such as words, gestures or pictures, which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. The 2004 Act emphasizes the environment for the person and has added to the definition the purpose or effect of creating a hostile and degrading environment. Harassment can occur through the actions or conduct of a fellow employee, the employer, or a client / customer/ business contact of the employer.

Harassment can occur in the workplace or in the course of the employment such as at conferences or training events outside the workplace.

Harassment also occurs where an employee is treated differently due to his/her acceptance or rejection of the harassment, even if the harassment does not occur in the workplace or in the course of the employment.

An employer will have a defence to a claim of harassment, other than by the employer, if s/he can prove that reasonably practical steps were taken to prevent the victim being harassed. Likewise if reasonably practical steps were taken to prevent the victim being treated differently due to the acceptance or rejection of the harassment or, if such treatment occurred, then reasonable steps were taken to reverse the effects of such treatment.

■ **Is positive action allowed in relation to age?**

Yes - the legislation allows measures aimed at preventing or compensating for disadvantages linked to the age ground or providing facilities for securing the integration of such persons into the working environment.



■ Is procuring discrimination on the age ground prohibited?

Yes, the legislation makes it an offence for a person to procure or attempt to procure another to discriminate against another on the age ground. Procurement means one person persuades or pressurises another person to discriminate on the age ground, for example an employer persuades his /her manager not to employ people over 35.

■ Does the Act prohibit the victimisation of an employee who brings a complaint of discrimination on the age ground?

Yes, the Act prohibits the victimisation, that is the dismissal or other adverse treatment in relation to the person taking the complaint or others, including shop stewards or other trade union representatives assisting with the complaint. The protection applies to a person:

- (a) making a complaint,
- (b) bringing proceedings,
- (c) representing or supporting a complainant,
- (d) whose work has been compared with that of another employee for the purposes of the legislation,
- (e) being a witness in any proceedings under equality legislation,
- (f) opposing by lawful means an act which is unlawful under equality legislation,
- (g) giving notice of an intention to do any of these things.

“Equality legislation” in this context includes both employment equality and equal status legislation.

Victimisation includes dismissal or other adverse treatment by the employer.

■ How can an employee enforce rights under the Act?

Enforcement is by bringing a complaint before the Equality Tribunal, see Part Four for further details.



DISABILITY

■ What is meant by “Disability”?

The definition of “disability” is extremely wide and covers all of the following circumstances:

- (a) Total or partial absence of a person's bodily or mental functions, including the absence of a part of the person's body,
- (b) Body organisms causing or likely to cause chronic disease or illness,
- (c) Malfunction, malformation, or disfigurement of a part of a person's body,
- (d) Condition or malfunction that results in a person learning differently,
- (e) Condition, illness or disease which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour.

■ What is meant by “discrimination”?

The prohibition on discrimination applies to both direct and indirect discrimination

Direct discrimination occurs where a person is treated less favourably than another is, has been or would be treated and one has a disability and the other has not. The basis for the discrimination may exist at present, have existed but no longer exists, or may exist in the future. Discrimination also occurs where a person is treated less favourably because a disability is attributed or imputed to that person. Finally discrimination may occur where a person is treated less favourably due to an association with another person, where such treatment would have been discrimination against that other person on the disability ground.

Indirect discrimination occurs where an *apparently neutral provision* in reality puts a person with a disability at a particular disadvantage compared with others. However discrimination does not occur where the provision can be independently justified as having a legitimate aim and the means being used to achieve that aim are appropriate and necessary. Statistics may be used to decide whether indirect discrimination exists or not.



■ What areas of employment does the Act cover?

The Act prohibits discrimination on the disability ground in relation to:

- Access to employment,
- Conditions of employment,
- Pay for “like work” ,
- Training or experience for or in relation to employment,
- Promotion or re-grading, or
- Classification of posts.

Conditions of employment to which the Act applies include overtime, shift work, short time, transfers, layoff, redundancies, dismissals and disciplinary measures.

The prohibition on discrimination applies to employees and prospective employees

■ When dealing with an equal pay claim what is meant by “like work”?

Two employees do “like work” if:

- (a) both perform the **same work** under the same or similar conditions, or each is interchangeable with the other in relation to the work,
- (b) the work performed by one is of a **similar nature** to that performed by the other. Any differences between the work performed (or the conditions under which it is performed) by each employee are either of small importance or occur with such irregularity as not to be significant, or
- (c) the work performed by one is **equal in value** to the work performed by the other, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

Where under (c) above the work done by the complainant is in fact greater in value to that done by the comparator employee, the work is still regarded as being of equal value for the purposes of an equal pay claim.

The Act states that an agency worker may only be compared with another agency worker.

■ Can an employer prevent the Act from applying to an employee?

No, unless covered by one of the permitted exemptions, provisions in agreements which result in different rates of pay based on the disability ground are unenforceable. Likewise any provisions which result in discrimination on the disability ground are also unenforceable. “Agreements” refer to collective agreements, employment regulation orders and registered employment agreements.



Even if a written contract of employment does not contain an equality clause, which prohibits discrimination on the disability ground, the Act states that such an equality clause is taken to be included. This means that where two employees do work which is substantially the same, one contract cannot be less favourable on the ground of disability compared to the other. Where a contract is less favourable the offending term(s) is altered to remove the discrimination. An employer can defend a difference in contracts by proving that the difference is genuinely based on a non-discriminatory ground.

■ **Is an employer responsible for discrimination by a member of staff?**

An employer is liable for discrimination on the disability ground committed by one of his/her employees. This is the case whether or not the discrimination occurred with the employer's knowledge or approval. This is known as "vicarious liability" and covers not only the actions of employees but also those of agents or persons acting with the employer's authority. An employer does however have a defence if s/he can show that reasonable steps were taken to prevent disability discrimination by his /her employees.

■ **Are there any exemptions or exceptions to the prohibition of discrimination on the disability ground?**

(a) Failure to perform duties There is no disability discrimination where an employer does not recruit, promote, retain or provide training or experience because the employee concerned will not undertake his/her duties, or accept conditions attaching to those duties. The exemption also applies to situations where the employee is not fully competent and available to undertake the duties or fully capable of undertaking the duties.

(b) Certain criminal behaviour - There is no disability discrimination where an employer does not recruit, retain or promote an individual because the employer is aware, on the basis of a criminal conviction of that individual or other reliable information that the individual engages in or has the propensity to engage in sexual behaviour that is unlawful. This particularly applies where the employment involves access to minors or to other vulnerable persons.

(c) Disproportionate Burden - A person with a disability is to be considered fully competent to undertake employment duties if with the reasonable assistance of the employer (in the legislation referred to as "reasonable accommodation") that person would be fully competent to undertake those duties. An employer is required to take appropriate steps to enable a person with a disability to access employment, participate or advance in employment and to undergo training, unless the steps would impose a "disproportionate burden" on the employer. Appropriate measures include



adapting premises, patterns of working time, distribution of tasks and the provision of training. Appropriate measures do not include facilities etc that the person might reasonably be expected to provide for him/herself.

In deciding if there would be a disproportionate burden on the employer consideration is given to the costs involved, the resources available to the employer and the possibility of obtaining grants or other assistance.

(d) Family benefits - Disability discrimination does not occur where an employer provides a benefit to an employee in respect of events relating to that employee's family. Likewise a benefit on the occasion of a change in the marital status of an employee or a benefit to help somebody who has the care of another person.

(e) Restricted capacity - Disability discrimination does not occur where an employer pays a person with a disability at a different rate due to the fact that the employee, by reason of the disability, does less work than an employee without a disability doing similar work.

(f) Certain residence, citizenship or language requirements - Disability discrimination does not occur where conditions as to residence, citizenship or proficiency in the Irish language are required for holding of in civil service (including the Gardai or Defence Forces) or in a local authority, harbour authority, health board or vocational education committee.

(g) Certain qualification requirements - Disability discrimination does not occur where, in relation to a particular post, there is a requirement to hold a specified qualification which is generally accepted qualification for such posts in the State. Likewise a body controlling entry into a profession, vocation or occupation may require a person to hold a particular qualification "which is appropriate in the circumstances."

(h) Private household - The prohibition on disability discrimination does not apply to access to *employment* for the provision of personal services in another person's home where the services affect the private or family life of persons living in that home. The prohibition does apply to all other aspects of such employment, for example, pay, conditions and termination of employment.

(i) Occupational requirements - A difference of treatment based on disability where by reason of the particular job or the context in which it is carried out, the age of the employee is a genuine and determining occupational requirement. In addition the objective in the difference of treatment must be legitimate and the requirement proportionate.



(j) **Garda, Prison and emergency services** - All persons employed in such services must be fully competent and available and capable to undertake their duties. The disability ground does not apply to employment in the Defence Forces.

■ **Is harassment on grounds of disability prohibited?**

Yes, and in this context **“harassment”** means any form of unwanted conduct in relation to an employee's disability, such as words, gestures or pictures, which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. The 2004 Act emphasises the environment for the person and has added to the definition the purpose or effect of creating a hostile and degrading environment. Harassment can occur through the actions or conduct of a fellow employee, the employer, or a client / customer/ business contact of the employer.

Harassment can occur in the workplace or in the course of the employment such as at conferences or training events outside the workplace.

Harassment also occurs where an employee is treated differently due to his/her acceptance or rejection of the harassment, even if the harassment does not occur in the workplace or in the course of the employment.

An employer will have a defence to a claim of harassment, other than by the employer, if s/he can prove that reasonably practical steps were taken to prevent the victim being harassed. Likewise if reasonably practical steps were taken to prevent the victim being treated differently due to the acceptance or rejection of the harassment or, if such treatment occurred, then reasonable steps were taken to reverse the effects of such treatment.

■ **Is positive action allowed in relation to disability?**

Yes - the legislation allows measures aimed at preventing or compensating for disadvantages linked to the disability ground or providing facilities for securing the integration of such persons into the working environment. In addition measures are also allowed which are to protect the health and safety at work of persons with a disability.

In addition the legislation does not prevent an employer providing a person with a disability with special treatment or facilities to enable that person to take part in training, a selection process or work.



■ Is procuring discrimination on the disability ground prohibited?

Yes, the legislation makes it an offence for a person to procure or attempt to procure another to discriminate against another on the disability ground. Procurement means one person persuades or pressurises another person to discriminate on the disability ground, for example, an employer persuades his/her manager not to employ people with disabilities.

■ Does the Act prohibit the victimisation of an employee, who brings a complaint of discrimination on the disability ground?

Yes, the Act prohibits the victimisation, that is the dismissal or other adverse treatment in relation to the person taking the complaint or others, including shop stewards or other trade union representatives assisting with the complaint. The protection applies to a person:

- (a) making a complaint,
- (b) bringing proceedings,
- (c) representing or supporting a complainant,
- (d) whose work has been compared with that of another employee for the purposes of the legislation,
- (e) being a witness in any proceedings under equality legislation,
- (f) opposing by lawful means an act which is unlawful under equality legislation,
- (g) giving notice of an intention to do any of these things.

