



The Business Case

There is a sound business case for adopting good practice measures in order to ensure that job applicants and employees are not discriminated against on grounds of sexual orientation, or indeed, on any of the grounds protected under the equality legislation.

By adopting an inclusive approach in relation to their recruitment and selection practices and procedures, employers widen their recruitment base and thereby attract a wider range of applicants. In addition, an employer that is, and is seen to be, proactive in promoting equality of opportunity is likely to enhance its image in the eyes of its employees, clients, customers and job applicants. This in turn could result in business benefits such as reduced staff turnover and more individuals seeking employment in the organisation.

In contrast, a failure to promote equality of opportunity can have serious repercussions both for employers and employees. Unfair treatment and harassment in the workplace can cause staff to resign or take sick leave due to anxiety and stress. In addition to the effect that this can have on individual employees, it can also impact on staff productivity and morale.

Discriminatory practices can have cost implications in terms of staff time and, if brought to a tribunal, the cost of defending the case and possibly paying compensation. In addition, if staff leave or are on sick leave, there can be cost implications in terms of recruiting or training new staff or as a result of lower productivity levels.

Good Practice Measures

The Regulations make it clear that employers have specific duties and responsibilities in relation to the way in which members of the gay, lesbian, bisexual and heterosexual communities are treated in the workplace.

The sections below outline good practice recommendations for employers in the following areas:

- **Equality policies, practices and procedures**
- **Recruitment and selection**
- **Harassment**
- **Monitoring**
- **Confidentiality**
- **Positive action**
- **Other employment policies.**

It is important to stress at the outset that adopting best practice measures is not simply about avoiding discrimination. The best practice measures outlined below are designed to help employers adopt a proactive rather than a reactive approach to promoting equality of opportunity in the workplace. The practical guidance aims to help employers recognise and promote diversity and to integrate equality into all of their working policies and practices.

Implement an equal opportunities policy

- Develop and implement a clear, comprehensive, effective and accessible equal opportunities policy which specifically covers the area of sexual orientation, or
- Check that their existing policy covers the ground of sexual orientation.
- The policy should
 - set out the employer's commitment to the promotion of equality of opportunity in the workplace;
 - make it clear to employees that discrimination on grounds of sexual orientation is unlawful and will not be tolerated in the workplace.

Recruitment and Selection

Employers that already ensure that recruitment is carried out in a systematic and objective manner and use sound selection and promotion arrangements are likely to have to implement few changes as a result of the Regulations. However, as outlined in the good practice recommendations below, there are certain recruitment and selection issues which arise in relation to the area of sexual orientation.

Employers must now ensure that employees do not treat job applicants less favourably because of their actual or perceived sexual orientation. They must also ensure that criteria, practices or procedures used during the recruitment and selection process do not without justification place individuals of a certain sexual orientation at a particular disadvantage. The Regulations apply both to promotions within an organisation as well as external recruitment exercises.

Remember that employers can treat job applicants differently on grounds of sexual orientation if possessing a particular sexual orientation is a genuine occupational requirement for that post.

It is recommended that employers should:

Advertising

- Advertise all vacancies widely.
- Ensure that advertisements are not placed in publications or other announcements which people of a particular sexual orientation are less likely to have access to.
- Subject to the general occupational requirement (GOR) exception, advertisements should not expressly or implicitly indicate that the post is more suitable for people of a particular sexual orientation.

- Before intending to rely on the GOR exception, employers should closely examine the duties of the job and consider questions such as:
 - What proportion of the duties must be carried out by persons of a particular sexual orientation?
 - Are these duties necessary for meeting the objectives of the job?
 - Is it necessary or merely preferable that they be performed by someone of a particular sexual orientation?
 - Are there sufficient numbers of other employees who are capable of undertaking these duties?

Further information on the GOR exception is provided in Part 1.

- Use, when appropriate, the lawful positive action measures designed to encourage people of a particular sexual orientation to apply for particular work.
- Make their commitment to equality of opportunity known to all job applicants.
- Check that adverts or information to applicants includes an equal opportunities statement which refers to sexual orientation.

Selection

- Instruct selection panel members that they should not ask questions about a candidate's marital status or other personal circumstances, as this may be perceived to be intrusive and imply potential discrimination.
- Instruct selection panel members not to make stereotypical assumptions in relation to an applicant's actual or perceived sexual orientation. Assumptions or decisions should not be made about whether or not an applicant will "fit into" the existing workplace environment.

Application Forms

- Ensure that application forms only contain questions which are relevant and job related. Do not include irrelevant questions about an applicant's marital status, spouse/partner or other personal circumstances. Such questions can be considered intrusive.
- Be careful not to unlawfully take into account information on an application form which indicates that an applicant has previously worked for or assisted an organisation associated with gay, lesbian or bisexual rights.
- Exercise caution when taking into account information provided in an application form in relation to an applicant's criminal record. Laws relating to gay men have changed significantly over time. It is possible that applicants may have acquired a criminal conviction many years previously in relation to a matter no longer considered unlawful. The criminal conviction may not be relevant in relation to the job or training advertised.

References

- Make managers, supervisors or others who supply references, aware that all informal or formal references supplied should be fair and nondiscriminatory. Managers and supervisors should ensure that their references are not influenced by personal prejudices relating to an individual's actual or perceived sexual orientation.