EMPLOYMENT

Law guide - Discrimination

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Discrimination

Overview

Discrimination issues can arise for multiple reasons in the workplace. For example, rejecting an employee's flexible working request could open up the possibility of a claim for discrimination on grounds of sex/gender, race, religion or belief, sexual orientation, disability, age, civil or family status, and/or membership of the traveller community.

In the case of a female employee if, for example, you reject the request of a woman returning from maternity leave to work part-time, this could be seen as indirect sex discrimination. This is on the grounds that a greater proportion of women than men have the main parental caring responsibility - you requiring her to work full time puts her at a disadvantage compared to her male colleagues.

However, even if she is put at a disadvantage by your refusal, you can still justify your actions at the tribunal if you can show that they were a proportionate means of achieving a legitimate aim.

What is discrimination?

If you discriminate against your employee on any of the following grounds, you may be acting unlawfully:

- age
- sexual orientation
- religion or belief
- disability
- race
- gender
- marital status
- family status
- membership of the Traveller Community

When does it occur?

Discrimination can occur in an employment context:

- in the way in which a job is advertised
- in the decision regarding whether or not to hire an applicant
- during the period of employment
- in a decision to bring an employment contract to an end

- after the employment has come to end, regarding the provision (or non-provision) and content of references

Everybody has the right to equal pay for equal work within the same employment.

Defence to discrimination

It should be noted that difference in treatment of an employee, which is based on a characteristic related to any of the nine discriminatory grounds, in respect of getting access to employment is, however, allowed to the extent that the characteristic constitutes a genuine and determining occupational requirement, the objective of this discrimination is legitimate and the requirement is proportionate.

Therefore it must be crucial to the job and not just one of several important factors. This will include situations concerning promotions and transfers. If having a particular characteristic is crucial for the role then this will need to be objectively justified as being a proportionate means of achieving a legitimate aim.

Part-time worker discrimination

You must not treat part-time workers less favourably in their contractual terms and conditions than comparable full-time workers - unless you can objectively justify that treatment.

So, if you agree to a request to work fewer hours, bear in mind that the employee is still entitled to the same pay and benefits (on a pro-rata basis) and access to training and promotion opportunities.

Age discrimination

Introduction

The Employment Equality Acts 1998 – 2015, as amended, provide legal protection to workers against age discrimination. It is, with some exceptions, unlawful to discriminate against a worker on the grounds of their actual or perceived age or because they are associated with someone of a particular age.

Who does the legislation apply to?

The Act applies to all employers in the private and public sector, vocational training providers, trade unions, professional organisations, employer organisations and trustees and managers of occupational pension schemes. It covers employees of any age and other workers, office holders, partners of firms and others. It also covers people using employment agencies or related careers guidance services, recruitment, terms and conditions, promotions, transfers, dismissals and training. It even covers post-employment acts such as the refusal to provide references to ex-employees.

What does the Act protect against?

The Act makes the following changes to the law:

- Stops unjustified age discrimination in employment and work-related training.
- Requires employers to make sure that any redundancy policies do not directly discriminate against older workers.
- Removes the upper age limit for unfair dismissal and redundancy rights.
- Removes the upper and lower age limits for the entitlement to statutory redundancy pay.

You will therefore have to pay your employee the statutory minimum redundancy payment, no matter what their age, so long as they have worked for you for at least two years.

Refusing job applicants

It is unlawful for you to impose an age limit when recruiting, unless this age restriction can be objectively justified or is imposed by law.

Direct age discrimination

This is where a worker is treated less favourably because of their actual age, when compared with another worker (known as a 'comparator') of a different age group, but who otherwise shares the same or similar (but not materially different) circumstances as the complaining worker.

The comparator's circumstances do not need to be identical (in terms of the type of job, job level, job experience and seniority, etc.), but must not be wholly dissimilar.

Direct discrimination also extends to protecting a worker if you treat them less favourably based on:

- your perception of their age, regardless of whether or not the perception is correct. For example, if you refuse to promote an employee because you perceive him to be too young but promote his colleague, whose circumstances are similar to the employee, except that you do not have the same perception about their age.
- the age of another person (also known as discrimination by association). Such instances include an employee being treated less favourably because they live with someone of a particular age or you dismiss them for refusing to comply with instructions that would require the employee to discriminate against someone because of their age.

Indirect age discrimination

This will occur where you apply a formal or informal provision, criteria or practice equally to all the workers in the workplace that puts members of an age group at a particular disadvantage when compared with other workers, and a worker within that disadvantaged group actually suffers this particular disadvantage.

It does not matter whether or not this has been done intentionally.

For example, if you state that only 'recently qualified' employees can attend a managerial training course, this will be indirectly discriminatory to older employees as they are less likely to have 'recently qualified'.

Harassment

Harassment is unwanted conduct towards a worker by an employer, another worker or a third party (such as customers), because of that worker's actual or perceived age. This applies to any conduct that violates a worker's dignity or creates an intimidating, hostile, humiliating, degrading or offensive environment even if it was not intended as such.

For example, if the unwanted conduct relates to the age of an employee's partner or friends, it may still be unlawful age harassment if they reasonably find it to be degrading or offensive. If the general conduct at the workplace is to tolerate the telling of ageist jokes, this can be age harassment if an employee reasonably considers it to be so.

If it is reasonable that the unwanted conduct has had an intimidating or humiliating effect on the worker, then you may have a harassment claim made against you (even where the harassment was unintentional). A worker will not be protected if they are over sensitive and unreasonably take offence to an innocent comment.

Workers who are not the subject of the unwanted conduct will also be able to make harassment claims for behaviour that they find offensive, even if they do not have a protected characteristic.

You also have a duty to protect a worker from any harassment by a third party, such as from a client or customer, which they may be subjected to in the course of their employment. You must take reasonably practicable steps to prevent such harassment, but you will not be liable for the conduct of third parties that you are not made aware of. You can only be held liable if the worker has been subjected to such harassment on at least two other occasions. It need not be the same person causing the harassment on each occasion.

Employers are liable for any acts of harassment undertaken by their employees in the course of their employment – whether they knew about it or not – if they fail to take reasonable steps to prevent it. 'In the course of employment' means 'done whilst at work' or 'done while 'in a workplace-related environment'. Employers can't defend a claim of harassment by showing that they did not authorise it or on the grounds that the actions were reasonable or warranted.

Employers can, however, escape liability for harassment, if they took reasonably practicable steps to prevent it.

