

Lesbian, Gay And Bisexual Rights In The Workplace

Why is this a trade union issue?

Discrimination experienced by lesbian,
gay and bisexual workers

A workplace agenda for negotiators



CONGRESS GUIDELINES FOR NEGOTIATORS

FOREWORD

Since Congress published the first Lesbian and Gay Rights in the Workplace Guidelines for Negotiators in 1982, there have been significant developments. Congress has won improvements to employment and other anti-discrimination legislation to make discrimination against lesbian gay and bisexual people unlawful. 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. All political parties and the social partners have supported powerful anti-discrimination legislation such as the Employment Equality Act along with the recent Employment Equality (SO) (NI) Regulations 2003 and Section 75 of the Northern Ireland (1998) Act.

Recent cases won by affiliated unions show that unions are meeting the challenges of representing a diverse workforce. It is hoped that these Congress Guidelines will provide additional assistance to unions in fighting discrimination and in ensuring equality.

I would like to take this opportunity to thank those who participated in the drawing up of these Guidelines, in particular the Congress Equality Network and the groups representing Lesbian, Gays and Bisexuals who provided their assistance. I would also like to thank the Equality Authority for their support and assistance in bringing these guidelines forward.



David Begg,
General Secretary

Why Is This A Trade Union Issue?

Trade Unions believe in equal rights for all workers. Trade unions are committed to combating all forms of discrimination and promoting equality. This includes representing the interests of their lesbian, gay and bisexual members. Despite being unlawful, discrimination on grounds of sexuality can still happen in the workplace. Discrimination leads to isolation, abuse and the victimisation of lesbian, gay and bisexual workers. Unions need to negotiate policies and procedures that counteract remaining discrimination and prejudice in all its forms against lesbian, gay and bisexual workers. The objective of such policies and procedures is to create a workplace environment where lesbian women, gay men and bisexual men and women experience equality and are free of harassment or discrimination from other workers or management.

Is This An Issue For Every Workplace?

There are lesbian women, gay men and bisexual men and women in all social classes, in all age groups and in all parts of the country. It's a common mistake to believe that there are few lesbians, gays and bisexuals and that "there are none where we work", and to think therefore that lesbian, gay and bisexual rights are not real issues. Research some years ago showed that one person in ten is predominately lesbian or gay, and studies since then have confirmed that basic figure. This figure when applied to the workforce in Ireland would amount to over 186,000 workers in 2003, making lesbian, gay and bisexual workers one of the largest minorities in the country.

In a workforce of a hundred, some ten people may be lesbian, gay or bisexual. A committee or small group will probably have at least one lesbian or gay present.

These figures still cause surprise, but it is still a fact that at work lesbians, gays and bisexuals are often afraid of opinions of colleagues. They are afraid that if their sexuality becomes known they will be isolated at work. Because of these fears and the continuing discrimination many lesbians, gays and bisexuals hide their identities at work.

Underlying the difference in treatment by colleagues is the usually unquestioned consensus that lesbian/gay/bisexual sexuality is unnatural or inferior to heterosexuality. This consensus (heterosexism) is pervasive and needs to be challenged. Trade unions must take up that challenge on behalf of their members.

Discrimination Experienced By Lesbian Gay And Bisexual Workers

The Experience Of Discrimination In The Workplace

Despite being unlawful, discrimination is still experienced by some lesbian, gay and bisexual workers. Discrimination means treating workers less favourably because of their sexuality or because other people have prejudices about that sexuality. In the workplace it can be direct, subtle, conscious or unwitting. It can come from supervisors, managers and also from other members of the workforce. Discrimination against lesbians, gays and bisexuals in the workplace manifests itself in a wide range of ways including: being overlooked for promotion; denied training; unfair selection for difficult or unpleasant tasks; being called names; being the butt of jokes; innuendo; verbal harassment or sustained unfriendly contact or exclusion. Physical forms of anti-lesbian and gay prejudice include persons damaging the property of others, and the most extreme form of the problem, physical violence. The effects of this discrimination can make victims fearful of going to work, and cause them to leave their employment,

in addition to causing physical or psychological illness.