“Equality legislation” in this context includes both employment equality and equal status legislation.

Victimisation includes dismissal or other adverse treatment by the employer.

■ How can an employee enforce rights under the Act?

Enforcement is by bringing a complaint before the Equality Tribunal, see Part Four for further details.



FAMILY STATUS

■ What is meant by “Family Status”?

“Family status” means that a person has responsibility as a parent or as a person in the position of a parent (referred to as “in loco parentis”), for example, a foster parent, in relation to a person who is under 18. In addition the term covers parents or resident primary carers who have responsibility for a child or adult with a disability who is in the need of “care or support on a continuing, regular or frequent basis”.

■ What is meant by “discrimination”?

The prohibition on discrimination applies to both **direct** and **indirect** discrimination

Direct discrimination occurs where a person is treated less favourably than another is, has been or would be treated and one has family status and the other has not. The basis for the discrimination may exist at present, have existed but no longer exists, or may exist in the future. Discrimination also occurs where a person is treated less favourably because a particular family status is attributed or imputed to that person. Finally discrimination may occur where a person is treated less favourably due to an association with another person, where such treatment would have been discrimination against that other person on the family status ground.

Indirect discrimination occurs where an *apparently neutral provision* in reality puts a person of a particular family status at a particular disadvantage compared with others. However discrimination does not occur where the provision can be independently justified as having a legitimate aim and the means being used to achieve that aim are appropriate and necessary. Statistics may be used to decide whether indirect discrimination exists or not.

■ What areas of employment does the Act cover?

The Act prohibits discrimination on the family status ground in relation to:

- Access to employment,
- Conditions of employment,
- Pay for “like work”,
- Training or experience for or in relation to employment,
- Promotion or re-grading, or
- Classification of posts.



Conditions of employment to which the Act applies include overtime, shift work, short time, transfers, layoff, redundancies, dismissals and disciplinary measures.

The prohibition on discrimination applies to employees and prospective employees

■ When dealing with an equal pay claim what is meant by “Like Work”?

Two employees do “like work” if:

- (a) both perform the **same work** under the same or similar conditions, or each is interchangeable with the other in relation to the work,
- (b) the work performed by one is of a **similar nature** to that performed by the other. Any differences between the work performed (or the conditions under which it is performed) by each employee are either of small importance or occur with such irregularity as not to be significant, or
- (c) the work performed by one is **equal in value** to the work performed by the other, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

Where under (c) above the work done by the complainant is in fact greater in value to that done by the comparator employee, the work is still regarded as being of equal value for the purposes of an equal pay claim.

The Act states that an agency worker may only be compared with another agency worker.

■ Can an employer prevent the Act from applying to an employee?

No, unless covered by one of the permitted exemptions, provisions in agreements which result in different rates of pay based on the family status ground are unenforceable. Likewise any provisions which result in discrimination on the family status ground are also unenforceable. “Agreements” refer to collective agreements, employment regulation orders and registered employment agreements.

Even if a written contract of employment does not contain an equality clause, which prohibits discrimination on the family status ground, the Act states that such an equality clause is taken to be included. This means that where two employees do work which is substantially the same, one contract cannot be less favourable on the ground of family status compared to the other. Where a contract is less favourable the offending term(s) is altered to remove the discrimination. An employer can defend a difference in contracts by proving that the difference is genuinely based on a non-discriminatory ground.



■ **Is an employer responsible for discrimination by a member of staff?**

An employer is liable for discrimination on the family status ground committed by one of his/her employees. This is the case whether or not the discrimination occurred with the employer's knowledge or approval. This is known as "vicarious liability" and covers not only the actions of employees but also those of agents or persons acting with the employer's authority. An employer does however have a defence if s/he can show that reasonable steps were taken to prevent family status discrimination by his /her employees.

■ **Are there any exemptions or exceptions to the prohibition of discrimination on the family status ground?**

(a) Failure to perform duties - There is no family status discrimination where an employer does not recruit, promote, retain or provide training or experience because the employee will not undertake his/her duties or accept conditions attaching to those duties. The exemption also applies where the employee is not fully competent and available to undertake the duties or fully capable of undertaking the duties.

(b) Certain criminal behaviour - There is no family status discrimination where an employer does not recruit, retain or promote an individual because the employer is aware, on the basis of a criminal conviction of that individual or other reliable information that the individual engages in or has the propensity to engage in sexual behaviour that is unlawful. This particularly applies where the employment involves access to minors or to other vulnerable persons.

(c) Family benefits - Family status discrimination does not occur where an employer provides a benefit to an employee in respect of events relating to that employee's family. Likewise a benefit on the occasion of a change in the marital status of an employee or providing a benefit intended to provide or assist in the provision during working hours of care for a person for whom the employee has responsibility, for example the provision of family friendly working arrangements or assistance with childcare.

(d) Certain residence, citizenship or language requirements - Family status discrimination does not occur where conditions as to residence, citizenship or proficiency in the Irish language are required for holding of in civil service (including the Gardai or Defence Forces) or in a local authority, harbour authority, health board or vocational education committee.

(e) Certain qualification requirements - Family status does not occur where, in relation to a particular post, there is a requirement to hold a specified qualification which is a generally accepted qualification for such posts in the State. Likewise a body controlling entry into a profession, vocation or occupation may require a person to hold a particular qualification "which is appropriate in the circumstances."



(f) Private households - The prohibition on family status discrimination does not apply to *access to employment* for the provision of personal services in another person's home where the services affect the private or family life of persons living in that home. The prohibition does apply to all other aspects of such employment, for example, pay, conditions and termination of employment.

(g) Occupational requirements - A difference of treatment based on family status where by reason of the particular job or the context in which it is carried out, the age of the employee is a genuine and determining occupational requirement. In addition the objective in the difference of treatment must be legitimate and the requirement proportionate.

(h) Garda, Prison and emergency services - All persons employed in such services must be fully competent and available and capable to undertake their duties.

■ Is harassment on grounds of family status prohibited?

Yes, and in this context **"harassment"** means any form of unwanted conduct in relation to an employee's family status, such as words, gestures or pictures, which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. The 2004 Act emphasises the environment for the person and has added to the definition the purpose or effect of creating a hostile and degrading environment. Harassment can occur through the actions or conduct of a fellow employee, the employer, or a client / customer/ business contact of the employer.

Harassment can occur in the workplace or in the course of the employment such as at conferences or training events outside the workplace.

Harassment also occurs where an employee is treated differently due to his/her acceptance or rejection of the harassment, even if the harassment does not occur in the workplace or in the course of the employment.

An employer will have a defence to a claim of harassment, other than by the employer, if s/he can prove that reasonably practical steps were taken to prevent the victim being harassed. Likewise if reasonably practical steps were taken to prevent the victim being treated differently due to the acceptance or rejection of the harassment or, if such treatment occurred, then reasonable steps were taken to reverse the effects of such treatment.



■ **Is positive action allowed in relation to family status?**

Yes - the legislation allows measures aimed at preventing or compensating for disadvantages linked to the family status ground or providing facilities for securing the integration of such persons into the working environment.

■ **Is procuring discrimination on the family status ground prohibited?**

Yes, the legislation makes it an offence for a person to procure or attempt to procure another to discriminate against another on the family status ground. Procurement means one person persuades or pressurises another person to discriminate on the family status ground, for example, an employer persuades his/her manager not to employ people with children.

■ **Does the Act prohibit the victimisation of an employee who brings a complaint of discrimination on the family status ground?**

Yes, the Act prohibits the victimisation, that is the dismissal or other adverse treatment in relation to the person taking the complaint or others, including shop stewards or other trade union representatives assisting with the complaint. The protection applies to a person:

- (a) making a complaint,
- (b) bringing proceedings,
- (c) representing or supporting a complainant,
- (d) whose work has been compared with that of another employee for the purposes of the legislation,
- (e) being a witness in any proceedings under equality legislation,
- (f) opposing by lawful means an act which is unlawful under equality legislation,
- (g) giving notice of an intention to do any of these things.

"Equality legislation" in this context includes both employment equality and equal status legislation.

Victimisation includes dismissal or other adverse treatment by the employer.

■ **How can an employee enforce rights under the Act?**

Enforcement is by bringing a complaint before the Equality Tribunal, see Part Four for further details.



MARITAL STATUS

■ What is meant by “Marital Status”?

Discrimination on the grounds that a person is single, married, separated, divorced or widowed.

■ What is meant by “discrimination”?

The prohibition on discrimination applies to both *direct* and *indirect discrimination*.

Direct discrimination occurs where a person is treated less favourably than another is, has been or would be treated and they are of different marital status. The basis for the discrimination may exist at present, have existed but no longer exists, or may exist in the future. Discrimination also occurs where a person is treated less favourably because a particular marital status is attributed or imputed to that person. Finally discrimination may occur where a person is treated less favourably due to an association with another person, where such treatment would have been discrimination against that other person on the marital status ground.

Indirect discrimination occurs where an *apparently neutral provision* in reality puts a person of a particular marital status at a particular disadvantage compared with others. However discrimination does not occur where the provision can be independently justified as having a legitimate aim and the means being used to achieve that aim are appropriate and necessary. Statistics may be used to decide whether indirect discrimination exists or not.

■ What areas of employment does the Act cover?

The Act prohibits discrimination on the marital status ground in relation to:

- Access to employment,
- Conditions of employment,
- Pay for “Like work”,
- Training or experience for or in relation to employment,
- Promotion or re-grading, or
- Classification of posts.

Conditions of employment to which the Act applies include overtime, shift work, short time, transfers, layoff, redundancies, dismissals and disciplinary measures.

The prohibition on discrimination applies to employees and prospective employees.



■ When dealing with an equal pay claim what is meant by “like work”?

Two employees do “like work” if:

- (a) both perform the **same work** under the same or similar conditions, or each is interchangeable with the other in relation to the work,
- (b) The work performed by one is of a **similar nature** to that performed by the other. Any differences between the work performed (or the conditions under which it is performed) by each employee are either of small importance or occur with such irregularity as not to be significant, or
- (c) the work performed by one is **equal in value** to the work performed by the other, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

Where under (c) above the work done by the complainant is in fact greater in value to that done by the comparator employee, the work is still regarded as being of equal value for the purposes of an equal pay claim.

The Act states that an agency worker may only be compared with another agency worker.

■ Can an employer prevent the Act from applying to an employee?

No, unless covered by one of the permitted exemptions, provisions in agreements which result in different rates of pay based on the marital status ground are unenforceable. Likewise any provisions which result in discrimination on the marital status ground are also unenforceable. “Agreements” refer to collective agreements, employment regulation orders and registered employment agreements.

Even if a written contract of employment does not contain an equality clause, which prohibits discrimination on the marital status ground, the Act states that such an equality clause is taken to be included. This means that where two employees do work which is substantially the same, one contract cannot be less favourable on the ground of marital status compared to the other. Where a contract is less favourable the offending term(s) is altered to remove the discrimination. An employer can defend a difference in contracts by proving that the difference is genuinely based on a non-discriminatory ground.



