

The Religion or Belief Regulations: An Introduction and Update

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What is a religion?

Framework Directive discrim in emp & occupation: SO, r&b, disability, age.

Religion often related to “race”.

- **The Equality Act 2006 contains definitions of religion and belief**
- **In order to be protected under the Equality Act 2006, a religion or belief must be recognised as being cogent, serious, cohesive and compatible with human dignity.**
- *"Religion" "means any religion and a reference to religion includes a reference to a lack of religion" and "belief" "means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief".*

Religion

- The concept includes religions that are widely recognised in Britain (although it isn't limited only to these), such as:
- Baha'i faith Buddhism Christianity
- Hinduism Islam Jainism
- Judaism Rastafarianism
- Sikhism Zoroastrianism

Denominations or sects in a religion are also religions, eg Catholics or Protestants in Christianity.

What is a belief?

- **For the purposes of the Equality Act 2006, belief is defined as including philosophical beliefs, such as humanism, which are considered to be similar to a religion.**
- **Other categories of beliefs, such as support for a political party, are not protected by the Equality Act.** The Bill includes a list of belief systems that will not be protected including Communism, Darwinism, Fascism and Socialism. Explanatory Notes indicate that *"political beliefs and beliefs in scientific theories are not religious or philosophical beliefs for these purposes"*.
- Regardless of the explanatory notes, the courts will ultimately be responsible for interpreting the meaning of religion or belief.

Employment Equality Regulations (Religion or Belief) Regulations 2003

- The Regulations makes it unlawful for an employer to discriminate against a person because of their religion or certain beliefs.

What the regulations say:

- These Regulations apply to employment including
 - Recruitment
 - terms & conditions
 - promotions
 - dismissals
 - training
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Example of direct discrimination

The first is that a person's religion (or lack of it) is often not apparent; unlike sex or race, it will generally not be immediately identifiable. Sometimes it is, of course; it will be reasonably obvious that certain persons are, for example, Sikhs or Jews because of the headgear they wear, although even then it may be their racial or ethnic groups rather than their religious convictions that will be apparent.

EG

- **At interview it becomes apparent that a job applicant is Hindu. Although the applicant has all the skills and competences required of the job, the organisation decides not to offer him the job because he is a Hindu.**

Example of indirect discrimination

- **PCP militating against group, disadvantage to individual. Justifiability test**
- the manifestation of belief, in rituals and practices, wearing religious jewellery or symbols and rules which impact on those = indirect discrim.
- **a specific head gear policy for all employees could be discriminatory for example against practising/religious observant Sikhs.**

Azmi v Kirklees Metropolitan Borough Council [2007] IRLR 484 (EOR 164). the Muslim woman who insisted on wearing the veil when teaching children in the presence of male colleagues. The college thought that it interfered with effective communication with the children, to conceal the face and mouth, and that this had to override her religious beliefs. the rule had a disparate impact on female Muslims since many of them habitually wear the veil. However, it was in the circumstances considered to be a justified and proportionate response. The EAT held that there was no error of law.

Indirect cont

Most employers are aware that discrimination on grounds of religion is against the law – but they need also to consider indirect discrimination. For example, always scheduling important meetings for dusk when Muslims are due to break their fast could fall into this category

Employers do not have to allow time off / changes to the usual routine if adversely affects business. However good practice to do so where poss. Accommodating religious practices does not mean allowing extra time off, but rather being flexible about employees' existing holiday entitlement or break periods.

Justifying indirect discrimination

- In some circumstances, indirect discrimination on grounds of religion or belief may be justifiable. But only if it is considered to be a proportionate means of achieving a legitimate aim.

These types of legally acceptable justifications apply only to indirect religious discrimination, and not to direct religious discrimination.

Example of harassment

- A Jehovah's witness is made fun of at work or in a work-related setting because of their religion or belief.
- ***Bhatti and Dar v Pontiac Coils Europe Ltd* Use of 'industrial language' does not excuse offensive comments**
- "I find it unacceptable that your religion is affecting your work."
- "Don't you go getting any ideas about wearing a headdress in my factory."
- Mr White had made suggesting that Mr Dar should join the Taliban amounted to discrimination and harassment on grounds of religion and race. The tribunal stated that "The context was a joke, albeit one in poor taste", but went on to say: "A reference, however, to a British Asian Muslim joining the Taliban at a time of heightened tension between this country and that group could, in our judgment, be nothing else than harassment on grounds of race and, indeed, religious belief."

Example of victimisation

- treating someone less favourably because they have made a complaint under Part 2

or

- because they have supported someone else making a complaint (such as giving evidence or information), or because they intend to do so.

Equality Act 2006

makes it unlawful to discriminate on grounds of religion or belief

- in the provision of goods, facilities and services
- in the disposal and management of premises
- in education
- in the exercise of public functions

Unlawful Discrimination:

- **against a person because of their religion or belief**
- **against a person because of a perceived religion or belief**
- **against someone because of someone else's belief**
- **against someone because they have the same religion or belief**

frequently clash of conflicting rights. Conflicts contentious, not least because there is no accepted priority of rights



When does the law allow religious discrimination?

- In most circumstances, it is unlawful to discriminate against you on the grounds of your religion or belief, but there are some limited exceptions where discrimination may be lawful.
- Regulations do provide, within very narrow limits, for religious concerns to trump other human rights.

A genuine occupational requirement

- **In very limited circumstances, an employer can claim that a certain religion or belief is necessary for a role. In other words, the religion or belief is considered to be a genuine occupational requirement.**
- **Euro C reasoned opinion under Framework Directive: exceptions to the principle of non-discrimination on the basis of sexual orientation for religious employers are too broad. Religious employers are likely to lose the opt-out that enables them to refuse to employ homosexual employees, as the European Commission is putting pressure on the government to reverse exemption clauses in Employment Regulations.**

Positive action

- refers to legal measures to counteract the effects of past discrimination and to help abolish stereotyping.
- can be taken to encourage people of a particular religion or belief to take advantage of opportunities for training or work experience schemes
- encourage them to apply for particular employment.