Victimisation

Victimisation happens when a worker is treated less favourably because:

- they have asserted their right not to be discriminated against on the basis of their age by making a complaint;
- they gave evidence or information in a complaint of age discrimination made by another worker;
- they have taken any other action under legislation protecting them from age discrimination;
- they have alleged that you or another worker have contravened age discrimination legislation;
- you believe that they have done or may do any of these things.

For example, a worker might have grounds for a victimisation claim if they are prevented from going on training courses; subjected to unfair disciplinary action; or excluded from company social events because they took any of the above-mentioned action.

Sexual orientation discrimination

Introduction

The Employment Equality Acts 1998 - 2015 as amended makes it unlawful for an employer to discriminate against a worker because of their actual or supposed sexual orientation, or their association with people of a particular sexual orientation. It covers all aspects of the employment relationship, including recruitment, pay, working conditions, training, promotion, dismissal and references.

Protection against sexual orientation discrimination applies to employees, contract workers, office holders, partners of firms and people using employment agencies or related careers guidance services.

What is sexual orientation?

The Employment Equality Acts defines sexual orientation as a sexual orientation towards persons of:

- the same sex (homosexual)
- the opposite sex (heterosexual)
- the same and the opposite sex (bisexual)

This means that the regulations protect lesbians, gay men, bisexuals and heterosexuals.

Direct sexual orientation discrimination

This is where a worker is treated less favourably because of their sexual orientation, when compared with another worker (known as a 'comparator') of a different sexual orientation, but who otherwise shares the same or similar (but not materially different) circumstances as the complaining worker.

The comparator's circumstances do not need to be identical (in terms of the type of job, job level, job experience and seniority, etc.), but must not be wholly dissimilar.

Direct discrimination also extends to protecting a worker if you treat them less favourably based on:

- your perception of their sexual orientation, regardless of whether or not the perception is correct. For example, if you refuse to promote an employee because you believe him to be homosexual, but you promote a colleague whose circumstances are similar to the employee, except that you do not have the same perception about their sexual orientation.

- the sexual orientation of another person (also known as discrimination by association). For example, if you treat an employee less favourably because they

have gay friends or have refused to comply with instructions that would require them to discriminate against someone because of their sexual orientation.

Indirect sexual orientation discrimination

This will occur where you apply a formal or informal provision, criteria or practice equally to all the workers in the workplace which puts members of a group with a particular sexual orientation at a particular disadvantage when compared with other workers and a worker within that group suffers the particular disadvantage.

It does not matter whether or not this has been done intentionally.

For example, you introduce a policy stating only employees who are biological parents may go on a child-care training course. This policy may result in homosexual employees suffering a disadvantage when compared to heterosexual employees, as homosexual employees are less likely to have given birth to or biologically fathered children, but may have adopted them. In this case, a homosexual employee would have been eligible to go on the training course had it not been for that policy.

Harassment

Harassment is unwanted conduct towards a worker by an employer, another worker or a third party (such as customers), because of that worker's actual or perceived sexual orientation. This applies to any conduct that violates a worker's dignity, or creates an intimidating, hostile, humiliating, degrading or offensive environment, even if it was not intended as such.

Victimisation

Victimisation happens when a worker is treated less favourably because:

- they have asserted their right under the sexual orientation discrimination regulations not to be discriminated against
- they have given evidence or information in a complaint of sexual orientation discrimination made by another worker
- they have taken any other action under legislation protecting them from sexual orientation discrimination
- they have alleged that you or any other worker has contravened legislation affecting sexual orientation discrimination
- you believe that they have done or may do any of these things

For example, a worker might have grounds for a victimisation claim if they are prevented from going on training courses; subjected to unfair disciplinary action; or excluded from company social events because they took any of the above-mentioned action.

Exceptions

There are a few exceptional circumstances where discrimination on the basis of sexual orientation will not be regarded as unlawful. Some of these are:

- organised religion – an employer may require an applicant to be of a specific sexual orientation for certain reasons when the employment relates to an organised religion
- genuine occupational requirement – an employer may require an applicant to be of a particular sexual orientation where that is a requirement to be able to do the job properly

Religion or belief discrimination

Introduction

The Employment Equality Acts 1998 - 2015 as amended provides protection for workers from discrimination and harassment at work on grounds of religion, religious belief or outlook.

It's against the law for an employer to discriminate against a worker because of their actual or perceived religion or outlook. It is also unlawful to discriminate against a worker because they are not religious.

What is the definition of 'religion' and 'belief'?

'Religion' or 'belief' may be defined as any religion, religious belief or outlook. There is no definitive list of recognised religions. To be recognised as a religion, there must be a clear structure and belief system.

Direct religion or belief discrimination

This is where a worker is treated less favourably because of their religion, religious belief or outlook, when compared with another worker (known as a 'comparator') of a different religion, religious belief or outlook, but who otherwise shares the same or similar (but not materially different) circumstances as the complaining worker.

The comparator's circumstances do not need to be identical (in terms of the type of job, job level, job experience and seniority, etc.), but must not be wholly dissimilar.

Direct discrimination also extends to protecting a worker if you treat them less favourably based on:

- your perception of their religion, religious belief or outlook, regardless of whether or not the perception is correct. For example, you may refuse to promote an employee because you perceive him to belong to a particular religious group, but their colleague is promoted and their circumstances are similar to the employee, except that you do not have the same perception about their beliefs.
- the religion or beliefs of another person (also known as discrimination by association). For example, if you treat an employee less favourably because they live with someone who belongs to a particular religious group or you dismiss them for refusing to comply with your instructions that would require the employee to discriminate against someone because of their religion or beliefs.

Indirect religion or belief discrimination

This is where you apply a formal or informal working practice, provision or criteria equally to all the workers in the workplace which puts a group of workers who share the same particular religion or belief at a particular disadvantage when compared with other workers and a worker within that group suffers the particular disadvantage.

It does not matter whether or not this has been done intentionally.

Harassment

Harassment is unwanted conduct towards a worker by an employer, another worker or a third party (such as customers), because of that worker's actual or perceived religion or beliefs. This applies to any conduct that violates a worker's dignity, or creates an intimidating, hostile, humiliating, degrading or offensive environment, even if it was not intended as such.

For example, if you make a remark about a worker's religion, which your worker or anyone else reasonably feels is hostile, you could be liable for harassment.

Victimisation

Victimisation happens when a worker is treated less favourably because:

- they have asserted their right not to be discriminated against on the grounds of their religion or belief by making a complaint
- they have given evidence or information in a complaint made by another worker regarding discrimination on grounds of religion or belief
- they have taken any other action under legislation relating to religion or belief discrimination
- they have alleged that you or another worker has contravened the legislation relating to religion or belief discrimination
- you believe that they have done or may do any of these things

For example, a worker might have grounds for a victimisation claim if they are prevented from going on training courses; subjected to unfair disciplinary action; or excluded from company social events because they took any of the above mentioned action.

