

**EMPLOYMENT LAW UPDATE FOR CHARITIES SEMINAR
JULY 2007**

**EMPLOYMENT EQUALITY (RELIGION OR BELIEF) REGULATIONS 2003
QUESTIONS AND ANSWERS**

Q1 What religions and beliefs are covered by the Regulations?

A1 The Regulations do not clearly define what may be a religion or belief. In most cases it will be clear whether the Regulations apply and where it is an issue an Employment Tribunal will have to consider matters such as collective worship, clear belief system affecting the way of life or view of the world. The Regulations extend beyond the main or more recognisable religions such as Christianity, Muslim and Hindu (which between them represent over 75% of the population according to the 2001 UK Census) and will include Paganism and Humanism. Atheism, having no religion, is also protected under the Regulations. Since the Regulations were first introduced, there has been a change in the definitions.

Under the Regulations the definition of "religion or belief" was "any religion, religious belief or similar philosophical belief". Part 2 of the Equality Act 2006, Discrimination on the Grounds of Religion or Belief, came into force on 30 April 2007. This changed the definition to "any religion or religious or philosophical belief". This is likely to open up the debate again as to what is or is not included within this definition.

Q2 What is direct discrimination?

A2 Treating someone less favourably because they follow a particular religion or belief, for example refusing to employ or dismissing someone because of their religion.

Q3 What is indirect discrimination?

A3 Applying a provision, criterion or practice which although applied equally to everyone, disadvantages those of a particular religion or belief such as a rule against wearing headwear which will disadvantage Sikh staff who wear turbans for religious reasons.

Q4 What is harassment?

A4 Offensive behaviour, such as bullying, which can be unintentional or subtle such as teasing an individual about aspects of his partner's religion or belief. It can include one member of staff ridiculing another because of their non-belief.

Q5 What is victimisation?

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A5 Detrimental treatment (e.g. dismissal or bullying) because someone has made a complaint under or done something in connection with the Regulations, such as acting as a witness for someone who claims they have been discriminated against or harassed, or making a discrimination claim.

Q6 Do we have to collect data on our staff's religion or belief?

A6 This is not a specific requirement under the Regulations but it may help you to understand individual needs based on their religion or belief. Consultation with staff can achieve the same ends.

Q7 We only employ five staff so do the Regulations apply to us?

A7 There is no 'small employer' exception. The Regulations apply to all employers, including those in the public and private sector, including charities, partnerships and sole traders. The Regulations also apply to those applying for work, as well as those in work, and will protect ex-employees, for example where you give (or refuse) a reference.

Q8 We don't employ anyone who is religious, so we don't have to do anything about the Regulations.

A8 Unless you are collecting data about your staff's religion or beliefs you cannot be certain. It is often down to the individual how they manifest or display the extent of their religion or belief. The Regulations will also protect those who have no religion or belief so may still apply.

The Regulations also apply to job applicants as well as employees and you can discriminate in the selection and recruitment process.

Q9 Do we have to provide a prayer room or release staff for prayer or religious festivals?

A9 This is not a specific requirement under the Regulations. Your obligations include considering whether you can assist staff who ask for time off for religious observance, including if requested whether there is available space which could be set aside, without any adverse impact on your business or other staff. Staff can ask to take holiday and other work rest breaks (under the Working Time Regulations 1998) at times that may assist and the key for employers is to be flexible and fair.

Q10 I run a restaurant and Christmas is one of our busiest times of year. My new chef has just told me that he wants to spend Christmas with his family.

A10 In the UK, Christmas day is a public holiday, not a religious holiday and there is no automatic right to time off. Also spending time with your family is not a matter of religious observance, but simple preference. It would be a different matter if your chef claimed to be a Christian who wished to attend a Christmas

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Day Church Service, but even here there is an issue of whether he could attend an out of work hours service and ultimately what the effect on your business would be. Remember that automatically letting staff off to go to Church on Christmas may adversely affect, i.e. be a detriment (discrimination) to other staff who have a different religion or no religion. The key is to discuss the matter sufficiently in advance and seek to reach agreement on who has time off and when.

Q11 We comply with the Regulations. We have an Equal Opportunities Policy which we tell everyone about when they apply for work.

A11 Simply having an Equal Opportunities Policy doesn't mean that you are complying with Regulations, and simply telling staff about it when they apply for work, doesn't mean to say that it is being followed. As an employer it is important that you regularly remind staff about what policies you have and what they mean. Your managers should be able to spot problems as they arise so that they can act promptly to prevent matters escalating. This includes, but is not just limited to being able to respond when a complaint is made.