Discrimination In The Workplace – What The Law Says

In the Republic of Ireland, the Employment Equality Act 1998 makes discrimination by employers against workers who are lesbian, gay or bisexual unlawful. It provides that an employer shall not discriminate in relation to pay, access to employment, conditions of employment, training or experience for or in relation to employment, promotion or regrading or classification of posts. Harassment and bullying are also unlawful, and employers should ensure that employees and the work environment are free from any bullying, harassment and sexual harassment. Employers are legally responsible for the sexual harassment and harassment suffered by employees in the course of their work unless they have taken reasonable steps to prevent sexual harassment and harassment from happening in the workplace; outside the workplace at functions organised by the enterprise and from customers and clients. Some exemptions apply to religious, education or medical institutions which are under the control of a religious body.

The Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 make discrimination on the grounds of sexual orientation unlawful in Northern Ireland. The Regulations make it illegal for an employer to discriminate because of a worker's sexuality and cover recruitment, access to training, benefits (such as access to insurance schemes, travel concessions and social events, unfair dismissal, unfair references, victimisation, bullying and harassment. The legislation outlaws discrimination by trade associations, including trade unions, employment agencies, providers of vocational training and institutions of further and higher education. There are exceptions that allow an employer

to deny a same-sex partner access to a benefit if they specify that this is restricted to married partners only; discriminate where there is a genuine occupational requirement; or if the employment 'is for the purposes of an organised religion'.

Currently, Section 75 of the Northern Ireland (1998) Act requires public authorities in carrying out their functions relating to Northern Ireland to have due regard to the need to promote equality of opportunity across nine grounds including sexual orientation.

Discrimination In The Workplace – What Trade Unions Can Do

To counteract discrimination against lesbian, gay and bisexual workers trade unions should:

- ◆ Recognise that this discrimination is a trade union issue affecting thousands of workers.
- ◆ Negotiate equal opportunity policies and procedures with employers which specifically refer to combating discrimination on grounds of sexuality.
- ◆ Ensure that interview panels adopt and follow non-discriminatory interview procedures and criteria.
- ◆ Negotiate procedures with employers for handling complaints of discrimination on grounds of sexual orientation.
- ◆ Communicate union policy throughout the union pointing out that discrimination will not be tolerated and that the union will treat such discrimination as a serious workplace issue.

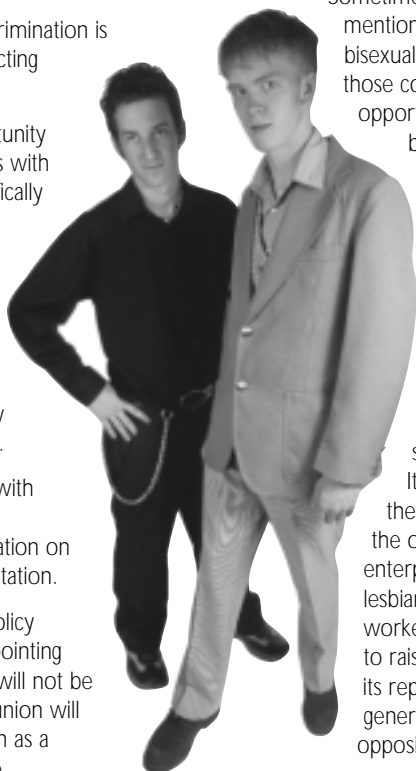
- ◆ Include the issue of discrimination on grounds of sexuality on union education and training courses (specific training courses are available from the Congress Training Service)

The Equal Opportunities Policy

Equal Opportunities policies are now commonplace in both the public and private sectors. An important first step is to ensure that this policy explicitly covers lesbian, gay and bisexual workers. Many current equal opportunity policies do not, and unions will need to negotiate this improvement to policies. Employers may be convinced that that such an explicit reference in the equal opportunities policy is not necessary. Negotiators may need to highlight some of the issues covered in these guidelines to demonstrate that a policy is required.

Sometimes even to win a mention for lesbian, gay and bisexual workers in a list of those covered by an equal opportunities policy can be a battle but in the process of arguing for it, discriminatory practices can be identified and dealt with.

Having the explicit inclusion of lesbians, gay and bisexual workers in a policy statement is important. It will help to increase the culture of equality in the organisation or enterprise and will encourage lesbian, gay and bisexual workers to have confidence to raise issues. Its omission or its replacement by a bland general statement has the opposite effect.