Exclusion of discrimination on certain grounds

A religious, educational or medical institution which is 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 shall not be taken to discriminate against a person for the purposes of this part of the act. Therefore they would not be liable if they treated one person more favourably over another to maintain the

religious ethos of the institution. They would also be permitted to take steps in order to prevent the employee from undermining the religious ethos of the institution.

Disability discrimination

Introduction

This protects workers from being treated unfavourably due to something arising as a consequence of their disability when compared with another worker who does not have the disability. The reason does not have to be the disability itself and can include something related to it, such as an aid or device (e.g. the use of a wheelchair) or the amount of sick leave taken in a year.

This means comparing the treatment of a disabled worker with how a person without the disability would be treated. For example, a disabled worker who is dismissed because he is regularly absent from work due to illness would be compared to a non-disabled worker who was not absent from work. He will be able to claim discrimination arising from a disability because he is being discriminated against for a reason (his absence from work) which relates to his disability.

Disabled workers enjoy the same anti-discrimination protection as other workers, but they have additional rights under the Employment Equality Acts 1998 – 2015 as amended (EA).

All aspects of employment are covered by the EA including:

- application forms
- interview arrangements
- proficiency tests
- job offers
- terms of employment
- promotion, transfer or training opportunities
- work-related benefits such as access to recreation or refreshment facilities

What is a disability?

The definition of a disability is a legal and not a medical definition. This means that sometimes a medical condition may be regarded as a disability by a doctor, but will not be a disability for the purposes of disability discrimination.

A person has a disability if they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. A disabled person means a person who has a disability.

Before deciding whether there is discrimination on the grounds of a disability, Employment Appeals Tribunal / the Director of the Equality Tribunal will have to decide whether a person is disabled and will look at four conditions:

1. The impairment: is there a physical or mental impairment? Examples of physical impairment include multiple sclerosis, cancer, blindness and arthritis. Examples of mental impairment include depression, self-harming, dementia and autism. An impairment, which may result in a worker being protected under the EA, can result from the cause or effect of another illness. It also may result from conditions which cannot be described as an illness, such as disfigurement or genetic deformity.

   Some physical conditions can result from an underlying mental condition, or can cause a mental condition, such as depression.

   If your employee has an addiction to alcohol, nicotine or any other substance they will not be regarded as having a disability for the purposes of the EA.

2. The adverse effect: the tribunal must ascertain whether the impairment identified at stage 1 adversely affects one's ability to carry out normal day-to-day activities. These include, for example, using a telephone, reading or using public transport, mobility, ability to lift, carry or otherwise move everyday objects, speech, hearing or eyesight.

   However, note that:

   - a progressive condition must have some adverse effect now, and be likely in the future to have a substantial effect
   - if a condition has periods of remission then you must prove that it is likely to recur. 'Likely' means 'could well happen' in this context.

3. Whether the adverse effect is substantial - The condition is more than minor or trivial. A number of factors are taken into account including the time it takes to carry out an activity and the way in which an activity is carried out.
4. Whether it is a long-term impairment: the impairment must have a long term effect as of the date of any alleged act of discrimination. 'Long term' includes impairments that:

   - have lasted at least 12 months
   - are likely (i.e. more probable than not) to last for at least 12 months
   - are likely (i.e. more probable than not) to last for the rest of a worker's life
   - are likely (i.e. could well happen) to recur if in remission

Where measures are taken to treat or correct an impairment that would be likely to have a substantial adverse effect on the ability of a person to carry out normal day-to-day activities, that impairment is still treated as amounting to a disability. For example epilepsy, which although controlled by medication, may still amount to a disability.

Note that anyone diagnosed with HIV/AIDS, cancer or multiple sclerosis will be considered a disabled person. They do not need to exhibit symptoms to qualify for this status.

Direct disability discrimination

This is where a worker is treated less favourably because of their disability when compared with another worker who is not disabled but has the same (or at least not materially different) abilities as the disabled worker.

For example, a job advert might state that disabled applicants will not be considered. This might give a disabled applicant, who is otherwise qualified and able to do the job, a claim for direct disability discrimination.

Direct discrimination also extends to protecting a worker if you treat them less favourably based on:

- your perception of whether they have a disability, regardless of whether or not the perception is correct. For example, you refuse to promote an employee because you believe he is dyslexic. However, you promote a colleague, whose circumstances are similar except that you do not have the same perception about them.
- the disability of another person (also known as discrimination by association). For example, if you are being discriminated against because you have to care for a disabled family member, even though you are not disabled yourself or your refusal to comply with instructions that would require you to treat someone less favourably because of their disability.

Indirect disability discrimination

This occurs when you apply a formal or informal provision criteria or practice equally to all the workers in the workplace, which puts a group of workers with a disability at a particular disadvantage when compared with other workers and a worker within that disadvantaged group actually suffers the particular disadvantage.

It does not matter whether or not this has been done intentionally.

Failure to make reasonable accommodation

Employers are obliged to make reasonable accommodations for staff with disabilities. This includes providing access to employment, enabling people with disabilities to participate in employment including promotion, and training.

Your duty is to take such steps as are reasonable in all the circumstances. Therefore, you should take into account whether the required adjustments are possible, the financial implications and whether there is financial or other assistance available to you in order to take such steps.

Note: protection on this ground is not available where the person is not capable or willing to do the job in question.

Harassment

Harassment is unwanted conduct towards a worker by an employer, another worker or a third party (such as customers), because of that worker's actual or perceived disability. This applies to any conduct that violates a worker's dignity, or creates an intimidating, hostile, humiliating, degrading or offensive environment, even if it was not intended as such.

Victimisation

Victimisation happens when a worker is being treated less favourably because:

- they have asserted their right not to be discriminated against on the basis of their disability by making a complaint about disability discrimination
- they gave evidence or information in a complaint of disability discrimination
- they take any other action under the EA relating to disability discrimination
- they have alleged that you or another worker has contravened disability discrimination legislation
- you believe that they have done or may do any of these things

Race discrimination

Introduction

The Employment Equality Acts 1998 – 2015 as amended (EA) makes it unlawful for an employer to discriminate against a worker because of their race. Race includes:

- race
- colour
- nationality
- ethnic or national origins

The EA protects all racial groups. A racial group means any group defined by reference to race, colour, nationality, or national or ethnic origins.

