

## Camden Lesbian, Gay, Bisexual and Transgender Forum

### Guidance on Employment Equality (Sexual Orientation) Regulations 2003

The Employment Equality (Sexual Orientation) Regulations 2003 outlaw discrimination and harassment in employment and vocational training on the grounds of sexual orientation. They apply in England, Scotland and Wales.

The Sexual Orientation Regulations give rights to employees to protect them from prejudice, harassment and discrimination in the workplace on the grounds of sexual orientation. These rights came into force on the 1<sup>st</sup> December 2003.

The Regulations makes unlawful:

**Direct discrimination** – treating people less favourably than others because of their sexual orientation.

**Indirect discrimination** – applying a provision, criterion or practice that disadvantages people of a particular sexual orientation which is not justified as a proportionate means of achieving a legitimate aim.

**Harassment** – unwanted conduct that violates people’s dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment.

**Victimisation** – treating people less favourably because of an action they have taken in connection with or under the Regulations e.g. made a formal complaint or given evidence to a tribunal.

#### **The Regulations mean that:**

Employers cannot refuse to employ someone or decide to dismiss someone because they are lesbian, gay or bisexual.

Employers cannot refuse access to training or promotion on the basis of sexual orientation.

Employers must act to protect employees against bullying or harassment suffered in the workplace because of their sexuality. In this case, the perceptions of the person suffering the harassment are of the essence.

Employers cannot deny workers benefits (facilities and services) that they offer to other employees – e.g. insurance schemes, travel benefits, leave arrangements to offer to care for partners/dependants, social events on the basis of sexual orientation. Unfortunately this does not extend to pension rights (see below)

Employers cannot give an unfair reference on leaving because of the leaver being lesbian, gay or bisexual.

The Regulations also apply to trade associations, employment agencies, providers of vocational training and further/higher education institutions.

**The Regulations cover discrimination and harassment:**

On the grounds of orientation towards people of the same sex (lesbians and gay men).

On the grounds of orientation towards people of the opposite sex (heterosexuals).

On the grounds of orientation towards people of the same and opposite sex (bisexuals).

On the grounds of perceived orientation – where an assumption is made, rightly or wrongly, that someone is lesbian, gay, bisexual or heterosexual.

On the grounds of association – where discrimination is because of those who you associate with, friends or family.

**The Regulations apply to:**

Recruitment

Terms and Conditions of Employment

Pay

Promotion

Transfers

Dismissals

And after the employment has finished (in certain cases).

**There are restrictions to the Regulations:**

**An employer may discriminate on the grounds of sexual orientation:**

If the employer has a religious ethos and the nature of the employment or its context requires that a particular sexual orientation is a genuine and determining occupational requirement.

If the employment is for the purposes of an organised religion and the doctrines of this religion require a particular sexual orientation.

If the sexual orientation would conflict with the strongly held religious convictions of a significant number of the religion's followers.

If it is proportionate to apply such a requirement in a particular case.

If an employer specifies a particular benefit applies to married partners only, it may be withheld from a same sex partner, commonly this may be applied to some Pension rights, where the rules of the pension scheme require marriage.

**These restrictions are currently subject to a legal challenge.**

**An employer may discriminate:**

To encourage people of a particular sexual orientation to apply for particular work or training in order to compensate for disadvantages otherwise suffered by people of that sexual orientation.

Where a Genuine Occupational Qualification exists for the post to be held by a person of a particular sexual orientation (for example lesbian or gay mans health workers)

**A complaint or claim of discrimination is made:**

To an employment tribunal – or a county or sheriff’s court in cases involving further and higher education proceedings.

The time limit for bringing a claim to an employment tribunal is three months after the alleged act of discrimination has taken place – or 6 months in the county or sheriff’s court.

Once an employment tribunal is satisfied that from the facts there is a case to answer, the burden of proof is with the employer to show that the difference in treatment was justified.

**Anyone who does experience discrimination or harassment should contact their union immediately.**