■ **Is an employer responsible for discrimination by a member of staff?**

An employer is liable for discrimination on the marital status ground committed by one of his/her employees. This is the case whether or not the discrimination occurred with the employer's knowledge or approval. This is known as "vicarious liability" and covers not only the actions of employees but also those of agents or persons acting with the employer's authority. An employer does however have a defence if s/he can show that reasonable steps were taken to prevent marital status discrimination by his /her employees.

■ **Are there any exemptions or exceptions to the prohibition of discrimination on the marital status ground?**

(a) Failure to perform duties - There is no marital status discrimination where an employer does not recruit, promote, retain or provide training or experience where the employee will not undertake his/her duties, or accept conditions attaching to those duties or the employee is not fully competent and available to undertake the duties or fully capable of undertaking the duties.

(b) Certain criminal behaviour - There is no marital status discrimination where an employer does not recruit, retain or promote an individual because the employer is aware, on the basis of a criminal conviction of that individual or other reliable information that the individual engages in or has the propensity to engage in sexual behaviour that is unlawful. This particularly applies where the employment involves access to minors or to other vulnerable persons.

(c) Family benefits - Marital status discrimination does not occur where an employer provides a benefit to an employee in respect of events relating to that employee's family. Likewise a benefit on the occasion of a change in the marital status of an employee or a benefit to help somebody who has the care of another person.

(d) Certain residence, citizenship or language requirements - Marital status discrimination does not occur where conditions as to residence, citizenship or proficiency in the Irish language are required for holding of in civil service (including the Gardai or Defence Forces) or in a local authority, harbour authority, health board or vocational education committee.

(e) Certain qualification requirements - Marital status discrimination does not occur where, in relation to a particular post, there is a requirement to hold a specified qualification which is a generally accepted qualification for such posts in the State. Likewise a body controlling entry into a profession, vocation or occupation may require a person to hold a particular qualification "which is appropriate in the circumstances."



(f) Private households - The prohibition on marital status discrimination does not apply to *access to employment* for the provision of personal services in another person's home where the services affect the private or family life of persons living in that home. The prohibition does apply to all other aspects of such employment, for example, pay, conditions and termination of employment.

(g) Occupational requirements - A difference of treatment based on marital status where by reason of the particular job or the context in which it is carried out, the age of the employee is a genuine and determining occupational requirement. In addition the objective in the difference of treatment must be legitimate and the requirement proportionate –

(h) Garda, Prison and emergency services - All persons employed in such services must be fully competent and available and capable to undertake their duties.

■ Is harassment on grounds of marital status prohibited?

Yes, and in this context **“harassment”** means any form of unwanted conduct in relation to an employee's marital status, such as words, gestures or pictures, which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. The 2004 Act emphasises the environment for the person and has added to the definition the purpose or effect of creating a hostile and degrading environment. Harassment can occur through the actions or conduct of a fellow employee, the employer, or a client / customer/ business contact of the employer.

Harassment can occur in the workplace or in the course of the employment such as at conferences or training events outside the workplace.

Harassment also occurs where an employee is treated differently due to his/her acceptance or rejection of the harassment, even if the harassment does not occur in the workplace or in the course of the employment.

An employer will have a defence to a claim of harassment, other than by the employer, if s/he can prove that reasonably practical steps were taken to prevent the victim being harassed. Likewise if reasonably practical steps were taken to prevent the victim being treated differently due to the acceptance or rejection of the harassment or, if such treatment occurred, then reasonable steps were taken to reverse the effects of such treatment.



■ **Is positive action allowed in relation to marital status?**

Yes - the legislation allows measures aimed at preventing or compensating for disadvantages linked to the marital status ground or providing facilities for securing the integration of such persons into the working environment.

■ **Is procuring discrimination on the marital status ground prohibited?**

Yes, the legislation makes it an offence for a person to procure or attempt to procure another to discriminate against another on the marital status ground. Procurement means one person persuades or pressurises another person to discriminate on the marital status ground, for example, an employer persuades his /her manager not to employ married people.

■ **Does the Act prohibit the victimisation of an employee who brings a complaint of discrimination on the marital status ground?**

Yes, the Act prohibits the victimisation, that is the dismissal or other adverse treatment in relation to the person taking the complaint or others, including shop stewards or other trade union representatives assisting with the complaint. The protection applies to a person:

- (a) making a complaint,
- (b) bringing proceedings,
- (c) representing or supporting a complainant,
- (d) whose work has been compared with that of another employee for the purposes of the legislation,
- (e) being a witness in any proceedings under equality legislation,
- (f) opposing by lawful means an act which is unlawful under equality legislation,
- (g) giving notice of an intention to do any of these things.

"Equality legislation" in this context includes both employment equality and equal status legislation.

Victimisation includes dismissal or other adverse treatment by the employer.

How can an employee enforce rights under the Act?

- Enforcement is by bringing a complaint before the Equality Tribunal, see Part Four for further details.



RACE

■ What is meant by “race”?

Discrimination on the basis of a person's race, colour, nationality or ethnic / national origin.

■ What is meant by “discrimination”?

The prohibition on discrimination applies to both **direct** and **indirect discrimination**.

Direct discrimination occurs where a person is treated less favourably than another is, has been or would be treated and they are of different race, colour, nationality or ethnic / national origin. The basis for the discrimination may exist at present, have existed but no longer exists, or may exist in the future. Discrimination also occurs where a person is treated less favourably because a particular race, colour, nationality or ethnic /national origin is attributed or imputed to that person. Finally discrimination may occur where a person is treated less favourably due to an association with another person, where such treatment would have been discrimination against that other person on the race ground.

Indirect discrimination occurs where an *apparently neutral provision* in reality puts a person of a particular race, colour, nationality or ethnic/national origin at a particular disadvantage compared with others. However discrimination does not occur where the provision can be independently justified as having a legitimate aim and the means being used to achieve that aim are appropriate and necessary. Statistics may be used to decide whether indirect discrimination exists or not.

■ What areas of employment does the Act cover?

The Act prohibits discrimination on the race ground in relation to:

- Access to employment,
- Conditions of employment,
- Pay for “like work”,
- Training or experience for or in relation to employment,
- Promotion or re-grading, or
- Classification of posts.

Conditions of employment to which the Act applies include overtime, shift work, short time, transfers, layoff, redundancies, dismissals and disciplinary measures.

The prohibition on discrimination applies to employees and prospective employees.



■ When dealing with an equal pay what is meant by “like work”?

Two employees do “like work” if:

- (a) both perform the **same work** under the same or similar conditions, or each is interchangeable with the other in relation to the work,
- (b) the work performed by one is of a **similar nature** to that performed by the other. Any differences between the work performed (or the conditions under which it is performed) by each employee are either of small importance or occur with such irregularity as not to be significant, or
- (c) the work performed by one is **equal in value** to the work performed by the other, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

Where under (c) above the work done by the complainant is in fact greater in value to that done by the comparator employee, the work is still regarded as being of equal value for the purposes of an equal pay claim.

The Act states that an agency worker may only be compared with another agency worker.

■ Can an employer prevent the Act from applying to an employee?

No, unless covered by one of the permitted exemptions, provisions in agreements which result in different rates of pay based on the race ground are unenforceable. Likewise any provisions which result in discrimination on the race ground are also unenforceable. “Agreements” refer to collective agreements, employment regulation orders and registered employment agreements.

Even if a written contract of employment does not contain an equality clause, which prohibits discrimination on the race ground, the Act states that such an equality clause is taken to be included. This means that where two employees do work which is substantially the same, one contract cannot be less favourable on the ground of race compared to the other. Where a contract is less favourable the offending term(s) is altered to remove the discrimination. An employer can defend a difference in contracts by proving that the difference is genuinely based on a non-discriminatory ground.



■ Is an employer responsible for discrimination by a member of staff?

An employer is liable for discrimination on the race ground committed by one of his/her employees. This is the case whether or not the discrimination occurred with the employer's knowledge or approval. This is known as "vicarious liability" and covers not only the actions of employees but also those of agents or persons acting with the employer's authority. An employer does however have a defence if s/he can show that reasonable steps were taken to prevent race discrimination by his /her employees.

■ Are there any exemptions or exceptions to the prohibition of discrimination on the race ground?

(a) Failure to perform duties - There is no race discrimination where an employer does not recruit, promote, retain or provide training or experience where the employee will not undertake his/her duties, or accept conditions attaching to those duties or the employee is not fully competent and available to undertake the duties or fully capable of undertaking the duties.

(b) Certain criminal behaviour - There is no race discrimination where an employer does not recruit, retain or promote an individual because the employer is aware, on the basis of a criminal conviction of that individual or other reliable information that the individual engages in or has the propensity to engage in sexual behaviour that is unlawful. This particularly applies where the employment involves access to minors or to other vulnerable persons.

(c) Family benefits - Race discrimination does not occur where an employer provides a benefit to an employee in respect of events relating to that employee's family. Likewise a benefit on the occasion of a change in the marital status of an employee or a benefit to help somebody who has the care of another person.

(d) Certain residence, citizenship or language requirements - Race discrimination does not occur where conditions as to residence, citizenship or proficiency in the Irish language are required for holding of in civil service (including the Gardai or Defence Forces) or in a local authority, harbour authority, health board or vocational education committee.

(e) Certain qualification requirements - Race discrimination does not occur where, in relation to a particular post, there is a requirement to hold a specified qualification which is a generally accepted qualification for such posts in the State. Likewise a body controlling entry into a profession, vocation or occupation may require a person to hold a particular qualification "which is appropriate in the circumstances."



(f) **Private households** - The prohibition on race discrimination does not apply to *access to employment* for the provision of personal services in another person's home where the services affect the private or family life of persons living in that home. The prohibition does apply to all other aspects of such employment, for example, pay, conditions and termination of employment.

(g) **Work Permits** - The prohibition on discrimination does not apply to actions taken in regard to work permits under the Employment Permits Act 2003.

(h) **Occupational requirements** - A difference of treatment based on race, colour, nationality or ethnic /national origin where by reason of the particular job or the context in which it is carried out, the age of the employee is a genuine and determining occupational requirement. In addition the objective in the difference of treatment must be legitimate and the requirement proportionate

(i) **Garda, Prison and emergency services** - All persons employed in such services must be fully competent and available and capable to undertake their duties.

■ Is harassment on grounds of race prohibited?

Yes, and in this context **"harassment"** means any form of unwanted conduct in relation to an employee's race, such as words, gestures or pictures, which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. The 2004 Act emphasises the environment for the person and has added to the definition the purpose or effect of creating a hostile and degrading environment. Harassment can occur through the actions or conduct of a fellow employee, the employer, or a client / customer/ business contact of the employer.

Harassment can occur in the workplace or in the course of the employment such as at conferences or training events outside the workplace.

Harassment also occurs where an employee is treated differently due to his/her acceptance or rejection of the harassment, even if the harassment does not occur in the workplace or in the course of the employment.