Direct racial discrimination

This is where a worker is treated less favourably because of their race, when compared with another worker(known as a 'comparator')of a different racial group, but who otherwise shares the same or similar (but not materially different) circumstances as the complaining worker.

The comparator's circumstances do not need to be identical (in terms of the type of job, job level, job experience and seniority, etc.), but must not be wholly dissimilar.

Direct discrimination also extends to protecting a worker if you treat them less favourably based on:

- your perception of their race, regardless of whether or not the perception is correct. For example, if you refuse to promote an employee because you believe him to belong to a particular race but instead promote someone whose circumstances are similar to the employee, except that you do not have the same perception about their race.
- the race of another person (also known as discrimination by association). Examples include treating an employee less favourably because they live with someone of another race or because you dismissed an employee for refusing to comply with instructions that would require them to discriminate against someone because of their race.

Indirect race discrimination

This will occur where you apply a formal or informal provision, criteria or practice equally to all the workers in the workplace, which puts a group of workers who share the same race at a particular disadvantage when compared with other workers and a worker within that disadvantaged group actually suffers the particular disadvantage.

It does not matter whether or not this has been done intentionally.

Harassment

Harassment is unwanted conduct towards a worker by an employer, another worker or a third party (such as customers), because of that worker's actual or perceived race. This applies to any conduct that violates a worker's dignity or creates an intimidating, hostile, humiliating, degrading or offensive environment even if it was not intended as such.

Victimisation

Victimisation happens when a worker is treated less favourably because:

- they have asserted their right not to be discriminated against on the basis of their race by making a complaint about race discrimination
- they gave evidence or information in a complaint of race discrimination
- they take any other action under the EA relating to race discrimination
- they have alleged that you or another worker has contravened race discrimination legislation
- you believe that they have done or may do any of these things

For example, a worker might have grounds for a victimisation claim if they are prevented from going on training courses; subjected to unfair disciplinary action; or excluded from company social events because they took any of the above mentioned action.

Gender discrimination

Introduction

The Employment Equality Acts 1998 – 2015 as amended (EA) provides that you cannot treat a worker less favourably than others because of their gender. It protects workers, employees, partners or office-holders, former employees and job applicants.

Areas of sex discrimination in employment

Gender discrimination in the workplace is unlawful in all aspects of employment, including the recruitment process, status, training, promotion and transfer opportunities, redundancy, dismissal and even post-employment.

In some cases, however, a job can be offered to someone of a particular gender without it amounting to unlawful discrimination, if there is a genuine 'occupational requirement'.

Examples could include:

- some jobs in single-sex schools
- jobs in some welfare services
- acting jobs that need a man or a woman
- where the job needs to be held by a particular gender to preserve a level of decency or privacy, such as where the job will involve some physical contact and people might object to the opposite sex
- where the job might require the employee to live in accommodation provided for by the employer and the only accommodation available is for people of a particular gender
- where the job is to be performed in a country where women are not allowed to perform those duties

Direct discrimination

This is where a worker is treated less favourably because of their sex when compared with another worker (known as a 'comparator') of the opposite sex who shares the same or similar (but not materially different) circumstances as the complaining worker.

The comparator's circumstances do not need to be identical (in terms of the type of job, job level, job experience and seniority, etc.), but must not be wholly dissimilar.

Direct discrimination also extends to protecting a worker if you treat them less favourably based on:

- your perception of their sex, regardless of whether or not the perception is correct.

- the sex of another person (also known as discrimination by association). Examples include treating an employee less favourably because they live with someone of a particular sex, or because you dismissed them after they refused to comply with instructions that would require them to discriminate against someone because of their sex.

Indirect sex discrimination

This will occur where you apply a formal or informal provision, criteria or practice equally to all the workers in the workplace that, because of their sex, puts a group of workers at a particular disadvantage when compared with other workers, and a worker within that disadvantaged group actually suffers the particular disadvantage.

It does not matter whether or not this has been done intentionally.

Harassment

Harassment is unwanted conduct (including conduct of a sexual nature) towards a worker by an employer, another worker or a third party (such as customers), because of that worker's actual or perceived sex. This applies to any conduct that violates a worker's dignity or creates an intimidating, hostile, humiliating, degrading or offensive environment even if it was not intended as such.

Sexual harassment occurs where there has been an act of physical intimacy, a request for sexual favours or any act or conduct that could reasonably be regarded as sexually offensive, humiliating or intimadatory.

Victimisation

Victimisation happens when a worker is treated less favourably because:

- they have asserted their right not to be discriminated against on the basis of their sex by making a complaint about sex discrimination
- they gave evidence or information in a complaint of sex discrimination
- they take any other action under the EA relating to sex discrimination
- they have alleged that you or another worker has contravened sex discrimination legislation
- you believe that they have done or may do any of these things

For example, a worker might have grounds for a victimisation claim if they are prevented from going on training courses; subjected to unfair disciplinary action; or excluded from company social events because they took any of the above mentioned action.

Marital/civil partnership status discrimination

Introduction

The Employment Equality Acts 1998 – 2015 as amended provides that you cannot treat a worker less favourably than others because of their marital/civil partnership status. The Act defines marital status as meaning single, married, separated, divorced or widowed persons. The inclusion of single persons for the first time in the definition of marital status will preclude employers from making certain benefits available to employees because they are married.

Discrimination in the workplace is unlawful in all aspects of employment, including the recruitment process, status, training, promotion and transfer opportunities, redundancy, dismissal and even post-employment.

Direct marital discrimination

This is where you treat a worker less favourably because of their marital status when compared with another worker (known as a 'comparator') who is not married or in a civil partnership and who shares the same or similar (but not materially different) circumstances as the complaining worker.

The comparator's circumstances do not need to be identical (in terms of the type of job, job level, job experience and seniority, etc.), but must not be wholly dissimilar.

For example if a single person, who has the same experience and qualifications as a married worker, is promoted instead of a married worker simply because he/she is single.

Indirect marital discrimination

This will occur where you apply a formal or informal provision, criteria or practice equally to all the workers in the workplace that, because of their marital status, places a group of workers at a particular disadvantage compared to other workers and a worker within that disadvantaged group actually suffers the particular disadvantage.

It does not matter whether or not this has been done intentionally.

Harassment

Harassment is unwanted conduct (including conduct of a sexual nature) towards a worker by an employer, another worker or a third party (such as customers), because of that worker's marital status. This applies to any conduct that violates a worker's dignity or creates an intimidating, hostile, humiliating, degrading or offensive environment even if it was not intended as such.