Data Collection And Equality Audits

Congress has constantly argued that the composition of the work force should be monitored on grounds of gender, race or disability to check that equal opportunity policies are working. However, this may not be helpful for dealing with discrimination on grounds of lesbian, gay or bisexual orientation. Lesbians, gays and bisexuals are not necessarily under-represented in the workforce but they may be very reluctant to risk "coming out" through a statistical questionnaire. Therefore, a simple head count may not be the appropriate way to monitor lesbian, gay or bisexual employees. Unions should examine the workplace processes and procedures in respect of all aspects of employment including social and family events to establish if any of the provisions discriminate against gay, lesbian or bisexual workers.

Ensuring Equal Treatment For Lesbian Gay And Bisexual Workers

In addition to ensuring against unlawful discrimination in pay, conditions of employment, training and promotion, unions should negotiate at the level of the enterprise for more than the legal minimum. Negotiating for equal opportunities for gay, lesbian and bisexual workers should be undertaken even if there are no lesbian, gay and bisexual workers "out" in the enterprise. Clear policies recognising the rights of lesbian, gay and bisexual workers can operate as a signal that the enterprise is open to diversity.

A Workplace Agenda For Negotiators

Some examples for the negotiation agenda at enterprise level –

Parental Leave and Force Majeure

Unions should negotiate at workplace level to ensure that lesbian, gay and bisexual workers have the same rights and entitlements to leave for parenting or urgent family reasons as other workers with partners.

Training

Unions should negotiate for training, information and briefing sessions on equality to be provided to staff at all levels of the organisation. One aspect of this training should address the sexual orientation ground and the implications for employers and employees of the Employment Equality Act, 1998.

Access to Employment

Unions should ensure that interviewers for recruiting and promotion are provided with detailed guidance in relation to non-discrimination and equal opportunity issues relevant to lesbian, gay and bisexual workers.

Pensions

Unions should negotiate at workplace level to ensure that lesbian, gay and bisexual workers have the same rights for pensions as other couples.

Family and Social Events

Where enterprises organise family events it is important that the union negotiate with the enterprise to recognise all types of families. An invitation to participate to partners of lesbian, gay and bisexual workers can act as a reassurance that the enterprise is open to lesbian, gay and bisexual workers.



How To Make The Union More Relevant To Lesbian Gay And Bisexual Members

There is a general assumption that everyone is heterosexual unless they say otherwise. Many lesbians, gay men or bisexuals are forced to remain invisible at work. Several lesbian, gay and bisexual workers have gained confidence and support to "come out" through their involvement in their union structures but most lesbian and gay workers are not "out".

Unions should be aware that these members may be reluctant to affirm their identity in an environment where they cannot be certain that they will not experience harassment or other forms of discrimination at a personal or institutional level. This may well have happened in the past leading to their reluctance to be identified as lesbian, gay or bisexual. Unions must respect this, and it is essential that confidentiality is offered to those who want it and that adequate and relevant supports are offered to those who may be "coming out" at work.

Diversity

Lesbian women, gay men and bisexual men and women are of every race and ethnic origin. People with disabilities may also be lesbian, gay or bisexual. Lesbian members', particularly lesbian mothers, will have some different priorities and concerns from gay men. Unions must recognise the diversity that exists within their membership and try to ensure that structures and policies are truly representative.

STRUCTURES FOR CONSULTATION And Support

It is important that unions recognise that discrimination against lesbian, gay and bisexual workers is a trade union issue and requires unions to develop a serious

anti-discrimination policy and programme. This policy needs to be communicated throughout the union, pointing out that discrimination will not be tolerated and that the union will treat such discrimination as a serious workplace issue. Unions should develop specific equality responses for lesbian, gay and bisexual members.

It is important to recognise that gender re-assignment discrimination experienced by transgender and transsexual workers are gender discriminations and not issues of sexual orientation. If you would like more information on transgender and transsexual rights in the workplace, please contact your union or the Congress Equality Office.



Where To Go For More Information

If you are experiencing discrimination at work, remember it is against the law and does not have to be suffered in silence. If you would like more information on this or any equality issue contact your union or the Irish Congress of Trade Unions, 31/32 Parnell Square, Dublin 1, Email: congress@ictu.ie or the Congress Northern Ireland Office, Email: info@ictuni.org

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