An employer will have a defence to a claim of harassment, other than by the employer, if s/he can prove that reasonably practical steps were taken to prevent the victim being harassed. Likewise if reasonably practical steps were taken to prevent the victim being treated differently due to the acceptance or rejection of the harassment or, if such treatment occurred, then reasonable steps were taken to reverse the effects of such treatment.



■ **Is positive action allowed in relation to race?**

Yes - the legislation allows measures aimed at preventing or compensating for disadvantages linked to the race ground or providing facilities for securing the integration of such persons into the working environment.

■ **Is procuring discrimination on the race ground prohibited?**

Yes, the legislation makes it an offence for a person to procure or attempt to procure another to discriminate against another on the race ground. Procurement means one person persuades or pressurises another person to discriminate on the race ground, for example, an employer persuades his /her manager not to employ people of a certain race.

■ **Does the Act prohibit victimisation of an employee who brings a complaint of discrimination on the race ground?**

Yes, the Act prohibits the victimisation, that is the dismissal or other adverse treatment in relation to the person taking the complaint or others, including shop stewards or other trade union representatives assisting with the complaint. The protection applies to a person:

- (a) making a complaint,
- (b) bringing proceedings,
- (c) representing or supporting a complainant,
- (d) whose work has been compared with that of another employee for the purposes of the legislation,
- (e) being a witness in any proceedings under equality legislation,
- (f) opposing by lawful means an act which is unlawful under equality legislation,
- (g) giving notice of an intention to do any of these things.

“Equality legislation” in this context includes both employment equality and equal status legislation.

Victimisation includes dismissal or other adverse treatment by the employer.

How can an employee enforce rights under the Act?

- Enforcement is by bringing a complaint before the Equality Tribunal, see Part Four for further details.



RELIGION

■ What is meant by “religion”?

“Religion” in the Act includes situations where two employees have different religious belief or one employee has a religious belief and another has not. “Religious belief” includes background or outlook.

■ What is meant by “discrimination”?

The prohibition on discrimination applies to both **direct** and **indirect discrimination**?

Direct discrimination occurs where a person is treated less favourably than another is, has been or would be treated and they have different religious belief or one has a religious belief and the other has not. The basis for the discrimination may exist at present, have existed but no longer exists, or may exist in the future. Discrimination also occurs where a person is treated less favourably because a particular religious belief or non-belief is attributed or imputed to that person. Finally discrimination may occur where a person is treated less favourably due to an association with another person, where such treatment would have been discrimination against that other person on the religion ground.

Indirect discrimination occurs where an *apparently neutral provision* in reality puts a person of a particular religious belief or non-belief at a particular disadvantage compared with others. However discrimination does not occur where the provision can be independently justified as having a legitimate aim and the means being used to achieve that aim are appropriate and necessary. Statistics may be used to decide whether indirect discrimination exists or not.

Likewise it covers a situation where a smaller proportion of employees with a religious belief (or none) are compared with employees with no religious belief (or with religious belief) and again the provision cannot be justified as being reasonable in all the circumstances of the case.

■ What areas of employment does the Act cover?

The Act prohibits discrimination on the religion ground in relation to:

- Access to employment,
- Conditions of employment,
- Pay for “like work”,
- Training or experience for or in relation to employment,
- Promotion or re-grading, or
- Classification of posts.



Conditions of employment to which the Act applies include overtime, shift work, short time, transfers, layoff, redundancies, dismissals and disciplinary measures.

The prohibition on discrimination applies to employees and prospective employees

■ When dealing with an equal pay claim what is meant by “like work”?

Two employees do “like work” if:

- (a) both perform the **same work** under the same or similar conditions, or each is interchangeable with the other in relation to the work,
- (b) the work performed by one is of a **similar nature** to that performed by the other. Any differences between the work performed (or the conditions under which it is performed) by each employee are either of small importance or occur with such irregularity as not to be significant, or
- (c) the work performed by one is **equal in value** to the work performed by the other, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

Where under (c) above the work done by the complainant is in fact greater in value to that done by the comparator employee, the work is still regarded as being of equal value for the purposes of an equal pay claim.

The Act states that an agency worker may only be compared with another agency worker.

■ Can an employer prevent the Act from applying to an employee?

No, unless covered by one of the permitted exemptions, provisions in agreements which result in different rates of pay based on the religion ground are unenforceable. Likewise any provisions which result in discrimination on the religion ground are also unenforceable. “Agreements” refer to collective agreements, employment regulation orders and registered employment agreements.

Even if a written contract of employment does not contain an equality clause, which prohibits discrimination on the religion ground, the Act states that such an equality clause is taken to be included. This means that where two employees do work which is substantially the same, one contract cannot be less favourable on the ground of religion compared to the other. Where a contract is less favourable the offending term(s) is altered to remove the discrimination. An employer can defend a difference in contracts by proving that the difference is genuinely based on a non-discriminatory ground.



■ **Is an employer responsible for discrimination by a member of staff?**

An employer is liable for discrimination on the religion ground committed by one of his/her employees. This is the case whether or not the discrimination occurred with the employer's knowledge or approval. This is known as "vicarious liability" and covers not only the actions of employees but also those of agents or persons acting with the employer's authority. An employer does however have a defence if s/he can show that reasonable steps were taken to prevent religious belief discrimination by his /her employees.

■ **Are there any exemptions or exceptions to the prohibition of discrimination on the religion ground?**

(a) Failure to perform duties - There is no discrimination on the religion ground where an employer does not recruit, promote, retain or provide training or experience where the employee will not undertake his/her duties, or accept conditions attaching to those duties or the employee is not fully competent and available to undertake the duties or fully capable of undertaking the duties.

(b) Certain criminal behaviour - There is no discrimination on the religion ground where an employer does not recruit, retain or promote an individual because the employer is aware, on the basis of a criminal conviction of that individual or other reliable information that the individual engages in or has the propensity to engage in sexual behaviour that is unlawful. This particularly applies where the employment involves access to minors or to other vulnerable persons.

(c) Family benefits - Religious belief discrimination does not occur where an employer provides a benefit to an employee in respect of events relating to that employee's family. Likewise a benefit on the occasion of a change in the marital status of an employee or a benefit to help somebody who has the care of another person.

(d) Certain residence, citizenship or language requirements - Religious belief discrimination does not occur where conditions as to residence, citizenship or proficiency in the Irish language are required for holding of in civil service (including the Gardai or Defence Forces) or in a local authority, harbour authority, health board or vocational education committee.

(e) Certain qualification requirements - Religious belief discrimination does not occur where, in relation to a particular post, there is a requirement to hold a specified qualification which is a generally accepted qualification for such posts in the State. Likewise a body controlling entry into a profession, vocation or occupation may require a person to hold a particular qualification "which is appropriate in the circumstances."



(f) Religious ethos – This exemption applies to religious, educational or medical institutions which are under the direction or control of a body established for religious purposes or whose objectives include the provision of services in an environment which promotes certain religious values. Such bodies do not discriminate if they give more favourable treatment, on the religion ground, to an employee or a prospective employee over another person where it is reasonable to do so in order to maintain the religious ethos of the institution. Likewise such a body will not to discriminate if it takes action which is reasonably necessary to prevent an employee or prospective employee from undermining the religious ethos of the institution.

(g) Occupational qualification - A difference of treatment based on religious belief or non-belief where by reason of the particular job or the context in which it is carried out, the age of the employee is a genuine and determining occupational requirement. In addition the objective in the difference of treatment must be legitimate and the requirement proportionate

(h) Private households - The prohibition on discrimination on the religion ground does not apply to *access to employment* for the provision of personal services in another person's home where the services affect the private or family life of persons living in that home. The prohibition does apply to all other aspects of such employment, for example, pay, conditions and termination of employment.

(i) Garda, Prison and emergency services - All persons employed in such services must be fully competent and available and capable to undertake their duties.

■ Is harassment on grounds of religion prohibited?

Yes, and in this context **"harassment"** means any form of unwanted conduct in relation to an employee's religion, such as words, gestures or pictures, which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. The 2004 Act emphasises the environment for the person and has added to the definition the purpose or effect of creating a hostile and degrading environment. Harassment can occur through the actions or conduct of a fellow employee, the employer, or a client / customer/ business contact of the employer.

Harassment can occur in the workplace or in the course of the employment such as at conferences or training events outside the workplace.

Harassment also occurs where an employee is treated differently due to his/her acceptance or rejection of the harassment, even if the harassment does not occur in the workplace or in the course of the employment.



An employer will have a defence to a claim of harassment, other than by the employer, if s/he can prove that reasonably practical steps were taken to prevent the victim being harassed. Likewise if reasonably practical steps were taken to prevent the victim being treated differently due to the acceptance or rejection of the harassment or, if such treatment occurred, then reasonable steps were taken to reverse the effects of such treatment.

■ **Is positive action allowed in relation to the religion ground?**

Yes - the legislation allows measures aimed at preventing or compensating for disadvantages linked to the religion ground or providing facilities for securing the integration of such persons into the working environment.

■ **Is procuring discrimination on the ground of religion prohibited?**

Yes, the legislation makes it an offence for a person to procure or attempt to procure another to discriminate against another on the religion ground. Procurement means one person persuades or pressurises another person to discriminate on the religion ground, for example, an employer persuades his/her manager not to employ people from a particular religion.

■ **Does the Act prohibit the victimisation of an employee who brings a complaint of discrimination on the ground of religion?**

Yes, the Act prohibits the victimisation, that is the dismissal or other adverse treatment in relation to the person taking the complaint or others, including shop stewards or other trade union representatives assisting with the complaint. The protection applies to a person:

- (a) making a complaint,
- (b) bringing proceedings,
- (c) representing or supporting a complainant,
- (d) whose work has been compared with that of another employee for the purposes of the legislation,
- (e) being a witness in any proceedings under equality legislation,
- (f) opposing by lawful means an act which is unlawful under equality legislation,
- (g) giving notice of an intention to do any of these things.

“Equality legislation” in this context includes both employment equality and equal status legislation.

Victimisation includes dismissal or other adverse treatment by the employer.

■ **How can an employee enforce rights under the Act?**

Enforcement is by bringing a complaint before the Equality Tribunal, see Part Four for further details.



SEXUAL ORIENTATION

■ What is meant by “sexual orientation”?

The definition of sexual orientation is heterosexual, homosexual or bisexual orientation.

■ What is meant by “discrimination”?

The prohibition on discrimination applies to both **direct** and **indirect discrimination**.

Direct discrimination occurs where a person is treated less favourably than another is, has been or would be treated and they are of different sexual orientation. The basis for the discrimination may exist at present, have existed but no longer exists, or may exist in the future. Discrimination also occurs where a person is treated less favourably because a particular sexual orientation is attributed or imputed to that person. Finally discrimination may occur where a person is treated less favourably due to an association with another person, where such treatment would have been discrimination against that other person on the sexual orientation ground.