Victimisation

Victimisation happens when a worker is treated less favourably because:

- they have asserted their right not to be discriminated against on the basis of their marital status by making a complaint about discrimination because of their marital status
- they gave evidence in a complaint of discrimination because of marital status
- they did anything else relating to marital status discrimination
- they have alleged that you or another worker have contravened the provisions regarding marital status discrimination in the Employment Equality Acts 1998 – 2015 as amended
- you believe that they have done or may do any of these things

For example, a worker might have grounds for a victimisation claim if they are prevented from going on training courses; subjected to unfair disciplinary action; or excluded from company social events because they took any of the above mentioned action.

Family status discrimination

Introduction

The Employment Equality Acts 1998 – 2015 as amended provides that you cannot treat workers less favourably because of their family status. Those regarded as having family status are a parent of a person under 18 years or a resident primary carer or a parent of a person with a disability.

Discrimination in the workplace is unlawful in all aspects of employment, including the recruitment process, status, training, promotion and transfer opportunities, redundancy, dismissal and even post-employment.

Direct discrimination

This is where you treat a worker less favourably because of their family status when compared with another worker (known as a 'comparator') who is has no family status and who shares the same or similar (but not materially different) circumstances as the complaining worker.

Indirect discrimination

This will occur where you apply a formal or informal provision, criteria or practice equally to all the workers in the workplace that, because of their family status, puts a group of workers at a particular disadvantage when compared with other workers, and a worker within that disadvantaged group actually suffers the particular disadvantage.

It does not matter whether or not this has been done intentionally.

Harassment

Harassment is unwanted conduct (including conduct of a sexual nature) towards a worker by an employer, another worker or a third party (such as customers), because of the workers family status. This applies to any conduct that violates a worker's dignity or creates an intimidating, hostile, humiliating, degrading or offensive environment even if it was not intended as such.

Victimisation

Victimisation happens when a worker is treated less favourably because:

- they have asserted their right not to be discriminated against because of their family status by making a complaint of discrimination because of their family status
- they gave evidence in a complaint of discrimination because of their family status
- they did anything else relating to family status discrimination

- they have alleged that you or another worker have contravened the provisions regarding discrimination because of
- you believe that they have done or may do any of these things

For example, a worker might have grounds for a victimisation claim if they are prevented from going on training courses; subjected to unfair disciplinary action; or excluded from company social events because they took any of the above mentioned action.

Bullying in the workplace

What is bullying?

Bullying is repeated inappropriate behaviour that undermines your right to dignity at work. An isolated incident is not considered to be bullying, it usually takes place over a period of time. Bullying can be done by one or more people and can be aimed at an individual or a group.

The terms bullying and harassment are different. A behaviour can be considered to be either bullying or harassment but not both.

By law, employers must prevent improper conduct or behaviour, which includes bullying. A summary of your employer's anti-bullying policy should be displayed prominently within the workplace.

Types of bullying

Bullying can be direct or indirect, and can include verbal, physical or cyberbullying. Cyberbullying is bullying that happens online. It can include offensive and abusive messages. It also includes hacking into accounts or spreading rumours online.

Bullying can take many different forms such as:

- Social exclusion and isolation
- Verbal abuse and insults
- Being treated less favourably than colleagues in similar roles
- Belittling a person's opinion
- Spreading malicious rumours, gossip or innuendo
- Intrusion – pestering, spying or stalking
- Intimidation and aggressive interactions
- Excessive monitoring of work
- Withholding information needed for the person to do their job properly
- Repeatedly manipulating a person's job contents and targets
- Blaming a person for things beyond their control
- Use of aggressive or obscene language
- Other menacing behaviour

An isolated incident of the above behaviour is not considered to be bullying.

Bullying can happen at all levels within an organization and can be conducted by customers, clients and business contacts.

Employer's obligations to prevent bullying

Employers have a duty to ensure the health and safety of their employees in the workplace. This is set out in the Safety, Health and Welfare at Work Act 2005 (as amended). Under section 8 of the Act an employer must "prevent any improper conduct or behaviour likely to put the

safety, health and welfare of employees at risk". This includes bullying.

The 'Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work' is effective since 23 December 2020. The code sets out detailed procedure for dealing with formal and informal complaints about bullying.

Employer's responsibilities

Under the Code, an employer must:

- take reasonable steps to prevent bullying in the workplace;
- have an anti-bullying policy for dealing with complaints of bullying;
- develop the anti-bullying policy in consultation with employees;
- prepare a 'Safety Statement' based on an assessment of the risk of bullying.

Employee's responsibilities

Under the Code, an employee must:

- not engage in improper behaviour which would endanger the health, safety and welfare of themselves or other employees;
- comply with relevant anti-bullying policies;
- co-operate with their employer when an allegation of bullying at work is being investigated.

Unfair dismissal

If the bullying becomes unbearable and an employee is forced to leave their job, they may be entitled to claim constructive dismissal under the Unfair Dismissals Acts 1977-2015. This means that although they left their job voluntarily, in reality they were forced to because of the way they were being treated.

Personal injury claim

If the bullying at work is so great that it causes one's physical or psychological health to suffer or be affected, an employee may also be entitled to bring a claim for compensation for personal injury through the Personal Injuries Assessment Board.

Equal opportunity

Introduction

Employers should be committed to equal opportunity for their employees. Discrimination is unlawful and also expensive.

Employer's responsibilities

Employers are responsible for the actions of their employees. Therefore clear policies are required to be implemented. These may include the following:

- not to discriminate unfairly against any person in respect of recruitment, promotion, development or training on the grounds of age, race, sex, marital or civil partner status, disability (physical or mental), religion or belief, sexual orientation, gender reassignment, trade union membership or non-membership or status as a fixed-term or part-time worker
- have policies and procedures to promote equality within the organisation
- have an established disciplinary and grievance procedure to deal with the matters on a fair and consistent basis
- have policies to combat harassment and victimisation
- provide advice and set up guidelines for equal policy implementation Training, promotion and selection must be made on a fair and equal basis based on merit
- make reasonable adjustments for disabled employees according to their needs

Failure to adhere to the equal opportunity policy by the employees or the directors should be treated as misconduct which may lead to a disciplinary action.

Equal pay

Equal pay for equal work is a requirement of EC law and finds its origin in the Treaty of Rome. Equality of payment is also incorporated in the Employment Equality Acts 1998 – 2015 as amended. Although reference is made to women, it applies equally for the benefit of men.

A woman is entitled to be treated no less favourably than a man (a 'comparator') in the same employment, where she is employed on 'like work' with a man. The position is the same where the work is rated as equivalent or the work is of equal value to that of the man in the same employment.

The work does not have to be identical but must be broadly similar, taking into account duties, responsibility and hours. If there are differences, the tribunal should consider whether these are of practicable importance or not.