It is important for all employers to remember that many complaints of discrimination, including harassment, arise through the actions of work colleagues. As employer you may be liable for those actions unless you can demonstrate that you took all reasonably practicable steps to prevent it happening. Having a policy isn't enough to protect you from liability.

Q12 Staff do enjoy a good banter and will often make fun of each other. It's harmless.

A12 Do not make assumptions. Individuals may feel that they cannot complain and it remains the case that many acts of harassment go unreported. As an employer you should ensure that staff are aware of your Equal Opportunities Policy, can raise in confidence any concerns that they may have over what is being said and that you act to stop what may be harmless banter becoming a subtle form of bullying.

Q13 We are a Christian employer and wish to promote our Christian ethos.

A13 By openly promoting a Christian ethos you may be discriminating against potential applicants for employment, for example by giving the impression that if they do not share your views then they would not be welcome. Only where there is a Genuine Occupational Requirement can staff be positively recruited on the basis of their religion or belief, but this is a narrow exception to what would otherwise be discrimination and requires a careful consideration of the job to determine whether the job holder needs to practice a particular religion. For example a faith school may seek a headmaster who practices the particular faith. Other teachers could be sympathetic to the particular ethos and values of the school without belonging to the particular religion. It is unlikely that support

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(non-teaching) staff would satisfy the Genuine Occupational Requirement exception.

Q14 We have a particular religious ethos and some of our staff may refuse to work with gay or lesbian colleagues.

A14 Some religions have views opposed to gay and lesbians but in the main such religions do not promote persecution. Such conduct may amount to discrimination, for example under the Employment Equality (Sexual Orientation) Regulations 2003, and as employer you may be held liable for such discrimination. One employee's rights under the Employment Equality (Religion or Belief) Regulations does not condone what is otherwise discriminatory conduct towards another employee. Staff do not need to be friends but can be asked to work in a professional manner.

Q15 We have had two applicants, A and B, both are similarly qualified, although B has more experience but B has stated he is a Muslim and must pray five times a day. We do not think he will fit in, so have decided not to offer him the job.

A15 A decision not to offer employment based on the applicant's religion or belief is likely to be direct discrimination, unless there is a Genuine Occupational Requirement. B would appear to be the person best suited to the role.

Q16 A former employee has asked me for a reference. Can I mention he never fitted in here because he wouldn't socialise with his colleagues?

A16 No. References are a complex area, but where you give a reference you have a responsibility to be true and fair. It may be true to say that he didn't socialise, but is that relevant to the job he did, or the role he is applying for?

A great deal of work related socialising focuses on the pub, including after work on a Friday. This can be difficult for many individuals because of their religion or belief, for example Muslims who seek to avoid alcohol or Muslims or Jews who may need to be at prayer. If this is the case and an employee is disadvantaged, for example they are not getting promotion or training opportunities as they are not seen to fit in to the work culture, then you are at risk of a discrimination claim.

Q17 My charity only provides advice and facilities for Sunni Muslims? Do I need to change?

A17 The Regulations will not interfere with current charity law. If a charity is required to discriminate in line with the explicit terms of the charitable instrument under which it is established, it may continue to do so. Otherwise, it must not discriminate on grounds of sexual orientation. Faith based voluntary organisations or charities will not have to comply with the Regulations where this would conflict with either the doctrine of their organisations or the strongly-

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held beliefs of a significant number of the religion's followers - provided they are not operating on either a commercial basis, or on behalf of and under contract with a public authority.

Q18 We are a Roman Catholic charity with a bookshop. Can we stock the same books we always have?

A18 The Regulations will have no effect on freedom of speech. Therefore, it will not prohibit bookshops from stocking religious or other texts that make statements about homosexuality, for example.

Q19 We are a Church of England diocese. Can we discriminate when letting premises owned by the charity?

A19 As religious organisations, churches could qualify for the religious organisation exemption and, therefore, continue to restrict to whom they hire their premises to - provided they can demonstrate that this restriction is necessary to comply with doctrinal belief or avoid conflicting with the strongly-held belief of a significant number of the religion's followers.

Q20 We are a small charity organising an event in our area in partnership with other voluntary organisations. Our role is to promote and publicise the event. We have printed a poster which another organisation paid for and provided some of the content for. It states that the "event" is not open to any persons of "Muslim faith". The other charity, which is largely Hindu, says its okay. Are we right to be concerned?

A20 Yes, you are right to be concerned where it is a joint publication. If you were simply publishing something given to you - like a newspaper printing an advert - then the newspaper may be able to claim lack of liability if able to prove that it relied on a statement by a person placing the advertisement that it is not discriminatory. But it is a criminal offence for a person knowingly or recklessly to make a false statement to that effect.

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