Indirect discrimination occurs where an *apparently neutral provision* in reality puts a person of a particular sexual orientation at a particular disadvantage compared with others. However discrimination does not occur where the provision can be independently justified as having a legitimate aim and the means being used to achieve that aim are appropriate and necessary. Statistics may be used to decide whether indirect discrimination exists or not.

■ What areas of employment does the Act cover?

The Act prohibits discrimination on the sexual orientation ground in relation to:

- Access to employment,
- Conditions of employment,
- Pay for “like work”,
- Training or experience for or in relation to employment,
- Promotion or re-grading, or
- Classification of posts.

Conditions of employment to which the Act applies include overtime, shift work, short time, transfers, layoff, redundancies, dismissals and disciplinary measures.

The prohibition on discrimination applies to employees and prospective employees



■ When dealing with an equal pay claim what is meant by “like work”?

Two employees do “like work” if:

- (a) both perform the same work under the same or similar conditions, or each is interchangeable with the other in relation to the work,
- (b) the work performed by one is of a **similar nature** to that performed by the other. Any differences between the work performed (or the conditions under which it is performed) by each employee are either of small importance or occur with such irregularity as not to be significant, or
- (c) the work performed by one is **equal in value** to the work performed by the other, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

Where under (c) above the work done by the complainant is in fact greater in value to that done by the comparator employee, the work is still regarded as being of equal value for the purposes of an equal pay claim.

The Act states that an agency worker may only be compared with another agency worker.

■ Can an employer prevent the Act from applying to an employee?

No, unless covered by one of the permitted exemptions, provisions in agreements which result in different rates of pay based on the sexual orientation ground are unenforceable. Likewise any provisions which result in discrimination on the sexual orientation ground are also unenforceable. “Agreements” refer to collective agreements, employment regulation orders and registered employment agreements.

Even if a written contract of employment does not contain an equality clause, which prohibits discrimination on the sexual orientation ground, the Act states that such an equality clause is taken to be included. This means that where two employees do work which is substantially the same, one contract cannot be less favourable on the ground of sexual orientation compared to the other. Where a contract is less favourable the offending term(s) is altered to remove the discrimination. An employer can defend a difference in contracts by proving that the difference is genuinely based on a non-discriminatory ground.



■ **Is an employer responsible for discrimination by a member of staff?**

An employer is liable for discrimination on the sexual orientation ground committed by one of his/her employees. This is the case whether or not the discrimination occurred with the employer's knowledge or approval. This is known as "vicarious liability" and covers not only the actions of employees but also those of agents or persons acting with the employer's authority. An employer does however have a defence if s/he can show that reasonable steps were taken to sexual orientation discrimination by his /her employees.

■ **Are there any exemptions or exceptions to the prohibition of discrimination on the sexual orientation ground?**

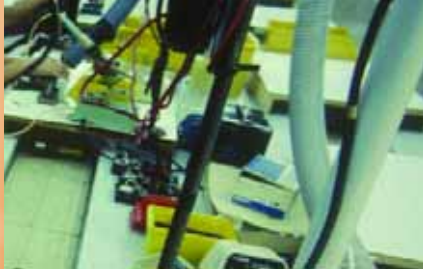
(a) Failure to perform duties - There is no sexual orientation discrimination where an employer does not recruit, promote, retain or provide training or experience where the employee will not undertake his/her duties, or accept conditions attaching to those duties or the employee is not fully competent and available to undertake the duties or fully capable of undertaking the duties.

(b) Certain criminal behaviour - There is no sexual orientation discrimination where an employer does not recruit, retain or promote an individual because the employer is aware, on the basis of a criminal conviction of that individual or other reliable information that the individual engages in or has the propensity to engage in sexual behaviour that is unlawful. This particularly applies where the employment involves access to minors or to other vulnerable persons.

(c) Family benefits - Sexual orientation discrimination does not occur where an employer provides a benefit to an employee in respect of events relating to that employee's family. Likewise a benefit on the occasion of a change in the marital status of an employee or a benefit to help somebody who has the care of another person.

(d) Certain residence, citizenship or language requirements - Sexual orientation discrimination does not occur where conditions as to residence, citizenship or proficiency in the Irish language are required for holding of in civil service (including the Gardai or Defence Forces) or in a local authority, harbour authority, health board or vocational education committee.

(e) Certain qualification requirements - Sexual orientation discrimination does not occur where, in relation to a particular post, there is a requirement to hold a specified qualification which is a generally accepted qualification for such posts in the State. Likewise a body controlling entry into a profession, vocation or occupation may require a person to hold a particular qualification "which is appropriate in the circumstances."



(f) Private household - The prohibition on sexual orientation discrimination does not apply to *access to employment* for the provision of personal services in another person's home where the services affect the private or family life of persons living in that home. The prohibition does apply to all other aspects of such employment, for example, pay, conditions and termination of employment.

(g) Occupational requirements - A difference of treatment based on sexual orientation where by reason of the particular job or the context in which it is carried out, the age of the employee is a genuine and determining occupational requirement. In addition the objective in the difference of treatment must be legitimate and the requirement proportionate

(h) Garda, Prison and emergency services - All persons employed in such services must be fully competent and available and capable to undertake their duties.

■ Is harassment on grounds of sexual orientation prohibited?

Yes, and in this context **"harassment"** means any form of unwanted conduct in relation to an employee's sexual orientation, such as words, gestures or pictures, which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. The 2004 Act emphasises the environment for the person and has added to the definition the purpose or effect of creating a hostile and degrading environment. Harassment can occur through the actions or conduct of a fellow employee, the employer, or a client / customer/ business contact of the employer.

Harassment can occur in the workplace or in the course of the employment such as at conferences or training events outside the workplace.

Harassment also occurs where an employee is treated differently due to his/her acceptance or rejection of the harassment, even if the harassment does not occur in the workplace or in the course of the employment.

An employer will have a defence to a claim of harassment, other than by the employer, if s/he can prove that reasonably practical steps were taken to prevent the victim being harassed. Likewise if reasonably practical steps were taken to prevent the victim being treated differently due to the acceptance or rejection of the harassment or, if such treatment occurred, then reasonable steps were taken to reverse the effects of such treatment.



■ **Is positive action allowed in relation to sexual orientation**

Yes - the legislation allows measures aimed at preventing or compensating for disadvantages linked to the sexual orientation ground or providing facilities for securing the integration of such persons into the working environment.

■ **Is procuring discrimination on the sexual orientation ground prohibited?**

Yes, the legislation makes it an offence for a person to procure or attempt to procure another to discriminate against another on the sexual orientation ground. Procurement means one person persuading or pressurises another person to discriminate on the sexual orientation ground, for example, an employer persuades his /her manager not to employ gay people.

■ **Does the Act prohibit the victimisation of an employee who brings a complaint of discrimination on the sexual orientation ground?**

Yes, the Act prohibits the victimisation, that is the dismissal or other adverse treatment in relation to the person taking the complaint or others, including shop stewards or other trade union representatives assisting with the complaint. The protection applies to a person:

- (a) making a complaint,
- (b) bringing proceedings,
- (c) representing or supporting a complainant,
- (d) whose work has been compared with that of another employee for the purposes of the legislation,
- (e) being a witness in any proceedings under equality legislation,
- (f) opposing by lawful means an act which is unlawful under equality legislation,
- (g) giving notice of an intention to do any of these things.

“Equality legislation” in this context includes both employment equality and equal status legislation.

Victimisation includes dismissal or other adverse treatment by the employer.

How can an employee enforce rights under the Act?

- Enforcement is by bringing a complaint before the Equality Tribunal, see Part Four for further details.



MEMBERSHIP OF THE TRAVELLER COMMUNITY

■ What is meant by “Traveller Community”?

Traveller community means the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland.

■ What is meant by “discrimination”?

The prohibition on discrimination applies to both **direct** and **indirect discrimination**?

Direct discrimination occurs where a person is treated less favourably than another is, has been or would be treated and one is a member of the Traveller community and the other is not. The basis for the discrimination may exist at present, have existed but no longer exists, or may exist in the future. Discrimination also occurs where a person is treated less favourably because a membership of the Traveller community is attributed or imputed to that person. Finally discrimination may occur where a person is treated less favourably due to an association with another person, where such treatment would have been discrimination against that other person on the Traveller ground.

Indirect discrimination occurs where an *apparently neutral provision* in reality puts a member of the Traveller community at a particular disadvantage compared with others. However discrimination does not occur where the provision can be independently justified as having a legitimate aim and the means being used to achieve that aim are appropriate and necessary. Statistics may be used to decide whether indirect discrimination exists or not.

■ What areas of employment does the Act cover?

The Act prohibits discrimination on the membership of the Traveller community ground in relation to:

- Access to employment,
- Conditions of employment,
- Pay for “like work”,
- Training or experience for or in relation to employment,
- Promotion or re-grading, or
- Classification of posts.



Conditions of employment to which the Act applies include overtime, shift work, short time, transfers, layoff, redundancies, dismissals and disciplinary measures.

The prohibition on discrimination applies to employees and prospective employees

■ When dealing with an equal pay claim what is meant by “like work”?

Two employees do “like work” if:

- (a) both perform the **same work** under the same or similar conditions, or each is interchangeable with the other in relation to the work,
- (b) the work performed by one is of a **similar nature** to that performed by the other. Any differences between the work performed (or the conditions under which it is performed) by each employee are either of small importance or occur with such irregularity as not to be significant, or
- (c) the work performed by one is **equal in value** to the work performed by the other, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

Where under (c) above the work done by the complainant is in fact greater in value to that done by the comparator employee, the work is still regarded as being of equal value for the purposes of an equal pay claim.

The Act states that an agency worker may only be compared with another agency worker.

■ Can an employer prevent the Act from applying to an employee?

No, unless covered by one of the permitted exemptions, provisions in agreements which result in different rates of pay based on the Traveller ground are unenforceable. Likewise any provisions which result in discrimination on the Traveller ground are also unenforceable. “Agreements” refer to collective agreements, employment regulation orders and registered employment agreements.

Even if a written contract of employment does not contain an equality clause, which prohibits discrimination on the Traveller ground, the Act states that such an equality clause is taken to be included. This means that where two employees do work which is substantially the same, one contract cannot be less favourable on the ground of membership of the Traveller community compared to the other. Where a contract is less favourable the offending term(s) is altered to remove the discrimination. An employer can defend a difference in contracts by proving that the difference is genuinely based on a non-discriminatory ground.



■ **Is an employer responsible for discrimination by a member of staff?**

An employer is liable for discrimination on the Traveller community ground committed by one of his/her employees. This is the case whether or not the discrimination occurred with the employer's knowledge or approval. This is known as "vicarious liability" and covers not only the actions of employees but also those of agents or persons acting with the employer's authority. An employer does however have a defence if s/he can show that reasonable steps were taken to prevent discrimination of Travellers by his /her employees.