A job evaluation scheme takes into account the demands on the employee in terms of, for example, effort, skill and decision-making. Once it has been carried out, the tribunal is bound by it, provided it is not discriminatory.

A woman must show that she has reasonable grounds that the work is of equal value. The employer must then put forward their defence. If the defence fails, the tribunal will then commission a report from an independent expert who will evaluate the job, and the tribunal will make a decision based on this evidence.

The Employment Equality Acts 1998 – 2015 as amended now allows a claim go be made even if no real comparator can be found. This means that a women who can provide evidence that she would have been paid more if a man was doing her job, may have a claim, even if there is no-one of the opposite sex in the business doing 'like work'.

What is 'like work'?

The term 'like work' means work that one employee does which is similar in nature to that of another worker. Jobs which are the same or broadly similar should have the same pay, irrespective of whether they are done by a man or by a woman. The breadth of 'like work' means that any differences must be of practical importance. Apparently dissimilar jobs can be seen as like work, e.g. lecturers of different subjects within the same employment. Pay means not just basic pay but also access to overtime, holidays, a company car and all other components of the pay package. Workers on piece rate can often be compared to each other under the category of 'like work'.

How do you find out if there is a problem?

As well as looking at differences between men and women in the same grade, remember to think about other aspects of equality such as race, disability and age.

You can find out if there is a problem in your organisation by looking at the amount you pay to individuals doing the same or similar jobs, to men and women, people from different ethnic groups and those with a disability compared to those without, over the past year. If your records show that there is a tendency for people from one group to be favoured over another, then you need to find out why this is happening.

Here are some examples of how organisations can become vulnerable to like work claims:

- companies have merged but pay rates have not been properly harmonised
- jobs have changed over time but because no job evaluation has taken place, the similarities between jobs has not been recognised
- two similar jobs were originally paid the same, because they were considered to be 'like work', but one of the jobs is now done by a part-time worker who does not have access to the same total pay package as her full time colleague

Enforcement of rights

Introduction

The Workplace Relations Commission (WRC) investigates or mediates claims of unlawful discrimination under equality legislation. An employee can bring a discrimination claim under the Employment Equality Acts 1998–2015 using the WRC's online complaint form.

The Workplace Relations Commission also deals with complaints of discrimination on the grounds of gender under the Pensions Acts 1990–2015 in relation to occupational benefit or pensions schemes.

A complaint must be made within six months of the act complained of. This time limit can be extended by a further six months if there was a reasonable cause for the delay. A complaint will either be handled using mediation or adjudication.

Mediation

Mediation is a voluntary, private and confidential process, unlike adjudication hearings which are usually held in public. Mediation can be carried out by phone, video, or face-to-face meetings. During mediation, a mediator helps you and your employer come to an agreement. At the end of mediation, both sides sign an agreement which is legally binding. This means both sides must keep to the terms of the decision. The agreement is not published.

Adjudication

If mediation is not used or is not successful, the complaint or dispute is referred to an adjudication officer within the Workplace Relations Commission. The adjudication officer will carry out an inquiry, including a hearing, and make a legally binding decision. This hearing is usually held in public, except in exceptional circumstances.

The adjudicator's decisions will include one or more of the following:

a) Compensation
b) An order for equal pay or equal treatment
c) An order that somebody takes a specified action.

Decisions made by an adjudication officer can be appealed, to the Labour Court for employment and pensions cases, and to the Circuit Court for equal status cases. Appeals must be made within 42 days of when the decision was issued.

Removal of contractual term

You cannot insert a term into a contract that furthers or provides for unlawful discrimination, and such a term will be unenforceable against any person.

Grievances

Introduction

Grievances are concerns, problems or complaints that employees raise with their employers.

Employees should aim to settle most grievances informally with their line manager. Many problems can be raised and settled during the course of everyday working relationships. This also allows for problems to be settled quickly.

If it is not possible to resolve a grievance informally, employees should raise the matter formally and, without unreasonable delay, with a manager who is not the subject of the grievance. This should be done in writing and should set out the nature of the grievance.

Where some form of formal action is needed, what action is reasonable or justified will depend on all the circumstances of the particular case, but whenever a grievance process is being followed, it is important to deal with issues fairly. There are a number of elements to this:

- employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions
- employers and employees should act consistently
- employers should carry out any necessary investigations, to establish the facts of the case
- employers should give employees an opportunity to put their case before any decisions are made
- employers should allow employees to be accompanied at any formal grievance meeting
- employers should allow an employee to appeal against any formal decision made

If an employee feels that the issue has not been resolved using informal methods, they may use your grievance procedure if they wish.

Third-party conciliation/mediation

If you cannot resolve the issue internally, you could try using an external third-party mediator or conciliator.

The arbitration scheme

Arbitration may offer to resolve the dispute through its arbitration scheme. Participation in the scheme is entirely voluntary but if both parties agree to arbitration, the decision of the arbitrator is binding.

Remedies and compensation

An employment arbitration can order you to:

- pay an award to the employee
- reconsider an application by following the procedure correctly

Informal resolution

In organisations where managers have an open policy for communication and consultation, problems and concerns are often raised and settled as a matter of course.

Employees should aim to settle most grievances informally with their line manager. Many problems can be raised and settled during the course of everyday working relationships. This also allows for problems to be settled quickly.

In some cases outside help such as an independent mediator can help resolve problems especially those involving working relationships.

Issues that may cause grievances

Anyone working in a business may, at some time, have problems or concerns about their work, working conditions or relationships with colleagues that they wish to talk about with management. They want the grievance to be addressed, and if possible, resolved. It is also clearly in management's interests to resolve problems before they can develop into major difficulties for all concerned. Issues that may cause grievances include:

- terms and conditions of employment
- health and safety
- work relations
- bullying and harassment
- new working practices
- working environment
- organisational change
- discrimination

Grievances may occur at all levels of seniority within a business.

Grievance procedures

Why have a procedure?

Fairness and transparency are promoted by developing and using rules and procedures for handling grievance situations. These should be set down in writing, be specific and clear.

Employees and, where appropriate, their representatives should be involved in the development of rules and procedures, so that they can be confident that the procedure will operate in a way that they accept is fair and which they understand.

A written procedure can help clarify the process and help to ensure that employees are aware of their rights such as to be accompanied at grievance meetings.

Training

Management and employee representatives who may be involved in grievance matters should be trained for the task. They should be familiar with the provisions of the grievance procedure, and know how to conduct or represent at grievance hearings. Consideration might be given to training managers and employee representatives jointly.

