



## UNIT-9

## Workplace Discrimination

### Learning Outcomes

By the end of this unit the learner will be able to:

- ✓ Understand the potential harm caused by a workplace discrimination
- ✓ Discuss the different types of discrimination in the workplace
- ✓ Play an active role in preventing all types of discrimination

## Unit 9

### Workplace Discrimination

#### Types of discrimination ('protected characteristics')

It is illegal to discriminate against anyone on the basis of:

- Age
- Gender reassignment
- Having been married or in a civil partnership for at least a year
- Being expecting a child or on maternity leave
- Disability
- Race, which includes skin colour, ethnicity, and national origin
- Belief or religion
- Sex
- Sexual preference

These are called 'protected characteristics'.

#### From the Employee's Perspective

##### You're protected from Discrimination:

- At the workplace
- In your education
- As a customer
- When using government services
- When purchasing or renting a home
- As a member of a private club or association or as a guest of a private club or association

##### The Equality Act of 2010 gives you legal Protection against Discrimination

You're also protected from discrimination if:

- you have a relationship with someone who has a protected characteristic, such as a family member or a friend
- You've filed a discrimination complaint or backed up someone else's claim

### Anti-Discrimination Measures

As an employer, you can and should volunteer to assist people who have a protected characteristic. This is referred to as "positive action."

It is a legal requirement to take positive action if people with a protected characteristic:

- Find themselves at a disadvantage
- Have specific requirements
- Are under-represented in a particular activity or field of employment

### Discrimination can happen in a Variety of Ways

Discrimination can take a variety of forms, including:

- Direct discrimination, which is when someone with a protected characteristic is treated unfairly in comparison to others.
- Indirect discrimination - putting in place rules or arrangements that apply to everyone but disadvantage someone with a protected characteristic.
- Harassment - unwelcome behaviour based on a protected characteristic that infringes on a person's dignity or creates an offensive environment for them.
- Victimization is when someone is treated unfairly as a result of a complaint of discrimination or harassment.

It is permissible to have specific rules or arrangements in place if they are justified.

### Discrimination in the Workplace

The law protects you from workplace discrimination, including:

- Dismissal
- Terms and conditions of employment
- Compensation and benefits
- Opportunities for advancement and transfer
- Training
- Recruitment
- Redundancy

Some forms of discrimination are only permitted if they are required by the organization's operations, such as:

- A Roman Catholic school that accepts only Catholics as applicants for admission.
- Only employing women in a Muslim women's health centre

### Disability

You have the same rights as other workers if you are disabled. Employers should also make "reasonable adjustments" to assist disabled employees and job applicants with the following issues:

- Application forms, such as providing Braille or audio versions of forms
- Aptitude tests, such as allowing extra time to complete them
- Redundancy or dismissal
- Disciplinary actions and grievances
- Interview arrangements, such as wheelchair accessibility and communicator assistance
- Ensuring that the workplace has the necessary facilities and equipment for disabled employees or those who have been hired.
- Opportunities for advancement, transfer, and training
- Employment conditions, including pay
- Perks related to the job, such as access to recreation or refreshment areas

## An Employer's Perspective

### How can Employers Prevent Workplace Discrimination?

It is illegal to treat someone less favourably than another because of a personal trait such as religion, sex, gender reassignment, or age.

Discrimination happens in a lot of ways, including:

- Not employing someone
- Deciding on a specific person for redundancy
- Without good reason, paying someone less than another worker

Even if you don't mean to, you can discriminate against someone. You can discriminate indirectly, for example, by providing working conditions or rules that disadvantage one group of people over another.

### Discrimination in the Hiring Process

#### Discrimination in Job Adverts

In a job advertisement, you must not state or imply that you will discriminate against anyone. This includes stating that you are unable to accommodate employees with disabilities.

Use phrases like "recent graduate" or "highly experienced" only when they are specific job requirements. Otherwise, you risk discriminating against people who are younger or older and have not had the opportunity to obtain qualifications.

Advertising exclusively in men's magazines, for example, may result in indirect discrimination.

You may not inquire about a candidate's "protected characteristics" or whether they:

- Are married, single, or in a civil partnership.
- Are a parent or plan to be a parent

### **Inquiring about a Person's Health or Disability**

You can only inquire about health or disability if you meet the following criteria:

- There are certain job requirements that cannot be met with reasonable modifications.
- you're determining if someone requires assistance in order to participate in a selection test or interview
- You're recruiting a disabled person using "positive action"

### **Requesting a Date of Birth**

On an application form, you can only ask for someone's date of birth if the job requires them to be a certain age, such as selling alcohol.

On a separate equality monitoring form, you can inquire about someone's date of birth.

### **Criminal convictions that have already been served**

Applicants are not required to disclose details of any spent criminal convictions. You must treat the applicant as if the conviction never occurred, and you cannot refuse to hire them because of it.

There are some occupations that are exempt from this rule, such as teaching.

### **Trade Union Membership**

You must not consider a person's membership in a trade union when deciding whether or not to hire them. This includes the following:

- Refusing to hire someone because they are a member of a labour union
- Requiring someone to join a labour union before hiring them

### **Employing People with Protected Characteristics**

Two candidates apply for the same job - one of whom has a protected characteristic.

If both candidates are qualified for the job and you believe that the protected characteristic in question:

- Is underrepresented in the workforce, industry, or profession
- Represents a disadvantage for the person in question (for example people from a certain ethnic group are not often given jobs in your sector)

Then you can make a hiring decision based on this factor. You can choose to hire the person with a protected characteristic, using underrepresentation or disadvantage as justification.

However, you can *only* do this if you're trying to address a specific characteristic's underrepresentation or disadvantage. You must make decisions on an individual basis rather than based on a policy.

You can't hire someone who isn't qualified for the job because they have a protected characteristic.

### **Rights of people with Disabilities**

Employers who discriminate against you because of a disability are breaking the law. The Equality Act of 2010 safeguards you in the following areas:

- Application forms
- Arranging for interviews
- Tests of aptitude or proficiency
- Job openings
- Employment conditions, including pay
- Opportunities for advancement, transfer, and training
- Redundancy or dismissal
- Disciplinary actions and grievances

### **Making reasonable Adjustments**

Employers must make "reasonable adjustments" to avoid putting you at a disadvantage in the workplace when compared to non-disabled employees. For example, adjusting your working hours or providing you with specialised equipment to assist you in performing your duties.

### **Recruitment**

An employer who is hiring employees may ask you a few questions about your health or disability.

Only questions about your health or disability are permitted:

- To determine if you are capable of performing a task that is critical to the job
- To assist in determining whether or not you are eligible to participate in an interview

- To assist in determining whether or not the interviewers should make reasonable accommodations for you during the selection process
- To aid in monitoring
- If they want to hire more people with disabilities
- If they require the information for national security purposes

On an application form or during an interview, you may be asked if you have a health condition or disability. Consider whether the question is appropriate to ask at that point in the recruitment process.

### **Retirement and Redundancy**

Because you're disabled, you can't be chosen for redundancy. The redundancy selection process must be fair and balanced for all employees.

If you become disabled, your employer cannot force you to retire.

### **Further Reading:**

- ✓ *Race, Gender, and Discrimination at Work by Samuel Cohn*
- ✓ *Women and Workplace Discrimination: Overcoming Barriers to Gender Equality Kindle Edition by Raymond F. Gregory*