■ **Are there any exemptions or exceptions to the prohibition of discrimination on the Traveller ground?**

(a) Failure to perform duties - There is no discrimination on the Traveller ground where an employer does not recruit, promote, retain or provide training or experience where the employee will not undertake his/her duties, or accept conditions attaching to those duties or the employee is not fully competent and available to undertake the duties or fully capable of undertaking the duties.

(b) Certain criminal behaviour - There is no discrimination on the Traveller ground where an employer does not recruit, retain or promote an individual because the employer is aware, on the basis of a criminal conviction of that individual or other reliable information that the individual engages in or has the propensity to engage in sexual behaviour that is unlawful. This particularly applies where the employment involves access to minors or to other vulnerable persons.

(c) Family benefits - Traveller ground discrimination does not occur where an employer provides a benefit to an employee in respect of events relating to that employee's family. Likewise a benefit on the occasion of a change in the marital status of an employee or a benefit to help somebody who has the care of another person.

(d) Certain residence, citizenship or language requirements - Traveller ground discrimination does not occur where conditions as to residence, citizenship or proficiency in the Irish language are required for holding of in civil service (including the Gardai or Defence Forces) or in a local authority, harbour authority, health board or vocational education committee.

(e) Certain qualification requirements - Traveller ground discrimination does not occur where, in relation to a particular post, there is a requirement to hold a specified qualification which is a generally accepted qualification for such posts in the State. Likewise a body controlling entry into a profession, vocation or occupation may require a person to hold a particular qualification "which is appropriate in the circumstances."



(f) **Private households** - The prohibition on discrimination on the Traveller ground does not apply to *access to employment* for the provision of personal services in another person's home where the services affect the private or family life of persons living in that home. The prohibition does apply to all other aspects of such employment, for example, pay, conditions and termination of employment.

(g) **Occupational requirements** - A difference of treatment based on membership of the Traveller community where by reason of the particular job or the context in which it is carried out, the age of the employee is a genuine and determining occupational requirement. In addition the objective in the difference of treatment must be legitimate and the requirement proportionate

(h) **Garda, Prison and emergency services** - All persons employed in such services must be fully competent and available and capable to undertake their duties.

■ **Is harassment on grounds of membership of the Travelling Community prohibited?**

Yes, and in this context **"harassment"** means any form of unwanted conduct in relation to an employee's membership of the Traveller community, such as words, gestures or pictures, which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. The 2004 Act emphasises the environment for the person and has added to the definition the purpose or effect of creating a hostile and degrading environment. Harassment can occur through the actions or conduct of a fellow employee, the employer, or a client / customer/ business contact of the employer.

Harassment can occur in the workplace or in the course of the employment such as at conferences or training events outside the workplace.

Harassment also occurs where an employee is treated differently due to his/her acceptance or rejection of the harassment, even if the harassment does not occur in the workplace or in the course of the employment.

An employer will have a defence to a claim of harassment, other than by the employer, if s/he can prove that reasonably practical steps were taken to prevent the victim being harassed. Likewise if reasonably practical steps were taken to prevent the victim being treated differently due to the acceptance or rejection of the harassment or, if such treatment occurred, then reasonable steps were taken to reverse the effects of such treatment.



■ Is positive action allowed in relation to membership of the Traveller community?

Yes - the legislation allows measures aimed at preventing or compensating for disadvantages linked to the Traveller ground or providing facilities for securing the integration of such persons into the working environment.

■ Is procuring discrimination on the Traveller ground prohibited?

Yes, the legislation makes it an offence for a person to procure or attempt to procure another to discriminate against another on the Traveller community ground. Procurement means one person persuades or pressurises another person to discriminate on the Traveller community ground, for example, an employer persuades his/her manager not to employ Travellers.

■ Does the Act prohibit the victimisation of an employee who brings a complaint of discrimination on the Traveller ground?

Yes, the Act prohibits the victimisation, that is the dismissal or other adverse treatment in relation to the person taking the complaint or others, including shop stewards or other trade union representatives assisting with the complaint. The protection applies to a person:

- (a) making a complaint,
- (b) bringing proceedings,
- (c) representing or supporting a complainant,
- (d) whose work has been compared with that of another employee for the purposes of the legislation,
- (e) being a witness in any proceedings under equality legislation,
- (f) opposing by lawful means an act which is unlawful under equality legislation,
- (g) giving notice of an intention to do any of these things.

“Equality legislation” in this context includes both employment equality and equal status legislation.

Victimisation includes dismissal or other adverse treatment by the employer.

■ How can an employee enforce rights under the Act?

Enforcement is by bringing a complaint before the Equality Tribunal, see Part Four for further details.



part 3

PROMOTION OF EQUALITY



1 ROLE AND POWERS OF THE EQUALITY AUTHORITY

The Equality Authority was established by the Employment Equality Act 1998. In the context of employment matters, the functions of Authority are:

- (a) To work towards the **elimination of discrimination**.
- (b) To **promote equality** of opportunity.
- (c) To **provide information** to the public and keep the equality legislation (along with certain other legislation, such as the Maternity Protection Act 1994) under review, if necessary, making proposals to the Minister in relation to possible amendments.
- (d) To keep the **Pensions Act** 1990 under review.

The Equality Authority website (www.equality.ie) includes access to publications, research papers and relevant legislation.

2 EQUALITY REVIEWS

The Equality Authority may invite a business to do either of the following:

- (a) carry out an equality review, or
- (b) prepare and implement an equality action plan.

The Authority itself may carry out an equality review and prepare an equality action plan in relation to any business with at least 50 employees.

An **equality review** involves an audit, in relation to employment matters, of the level of equality of opportunity that exists. It also involves an examination of the practices, procedures and, for example, the working environment to see whether these practices etc are conducive to promoting equality of opportunity.

An **equality action plan** is a programme of actions to be undertaken to promote equality of opportunity.

As part of an equality review or the preparation of an equality action plan, the Equality Authority may require a person to supply the Authority with information or to produce documents under that person's control.

If the Equality Authority considers that there is a failure to implement an equality action plan, it may issue a warning that action is required to implement the plan. The person given this notice has 28 days to make representations. Subsequently the Authority may, taking into account such representations, require the person to undertake a specified course of action.



Where a person is given notice to take action, s/he has 42 days to appeal to the Labour Court.

Where a person fails to implement the action specified in the notice, the Authority may refer the matter to court and the court may make the notice an order of the court and therefore enforceable by it.

An equality review / action plan may also involve a group of businesses or a particular business sector.

3 EQUALITY INQUIRIES

The Equality Authority may, as part of its functions, conduct an inquiry. The Authority must also conduct such an inquiry if directed by the Minister for Justice, Equality and Law Reform to do so.

The Authority must draw up the terms of reference for the inquiry and notify the public of its intention to hold such an inquiry.

In carrying out the inquiry the Authority may require persons to give information, produce documents and attend as witnesses. Any person who fails to comply is guilty of an offence. Likewise a person who gives false evidence or conceals or destroys documentation is guilty of an offence.

After conducting the inquiry the Authority may make recommendations aimed at eliminating discrimination or promoting equality of opportunity. If the Authority is satisfied that any person is (or has been) discriminating in the general area of employment, in advertising or by procuring discrimination, the Authority may serve a non-discrimination notice on that person. The Authority must give the person concerned warning of its intention to serve such a notice. The person has 28 days to make representations to the Authority concerning its intention and the Authority must take these representations into account in relation to any notice that it issues.

A non-discrimination notice must give the details of the discrimination said to have occurred and require the person to address the situation in the way specified by the Authority. In addition the Authority may require the person to disclose to it the steps taken in order to comply with the notice. Finally the Authority may also require the person to supply it with further specified information.

A person who is served with a non-discrimination notice has 42 days to appeal to the Labour Court.

The Equality Authority must keep a register of non-discrimination notices that have come into operation.



Where, in the five years from the coming into operation of the non-discrimination notice, the Authority satisfies a court that there is a likelihood of further discrimination or failure by the person to comply with the notice, the court may grant an injunction to prevent the discrimination.

Failure to comply with a non-discrimination notice is an offence.

4 POSITIVE ACTION

The Employment Equality Act 1998 and the Equality Act 2004 allow an employer, in certain circumstances, to put in place measures to reduce or eliminate the effects of discrimination and to help employees or prospective employees integrate into the workforce. The details concerning permitted positive action measures are provided under each ground in Part 2 of this manual.

5 PROMOTING AN INTERCULTURAL WORKPLACE – GOOD PRACTICE

Congress, IBEC and the CIF support the principle and practice that no individual be denied access to employment or be treated less favourably, directly or indirectly on the grounds of her or his race, colour, ethnic or national origin. As a result Congress, IBEC and the CIF are committed to working together, in partnership, to promote anti-racist workplaces and will act together and within their own spheres of influence to promote a positive approach to diversity and interculturalism.

Racism can take place at the level of the individual or group. At the level of the group it essentially involves the abuse of power by one group over another. Power is used to isolate, separate or exploit others on the basis of skin colour, nationality or ethnic or national origin. It can be intentional or unintentional. The result is that certain individuals and groups are denied the right to participate fully in society, do not have equal access to decision making processes and often have their cultures denied. Others then define themselves as inherently superior. Prejudice is an important element in this process. At the level of the individual it can involve physical and / or verbal abuse, as well as actions to exclude or diminish people on the basis of their ethnicity or skin colour.

The United Nations International Convention on the Elimination of All Forms of Racial Discrimination 1969 defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural and any other field of public life.”



Xenophobia is a term that is often used along with racism. Xenophobia is an attitude based on a fear of strangers. It is different to racism in that it does not involve any exercise of power, but it shares the element of prejudice with racism.

The Report of the Task Force on the Travelling Community 1995 stated that “Cultural diversity provides a society with a broader range of perspectives and frames of reference. Cultural diversity in a context of mutual respect means that communities with different cultures can provide different approaches and solutions to common problems.”

Promoting an anti-racist workplace involves:

Policy & planning - A clear message to all that racism will not be tolerated in the workplace and an open commitment to challenging racism. Therefore each workplace should have:

- An equal opportunities policy incorporating an anti-racism policy statement.
- An action plan which defines the key strategies to combat racism and their anticipated outcomes.
- A monitoring and evaluation process to ensure that policies are effective and results achieved.
- Strategies to encourage the involvement of Black and minority ethnic employees in workplace structures and strategies.

Recruitment / selection

- The inclusion of an equal opportunities statement in advertisements to encourage people from Black and minority ethnic groups to apply.
- Person(s) with responsibility for ensuring progress in encouraging applications from Black or minority ethnic groups.
- Advertising that reaches Black and minority ethnic groups.
- Anti-racist training for those involved in the selection process.
- Selection criteria which focus on the essential requirements of the job.
- Selection tests, if any, that do not exclude or discourage applications from Black or minority ethnic groups and which are not relevant to the job.

Culture & Ethos

- An organisational culture which openly values and accommodates difference and cultural diversity.
- Anti-racism training for both employees and management.