Which grievance procedure must I follow?

A grievance procedure should be included where possible in the contract of employment or in a separate policy referred to in the contract. It is important as it allows employees a means to resolve matters of concern in relation to their employment.

The Workplace Relations Commission 'Code of Practice on Grievance and Disciplinary Procedures' can be used or as a guideline to employers. The Code is often taken into account by courts or tribunals. See the following chapter for more information.

Creating a grievance procedure

An employer must draw up a written grievance procedure and provide a copy of it to its employees. Where appropriate, management, employees and their representatives should be involved in drawing up the procedure. Management and supervisors should be aware of the contents of the grievance procedure.

Code of Practice on Grievance and Disciplinary Procedures

The essential elements of any procedure for dealing with grievance and disciplinary issues are that they be rational and fair, that the basis for disciplinary action is clear, that the range of penalties that can be imposed is well defined and that an internal appeal mechanism is available.

Procedures should be reviewed and up-dated periodically so that they are consistent with changed circumstances in the workplace, developments in employment legislation and case law, and good practice generally.

Good practice entails a number of stages in discipline and grievance handling. These include raising the issue with the immediate manager in the first instance. If not resolved, matters are then progressed through a number of steps involving more senior management, HR/IR staff, employee representation, as appropriate, and referral to a third party, either internal or external, in accordance with any locally agreed arrangements.

For the purposes of this Code of Practice, "employee representative" includes a colleague of the employee's choice and a registered trade union but not any other person or body unconnected with the enterprise.

The basis of the representation of employees in matters affecting their rights has been addressed in legislation, including the Protection of Employment Act 1977; the European Communities (Safeguarding of Employees Rights on Transfer of Undertakings) Regulations, 1980; Safety, Health and Welfare at Work Act 1989; Transnational Information and Consultation of Employees Act 1996; and the Organisation of Working Time Act 1997. Together with the case law derived from the legislation governing unfair dismissals and other aspects of employment protection, this corpus of law sets out the proper standards to be applied to the handling of grievances, discipline and matters detrimental to the rights of individual employees.

The procedures for dealing with such issues, reflecting the varying circumstances of enterprises/organisations, must comply with the general principles of natural justice and fair procedures which include:

- That employee grievances are fairly examined and processed
- That details of any allegations or complaints are put to the employee concerned
- That the employee concerned is given the opportunity to respond fully to any such allegations or complaints
- That the employee concerned is given the opportunity to avail of the right to be represented during the procedure
- That the employee concerned has the right to a fair and impartial determination of the issues concerned, taking into account any representations made by, or on behalf of, the employee and any other relevant or appropriate evidence, factors, circumstances.

These principles may require that the allegations or complaints be set out in writing, that the source of the allegations or complaint be given or that the employee concerned be allowed to

confront or question witnesses.

As a general rule, an attempt should be made to resolve grievance and disciplinary issues between the employee concerned and his or her immediate manager or supervisor. This could be done on an informal or private basis.

The consequences of a departure from the rules and employment requirements of the enterprise/organisation should be clearly set out in procedures, particularly in respect of breaches of discipline which if proved would warrant suspension or dismissal.

Disciplinary action may include:

1. An oral warning
2. A written warning
3. A final written warning
4. Suspension without pay
5. Transfer to another task, or section of the enterprise
6. Demotion
7. Some other appropriate disciplinary action short of dismissal
8. Dismissal

Generally, the steps in the procedure will be progressive, for example, an oral warning, a written warning, a final written warning, and dismissal. However, there may be instances where more serious action, including dismissal, is warranted at an earlier stage. In such instances the procedures set out at paragraph 6 hereof should be complied with.

An employee may be suspended on full pay pending the outcome of an investigation into an alleged breach of discipline.

Procedures should set out clearly the different levels in the enterprise or organisation at which the various stages of the procedures will be applied.

Warnings should be removed from an employee's record after a specified period and the employee advised accordingly. The operation of a good grievance and disciplinary procedure requires the maintenance of adequate records. As already stated, it also requires that all members of management, including supervisory personnel and all employees and their representatives be familiar with and adhere to their terms.

Steps of a grievance process

The following is an outline of the steps involved in a typical employee grievance process.

Preparing for the meeting

Managers should:

- arrange a meeting without unreasonable delay, ideally within five working days after details of a grievance are received, in private where there will not be any interruptions
- consider arranging for someone who is not involved in the case to take a note of the meeting and to act as a witness to what was said
- find out before the meeting whether similar grievances have been raised before, how they have been resolved, and any follow-up action that has been necessary
- consider arranging for an interpreter where the employee has difficulty speaking English
- consider whether any reasonable adjustments are necessary for a person who is disabled and/or their companion
- consider whether to offer independent mediation

Holding a meeting

A meeting should be held with the employee to discuss their grievance. You should arrange for a formal meeting to be held without unreasonable delay after a grievance is received. Employees have a statutory right to be accompanied at the meeting by a trade union representative or colleague. All parties should make reasonable efforts to attend the meeting.

Employees should be allowed to explain their grievance and how they think it should be resolved. Consideration should be given to adjourning the meeting for any further investigation that may be necessary.

Communicating your decision

Following the meeting, you should decide on what action, if any, to take. The decision, and a full explanation of how you reached it, should be communicated to the employee in writing, without unreasonable delay. Where appropriate, the decision should set out what action you intend to take to resolve the grievance.

The employee should be informed that they can appeal if they feel that their grievance has not been satisfactorily resolved.

Permitting an appeal

If the employee feels that their grievance has not been satisfactorily resolved, they should have the opportunity to appeal.

An appeal should be made without unreasonable delay, advising you in writing of the grounds on which it is being made. You should hear the appeal without unreasonable delay and at a time and place which should be communicated to the employee in advance.

The appeal should be dealt with impartially and wherever possible by a manager who has not previously been involved in the case. Again, employees have a statutory right to be accompanied at an appeal hearing by a trade union representative or a colleague.

The outcome of the appeal should be communicated to the employee in writing without unreasonable delay.

Where an employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. There may be situations where you may find it more convenient to deal with both issues concurrently.

The code of practice does not apply to grievances raised on behalf of two or more employees by a trade unions representative.

Records

Written records should be kept including:

- a copy of the written grievance
- the employer's response
- action(s) taken
- the reasons for action(s) taken
- whether an appeal was lodged
- the outcome of any appeal

Records should be treated as confidential and kept in accordance with the Data Protection Acts, which gives individuals the right to request and have access to certain personal data. Relevant records should be given to the employee including any formal minutes that may have been taken. In certain circumstances, for example to protect a witness, the employer might withhold some information.