Support for Black & minority ethnic employees

- Support mechanisms available for Black and minority ethnic employees, such as grievance procedures for dealing with harassment from colleagues, customers, clients or suppliers.
- Flexibility to allow for reconciling work with specific cultural needs.
- Customised training courses where required, for example, language training.

Links with the community

- Ensuring that services and facilities provided are accessible and appropriate to the needs of Black and ethnic minority groups.
- Initiatives to create links with Black and ethnic minority groups.

Actions to address racism in the workplace

- Person(s) responsible for initiatives to counteract racism in the workplace.
- Actions planned with those affected by racism in the workplace.
- Anti-racism training for staff.
- Awareness campaign aimed at staff and customers that racism is not acceptable.
- Explore the issue of racism in the organisation through attitudinal and experiential surveys with staff.
- Develop an intercultural ethos in areas where staff congregate.
- Incorporate an element of ethnic diversity into advertising in order to appeal to a wider customer base.
- Organise celebrations of cultural diversity to coincide with important events for various cultures and nationalities.
- Organise a day of solidarity with refugees.
- Organise a staff briefing event.

6 SEXUAL HARASSMENT / HARASSMENT – CODE OF PRACTICE

Prevention is the best way to minimise **sexual harassment** and **harassment** in the workplace.

“Sexual harassment” involves harassment by one person of another of a sexual nature and includes same sex harassment as well as that between people of different genders.

“Harassment” means harassment by one person of another on any of the grounds covered by the Act not including the gender ground.

An effective policy and a strong commitment to implementing it are required. The purpose of an effective policy is not simply to prevent unlawful behaviour but to encourage best practice and a safe



and harmonious workplace where such behaviour will not occur. A model code (S.I. No. 78/2002: Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2002) was prepared by the Equality Authority with the approval of the Minister for Justice, Equality and Law Reform and after consultation with Congress and IBEC, and other relevant organisations representing equality interests.

The policy should be agreed by the employer with the relevant trade union(s). In so far as practicable, clients, customers and business contacts should also be consulted

Core elements of a policy:

1. The policy should begin by declaring:

- The organisation's commitment to ensuring that the workplace is free from sexual harassment and harassment.
- That all employees have the right to be treated with dignity and respect.
- That complaints by employees will be treated with fairness and sensitivity and in as confidential a manner as possible.
- That sexual harassment and harassment by employers, employees and non-employees, such as customers, clients, suppliers and business contacts will not be tolerated and could lead to disciplinary action or in the case of non-employees suspension of contracts and /or exclusion from the premises.

2. Definition

- Simple, clear and practical definitions of sexual harassment and harassment.
- A non-exhaustive list of examples.
- A statement that protection extends to:
 - sexual harassment and harassment by co-workers, employers, clients, customers and other business contacts. In addition that protection extends beyond the workplace to conferences, training, and work-related social events,
 - different treatment of an employee because s/he has accepted or rejected the sexual harassment or harassment,
 - employment agencies and vocational training.
- The policy should emphasise that it is up to the employee to decide what behaviour is unwelcome irrespective of the attitude of others to the matter.
- The policy should state that employees who make a complaint or who give evidence concerning a complaint will not be victimised.



3. Allocation of responsibilities

The policy should state that management and others in positions of authority have a particular responsibility to ensure that sexual harassment and harassment does not occur and that complaints are addressed speedily. The policy should state that in particular management should:

- Provide good example by treating all in the workplace with courtesy and respect.
- Promote awareness of the organisation's policy and complaints procedures.
- Be vigilant for signs of harassment and take action before a problem escalates.
- Respond sensitively to an employee who makes a complaint of sexual harassment or harassment.
- Explain the procedures to be followed if the complaint of sexual harassment or harassment is made.
- Ensure that an employee making a complaint is not victimised for doing so.
- Monitor and follow up the situation after a complaint is made so that the sexual harassment or harassment does not recur.



part 4

ENFORCEMENT



ENFORCEMENT BODIES

Issue	Complaint to	Appeal
Discrimination	Equality Tribunal	Labour Court
Equal pay	Equality Tribunal	Labour Court
Equality clause	Equality Tribunal	Labour Court
Victimisation	Equality Tribunal	Labour Court
Dismissal due to discrimination (note 1)	Equality Tribunal	Labour Court
Dismissal due to victimisation (note 1)	Equality Tribunal	Labour Court
Gender discrimination (including equal pay, equality clause and victimisation)	Choice to go to Circuit Court or the Equality Tribunal	High Court
Gender dismissal	Choice to go to Circuit Court or the Equality Tribunal	High Court

Note 1: Dismissal cases where the investigation commenced before the coming into force of the Equality Act 2004 on 19th July 2004 will be heard before the Labour Court as provided for in the Employment Equality Act 1998. Dismissal cases commenced after that date will be heard by the Equality Tribunal.

EQUALITY TRIBUNAL

The Equality Tribunal was established in 1999. Its purpose is to investigate (and possibly mediate) claims of discrimination under the Employment Equality Act 1998. It also hears claims in relation to the Equal Status Act 2000.

There is a Director of Equality Investigations and a team of Equality Officers / Equality Mediation Officers. One Equality Officer (or Equality Mediation Officer if appropriate) is assigned to each claim.

LABOUR COURT

The Labour Court is not a court of law, but operates as an industrial relations tribunal. In addition to its functions under industrial relations procedures, the Labour Court also considers cases under certain other legislation including the Employment Equality Act 1998. Under the Employment



Equality Act 1998 it originally heard discrimination / victimisation cases involving dismissal. Following an amendment introduced by the Equality Act 2004 the role of the Labour Court is now to hear appeals from the Equality Tribunal on all matters covered by the employment equality legislation. An appeal hearing is by a division of the Labour Court consisting of a chair, an employer member and a worker member.

PROCEDURES

THE COMPLAINANT

The complainant will normally be the person alleging a breach of the equality legislation. However there is provision that where this person is unable by reason of an intellectual or a psychological disability to pursue the claim effectively, his/ her parent, guardian or other person acting in place of a parent may do so. Complainants can also be represented by their trade union who can refer a claim under the Act. Legal representation may also be engaged.

MULTIPLE CLAIMS

Claims to have been discriminated against on more than one ground are investigated as a single case.

THE BURDEN OF PROOF

Where the complainant establishes facts from which it may be presumed that there has been discrimination, it is for the employer to prove that the alleged discrimination did not occur.

EQUALITY TRIBUNAL

The Equality Tribunal procedures are informal and cases are heard in private. The Tribunal adopts an investigative role rather than the adversarial role that would be used in a normal court setting. As a result each party will be invited to make a submission at the hearing and the Equality Officer may question the parties on their submissions. Each party may raise questions with the Equality Officer concerning the other party's submission. Although the hearings are informal the normal rules of fair procedures and natural justice apply.

In a case involving equal pay, if there is an issue of different rates of pay, then the Director may decide that this matter should be investigated as a preliminary issue. Work inspections may also be carried out during which both parties may be present.

Either party may be represented at a hearing before the Tribunal.



3 APPLICATION FORMS

Application forms are available on the Equality Tribunal website

GROUP CASES

Group cases may be brought under the legislation, for example, a number of members in a particular workforce wish to bring claims in relation to equal pay. However each member must complete his/her own separate application form.

4 RIGHT TO INFORMATION

A person who considers that s/he may have been discriminated against under any of the provisions of the legislation may ask the alleged perpetrator of the discrimination questions to obtain ***“material information”***.

“Material information” is defined as:

- Information as to why actions were taken or not taken.
- Information (apart from confidential information) about the pay or treatment of other people who are in a similar or same position to the alleged perpetrator as the requester.
- Other information (apart from confidential information and information about the scale or financial resources of the employer's business) that it is reasonable for the requester to look for.

“Confidential information” means information which relates to a particular individual, which can be identified with that individual and that individual has not agreed to the disclosure of the information.

While the person from whom the information is sought is not obliged to provide it, the body hearing the case, for example the Equality Tribunal, may draw such inferences as seem appropriate from the failure to supply the information. This is subject to the body being of the view that the information sought was in the alleged discriminator's possession or control. Likewise a body may draw such inferences as seem appropriate where the information supplied was false or misleading or not what was reasonably required in order to make a decision on whether to bring a claim or not.

The legislation specifies that the provisions as to the right to information do not require any person to provide a reference or report as to the character or suitability for employment of any person.



The Act provides that where a person considers that s/he may have been discriminated against in relation to recruitment conducted on behalf of,

- the Civil Service Commissioners (other than from / for their own staff)
- the Local Appointments Commissioners (other than from / for their own staff)
- the Minister for Defence to join the Defence Forces
- the Commissioner of the Garda Síochána to join the Garda Síochána;

the following applies:

Information is not **“material information”** if it relates to communications with external advisers or goes beyond either of the following information:

- identifying successful and unsuccessful candidates by reference to their sex or
- identifying successful and unsuccessful candidates by reference to the other characteristics covered in the discriminatory grounds prohibited by the legislation.

5 TIME LIMITS

A complaint in relation to discrimination or victimisation must be brought to the appropriate body (i.e. Equality Tribunal or the Circuit Court) within 6 months of the date of the discrimination / victimisation or the date of the last occurrence of such discrimination / victimisation.

The Equality Tribunal or the Circuit Court may, where reasonable cause for the delay is shown, extend the time for bringing a claim by up to a further 6 months. However the possibility of such an extension of time not apply to a complaint involving equal pay.

A decision by the Equality Tribunal in relation to an extension of time from making a claim may be appealed by either party to the Labour Court. The appeal must be made within 42 days of the date of the decision.

Where a delay in referring a case is due to any misrepresentation by the employer, the time for bringing the claim starts from the date on which the misrepresentation became known to the complainant.



6 MEDIATION

Where the Director of the Equality Tribunal considers that a case brought to the Tribunal is one, which could be resolved by mediation, the case may be referred to an equality mediation officer. In practice almost all cases are initially referred to mediation, however if either party objects to mediation then the case will proceed to hearing in the normal way.

Where a case is resolved by mediation the Equality Mediation Officer prepares a written record of the settlement terms, which is signed by both parties and both receive a copy of this document.

Where the case is not resolved by mediation either before an Equality Mediation Officer, a notice is issued to that effect to each party. In this event the complainant has 28 days from the issue of the notice to make an application for the case to proceed before the Equality Tribunal.

7 REMEDIES

The Equality Tribunal may order one or more of the following:

- (1) An order for *arrears of equal pay* for up to three years before the date of the complaint.
- (2) An order for *equal pay to be paid* from the date of the complaint.
- (3) An order for *compensation* for discrimination / victimisation which occurred up to six years from the date of the complaint.
- (4) An order for *equal treatment* as appropriate to the case.
- (5) An order that a person or persons take a *specified course of action*.
- (6) An order for the *re-instatement / re-engagement* of the complainant with or without an order for compensation.

A limit of 104 weeks pay is set on any award by the Equality Tribunal in respect of an order for compensation for discrimination / victimisation under (3) above.