Sanction for failing to comply with the code of practice

If you fail to complete your side of the standard procedure, and the employee subsequently brings a claim before the employment appeals tribunal and is successful, the tribunal can consider this in any award made in a tribunal case.

Mediation

In appropriate cases, you may want to consider using mediation to resolve a grievance.

An independent third party or mediator can sometimes help resolve grievance issues. Mediation is a voluntary process where the mediator helps two or more people in dispute to attempt to reach an agreement. Any agreement comes from those in dispute, not from the mediator. The mediator is not there to judge, to say one person is right and the other wrong, or to tell those involved in the mediation what they should do. The mediator is in charge of the process of seeking to resolve the problem but not the outcome.

Mediators may be employees trained and accredited by an external mediation service who act as internal mediators in addition to their day jobs. Or they may be from an external mediation provider. They can work individually or in pairs as co-mediators.

There are no hard-and-fast rules for when mediation is appropriate but it can be used:

- for conflict involving colleagues of a similar job or grade, or between a line manager and their staff
- at any stage in the conflict as long as any ongoing formal procedures are suspended, or where mediation is included as a stage in the procedures themselves
- to rebuild relationships after a formal dispute has been resolved
- to address a range of issues, including relationship breakdown, personality clashes, communication problems, bullying and harassment

In some businesses mediation is written into formal grievance procedures as an optional stage. Where this is not the case, it is useful to be clear about whether the grievance procedure can be suspended if mediation is deemed to be an appropriate method of resolving the dispute.

Mediation may not be suitable if:

- used as a first resort – because people should be encouraged to speak to each other and talk to their manager before they seek a solution via mediation
- it is used by a manager to avoid their managerial responsibilities
- the parties do not have the power to settle the issue
- one side is completely intransigent and using mediation will only raise unrealistic expectations of a positive outcome

Contractual procedures

If you have a contractual procedure that provides rights above and beyond the statutory procedure or a fair and reasonable procedure, you must follow it in its entirety. Where your

employees are entitled to a contractual grievance procedure, if you fail to follow it correctly you may be liable for breach of contract.

Where no such contractual procedures exist, you must follow the statutory disciplinary and dismissal procedure or a fair and reasonable procedure.

Sickness absence

When dealing with the issue of absence due to sickness and ill-health, it is very important that employers have clear rules in place. Under the Terms of Employment (Information) Act 1994 an employer must provide an employee with a written statement of terms of employment within two months of the commencement of employment. One of these terms is the terms and conditions relating to absence for work due to sickness.

Sick pay

On 20nd July 2022 the Sick Leave Act 2022 became law with the entitlement to sick pay starting on 1st January 2023. As of this date employees have a right to:

1. Paid sick leave for up to three sick days per year. This increases to five days in 2024, 7 days in 2025 and ten days in 2026.
2. A rate of payment for statutory sick leave of 70% of normal wages to be paid by employers (up to a maximum €110 per day).

To be entitled to paid sick leave under this scheme an employee must be working for an employer for at least 13 weeks. They will also need to be certified by a GP as unfit to work.

An employee can also apply for Illness Benefit (see below) while also getting sick pay. But if the employer already provides sick pay they can ask the employee to sign over any Illness Payment to them for as long as the sick pay continues.

Notification

It should be clear from the terms of your contract that if you are sick and unavailable for work, you must contact a specified person by a specified time. You should give brief details of your illness or injury and indicate the probable duration of your absence from work.

Providing a medical certificate

When an employee has been absent from work they can be required to provide a medical certificate from their GP. The medical certificate should state the reason why they cannot attend work and also include the date when they are likely to return to work.

Illness Benefit

An employee may be entitled to an illness benefit from the Department of Social Protection if they cannot work because they are sick or ill. The employee must be aged under 66 and be covered by social insurance (PRSI).

Accident or injury at work

If you have an accident at work and you are not entitled to sick pay, you can apply for Injury Benefit. This is a weekly payment from the Department of Social Protection which you may be entitled to if you suffered an accident at work.

If you are entitled to sick pay, you will probably be required to sign over any injury benefit payment from the Department of Social Protection to your employer for as long as the sick pay continues.

Self-certification

The Labour Court has made recommendations in relation to sick pay arrangements in the public service. In relation to self-certified (or uncertified) sick leave, the Labour Court recommended that “seven days self-certified paid sick leave be granted over a rolling two year period”.

Sickness and annual holiday leave

If you are ill during your annual leave and have a medical certificate for the days you were ill, these sick leave days will not be counted as annual leave days. Instead you can use these days as annual leave at a later date.

The Organisation of Working Time Act states that an employee’s entitlement to annual leave is based on the number of hours worked. Therefore, illness during the leave year will reduce the number of hours worked and may affect your entitlement to annual leave.

Appeals

To appeal against any decision of the company to withhold sick pay, or to take disciplinary action under these rules, you should raise the matter under the company's grievance procedure.

Illness Benefit

Illness Benefit

An employee may be entitled to an Illness Benefit from the Department of Social Protection if they cannot work because they are sick or ill. The employee must be aged under 66 and be covered by social insurance (PRSI).

Excluded employees

An employee in any of the following categories has no Illness Benefit entitlement:

- employees who are sick for less than six days in a row
- people you pay who are non-employees, e.g. freelancers and contractors

The decision to pay

All decisions of payment are for the Department of Social Protection to consider.

Applying for Illness Benefit

Employees must complete an application form for illness benefit within seven days of becoming ill. No illness benefit payment will be made for the first six days of illness. You can get a first social welfare medical certificate (known as MC1), which includes an application form for Illness Benefit, from your GP or hospital doctor. The reason you can only get this form from a doctor is because a doctor must complete the medical certificate part of the form.

You must see your doctor and send in an intermediate medical certificate (known as MC 2) each week for as long as you are ill, unless you are told otherwise.

You must get a final medical certificate from your doctor before you go back to work.

PRSI Contributions

1. you must have at least 104 weeks PRSI contributions paid since you first started work

   and *either* 2(a) or 2(b)

2. (a) 39 weeks of PRSI contributions paid or credited in the relevant tax year, of which 13 must be **paid contributions**. If you do not have 13 paid contributions in the relevant tax year, then 13 paid contributions in *one* of the following tax years can be used instead:
   - Either of the two tax years before the relevant tax year
   - The last complete tax year (before the year in which your claim for Illness Benefit begins)

- The current tax year

  or

  (b) 26 weeks of PRSI contributions paid in the relevant tax year, **and** 26 weeks of PRSI contributions paid in the tax year immediately before the relevant tax year.