Where the discrimination occurred before the complainant became an employee, for example, during the recruitment process, then the compensation that may be ordered is limited to €12,697.00



The Circuit Court may order one or more of the following:

- (1) An order for *compensation in the form of arrears of pay* in connection with an equal pay matter for up to six years before the date of the complaint.
- (2) An order for *equal pay* from the date of the complaint.
- (3) An order for *compensation* for discrimination / victimisation which occurred up to six years from the date of the complaint.
- (4) An order for *equal treatment* as appropriate to the case.
- (5) An order that a person or persons take a *specified course of action*.

There is no limit on the amount of compensation or pay that the Circuit Court may order.

Where a person obstructs or impedes an investigation or appeal under the legislation, that person can be ordered to pay an amount to cover the expenses (not including the representation expenses) to another person.



part 5

REPRESENTATION - PRACTICAL GUIDE



1 IS THERE A CASE UNDER THE ACT?

When a member brings a complaint to you concerning alleged discrimination, your first task will be to assess whether there is a valid winnable claim under the legislation. In order to assess the case you will need to:

- Have a detailed discussion with the member about the allegation, ensuring that you take notes of all the essential facts. It is important at this stage to open a file on the case which will contain your notes, any material supplied by the member, records of interviews, meetings, telephone conversations etc. Make a note at this stage of the time limit that will apply if a decision is made to take a claim.
- Consider the case and take whatever advice may be appropriate. You may also wish to discuss the case with an appropriate union body such as the shop stewards committee, but continue to be mindful of the time limits that apply to bringing a claim under the legislation.
- Inform the member of what initial steps you intend taking, give him/her some idea of when you hope to report back. Depending on the circumstances of the case, it may be appropriate to advise the member in the meantime that it s/he should not discuss the matter in detail with others in the workplace or outside.
- Consider whether you need to discuss the case with any other members who may be possible witnesses – remembering to keep the member making the claim informed of your proposed actions and reminding any members you speak to of the need to maintain confidentiality.

Having considered the case, if you decide that there is a claim under the legislation, you should inform the member and agree a strategy and time frame for progressing the case.

If you consider that there is no case under the legislation you will need to explain your reasons to the member, and consider any alternative strategies that may be available to deal with the matter. Record the details of your reasons for recommending that the case is not taken further, the details of your conversation with the member concerned and any considerations as to alternative strategies.



2 PREPARING A CASE

Where you decide that there is a claim under the legislation, in preparing the case, you should take the following steps well in advance of the hearing:

- (a) You should record your reasons for deciding to proceed with a claim, list the ground(s) under which the claim will be brought and the relevant parts of the legislation that you based your decision on
- (b) You will need to have further discussions with the member and it may be useful, where appropriate to ask him/her to write down in his /her own words what happened. This is particularly so where the alleged discrimination involves a specific incident, such as, for example, questions at an interview, an incident of harassment etc. You should then go through your notes and the statement (if any) of the member with him/her carefully clarifying and adding more detail to your notes. It is useful to play "devil's advocate" in such situations, putting yourself in the position of the employer and thinking about the kind of arguments the employer would put up and the kind of questions s/he would ask the member. It is useful also to get a general history of the member's employment record and previous experience in the employment, for example, have there been other instances of unfair or discriminatory treatment? Getting all of these details takes time and may well involve more than one meeting with the member. You should keep full notes of all such meetings and write out a full statement of such notes soon after your meeting. It is useful to send the finalised notes to the member for his /her comments and this may also assist the member to recall further information.
- (c) Consider whether there are facts that you need to check out?, for example, in an equal pay claim the details of the wages / job descriptions of comparators – in addition the possible need for a workplace inspection. Where comparators need to be identified it is important to discuss the process with them and ensure that they do not become the targets of any victimisation by the employer or others within the workforce.
- (d) Consider whether you need to obtain any documents or check out witnesses. If there are witnesses then it will be necessary to get a statement from each witness, along with the details of where each witness can be contacted. Remember also to give each witness your own contact details so that if they remember other points or if they are moving job /changing address they can let you know.
- (e) In considering whether to bring a claim, as we have seen you are entitled to seek information from the employer. List carefully all the information you think you might need and send this list to the employer.
- (f) Avail of support from within your union or elsewhere, such as the Equality Authority.



- (g) Familiarise yourself with the legislation, using this manual and any other available guides to help you. A list of sources is contained in Part Six of this manual.
- (h) Check out decisions in previous cases, those involving the Equality Tribunal and the Labour Court are available on the relevant websites, again the sources are contained in Part Six of this manual.
- (i) Lodge your claim within the time limits.

3 Preparing a submission

The Guide to the Labour Court booklet includes a model of a submission which provides a useful template for use before the Equality Tribunal or the Labour Court. Your submission should include:

- A brief background to the claim.
- A statement of the ground(s) of discrimination under which the claim is being brought.
- Reference to the sections of the Act you are relying on.
- Outline the basis for the claim and list the main facts and arguments involved.
- Where appropriate refer to any relevant documentation, for example, contract of employment, code of practice etc.
- Cite any relevant case decisions.
- Include a summary of your main arguments.

The layout of the submission should include:

- A cover which identifies the parties.
- A contents page which divides your submission into sections and gives page numbers – number all pages.
- Sections should be broken down into numbered paragraphs.
- Where appropriate, appendices which are numbered and each given a separate page(s).

4 MEDIATION OR NOT?

As already discussed mediation may be offered as an alternative to a hearing before the Equality Tribunal. Before a case can go to mediation each party must be agreeable to this happening. If either party disagrees then the case cannot go to mediation. Whether you agree to mediation or not will be a matter to decide in each case and it is not possible to lay down hard and fast rules. Obviously you



will need to get the views of the member – having explained to him /her fully the procedures involved. In addition you should take into account what the member hopes to achieve from the case. If, for example, the case concerns a change of practice within a job, then mediation might be the best approach to achieving the required change through agreement. A major advantage of mediation is that the parties are being enabled to reach the best solution from their viewpoint rather than having a decision made for them if the case goes to hearing. If on the other hand there is a strong case of discriminatory dismissal, mediation may not be appropriate in terms of achieving the maximum level of compensation.

The following factors should also be taken into account:

- Mediation is a **voluntary** process which you may or may not enter into and from which you may withdraw at any stage.
- If mediation is to work, all parties must **participate** – if you or your member do not feel you can participate in the process, then don't agree to it. For example, you may judge that there is such a level of mistrust of the employer by your member that realistically mediation would have little or no chance of success. Likewise, if you find the employer having agreed to mediation is not fully engaging in the process, then you should consider withdrawing from the process.
- **Confidentiality** – mediation is conducted in private and information given by either party during the process should not be disclosed. Indeed it is an offence under the legislation to disclose such information. There are exceptions to this rule, for example if you are required by a court to disclose the information. However the rule against disclosure would extend to, for example, offers for settlement made during the process, personal details or matters of a commercial nature. If you consider that an employer might use the process principally to find out the background to your member's case and has no real interest in participating fully in the process, then mediation is unlikely to be successful.
- Mediation will provide a **quicker and less formal** process.

Remember also that if you cannot reach a settlement through mediation, the case can proceed to a full hearing.



5 PRESENTING A CASE

Before attending a hearing check that you have everything ready that you will need.

Check-list

- A copy of the application form.
- A copy of your submission to the body hearing the complaint.
- A copy of the information (if any) sought from the employer and the reply (if any).
- Any correspondence involved in the case in chronological order.
- Your notes from your discussions with the claimant.
- Witness statements (if any) and a list of the questions you want to put to them.
- Copies of documentation that you may wish to present to the Equality Officer, plus a copy for the employer (if relevant).
- Notes on any relevant case law.
- A copy of the legislation with any particular sections you are relying on marked so that you can refer to them easily.

On the day of hearing you should arrange to meet the member not less than ½ an hour before the time for the hearing. You should allow enough time to go through the main details of the case again with the member, and check the evidence that any witness will be presenting. You will also need to be able to answer any questions that the member or a witness might have particularly about the format of the hearing, who will be present etc.



part 6

SOURCES OF FURTHER INFORMATION



REVIEW OF CASES

There is a wealth of information available in relation to decisions on equality cases which provide an invaluable source for trade union officials involved in advising members on employment equality matters. Congress itself has developed a guide to European Case Law, available in CD Rom format.

EQUALITY TRIBUNAL

The Equality Tribunal website (www.equalitytribunal.ie), which was relaunched in October 2004, contains a full index of decisions of the Tribunal in relation to employment equality cases. In relation to each case the website provides a summary of the decision as well as a full report.

The website provides access to the Employment Equality Act 1998 and the Equality Act 2004

The Equality Tribunal has published Annual Legal Reviews and Summaries for 2001, 2002, and 2003 and these are available on the website or from the Equality Tribunal. Mediation Reviews for 2001, 2002, and 2003 are also available.

THE LABOUR COURT

The Labour Court website (www.labourcourt.ie) provides reports on employment equality cases that it has heard. In the website, click on "Labour Court recommendations" followed by "By legislative type" followed by "Heard under the EEA 1998". The reports are divided into three sections. S.77(E) deals with unfair dismissals cases, S.77(6) (EE) deals with applications for extension of time and S.83(E) deals with appeals from the Equality Tribunal.

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PUBLICATIONS

Congress produces materials on Equality issues for use by trade union officials and activists.

Among the most recent ones are:

European Case Law and Equality Supplement – A guide for negotiators (CD Rom available from Congress)

Gender Pay Gap Toolkit, available from Congress

Family Friendly Working and Work Life Balance Guidelines Toolkit for Trade Unions

Negotiating Disability in the Workplace – guidance for trade union representatives

Lesbian, Gay and Bisexual Rights in the Workplace - Congress Guidelines for Negotiators - ICTU

Achieving Equality in Intercultural Workplaces - Available on www.interact2.com (in partnership with IBEC, IILT and FÁS)



Other useful publications include:

Annual Legal Reviews & Summaries 2001, 2002 & 2003 - Available from the Equality Tribunal

Annual Mediation Reviews - Available from the Equality Tribunal

"Equality in Diversity - The New Equality Directives" Edited by Cathryn Costello & Ellis Barry; ICEL no.29; Irish Centre for European Law (2003) - Available from the Equality Authority or the ICEL

Equality Authority Annual Reports - Available from the Equality Authority

Organising for Equality within the Enterprise - Available on www.interact2.com

Cultural Diversity in the Irish Health Care Sector - NCCRI / IHSMI

Guidelines for Employment Equality Policies in Enterprises - ICTU, IBEC & the Equality Authority

Guidelines on Equality & Diversity Training in Enterprises - National Framework Committee for Developing Equal Opportunities Policies at the level of Enterprises

Guidelines on Interculturalism and Anti-Racism Training - NCCRI

Additional useful websites

www.baillii.org - British and Irish Legal Information Institute database with legislation from 1922

www.legal-island.com/Irishzone.htm - Employment law news

www.interact2.com - Valuing diversity in the workplace

www.stop-discrimination.info - European dimension of equality



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