



RELIGION & BELIEF DISCRIMINATION

`Must' and `should'

Throughout this guide, a legal requirement is indicated by the word 'must' - for example, an employer must not ignore an employee for promotion because the employee holds a certain religion.

The word 'should' indicates what MIRS considers to be good employment practice.

Understanding the term `employee'

Regarding discrimination matters, under the Equality Act 2017, the definition of 'employee' is extended to include:

- employees (those with a contract of employment)
- workers and agency workers (those with a contract to do work or provide services)
- apprentices (those with a contract of apprenticeship)
- some self-employed people (where they have to personally perform the work)
- specific groups such as police officers and partners in a business.

Job applicants are also protected.

Contents

About this guide	4
What is religion or belief discrimination?	4
Religion and religious belief	4
Case Discrimination	5
Philosophical belief	5
How religion or belief discrimination can happen	6
Direct discrimination	7
Indirect discrimination	8
Harassment	9
Victimisation	10
Where religion or belief discrimination are most likely to happen	11
Recruitment	12
Taking annual leave, breaks and time away from work for religious reasons	15
Dress code and appearance	18
Considerations for everyone	19
Develop policies for handling requests for reasons of religion or belief	20
Job duties and religion or belief	20
Talking about religion or belief at work	21
Unacceptable language	22
Food and fasting	23
Behaviours based on religious belief	25
Working on a holy day of the week	25
Avoiding stereotyping	26
Occupational requirements	26
Bereavement	28
Washing and changing rooms	29
Raising and handling complaints	29

Acknowledgement

This guide is based on the Acas publication "Race discrimination : key points for the workplace" and has been adapted for the Isle of Man. MIRS acknowledges, and thanks Acas for, their consent to use their source material.

About this guide

This guide primarily offers employers, managers, HR professionals, employees, employee/trade union representatives and job applicants a grounding in how to reduce the chance of religion or belief discrimination happening in the workplace, how it might still occur and how it should be dealt with if it does happen.

While employers and employees can be liable for their own acts of discrimination, employers can also be liable for their employees' acts.

This guide encourages employers to make sure their workplaces are 'inclusive'. For example, so employees feel:

- they belong
- are not disadvantaged or under-valued because they hold a certain religious faith or philosophical belief, and
- their beliefs and/or religious observances are respected.

What is religion or belief discrimination?

The Equality Act 2017 protects employees from discrimination, harassment and victimisation because of religion or belief, one of nine features known in law as protected characteristics and covered by the Act. This characteristic mainly divides into two areas:

- religion and religious belief, and
- philosophical belief.

The Act does not require any minimum length of continuous employment, or any employment for a job applicant, for a discrimination claim to be made. Discrimination is unlawful from when a role is advertised and interviewed for, through to the last day of employment and beyond, including any job references.

The Human Rights Act 2001 gives a person the right to hold a religion or belief, and change their religion or belief. It also gives them a right to show that belief, but not if that display or expression interferes with public safety, public order, health or morals, or the rights and freedoms of others.

Religion and religious belief

What is a **religion** is not defined by the Equality Act. However, in line with the European Convention on Human Rights and Britain's Equality and Human Rights Commission's employment statutory code of practice, it is accepted that:

- a religion must have a clear structure and belief system
- a clearly-structured denomination or sect within a religion can be covered
- employees without a religious faith, as well as those with a faith, can be protected against discrimination. For example, someone who is **not a Hindu** would be protected against discrimination **because they are not a Hindu**
- what makes up religious belief or practice may vary among people in that religion
- no one religion or branch of a religion overrides another – so an employee is protected against discrimination by someone of another religion, or of the same religion or of a different branch or practice of their religion. For example, it would be discriminatory for an employee to treat a colleague of the same religion unfairly because they regard them as less orthodox in their belief.

The Equality Act does not give a comprehensive list of religions.

Religious belief is an individual's own faith and how it affects their life.

Caste discrimination

Caste usually refers to the social levels in certain cultures and racial groups, such as in India, where people's positions in society are fixed by birth or occupation, and are hereditary. Caste can also affect life outside the Indian sub – continent and, unlike in the UK, caste is expressly protected on the Isle of Man

Philosophical belief

Broadly speaking, a philosophical belief must be all of the following:

- genuinely held
- not just an opinion or point-of-view based on current information

- a weighty and substantial aspect of human life and behaviour
- clear, logical, convincing, serious, important, and
- worthy of respect in a democratic society, compatible with human dignity and not conflicting with the fundamental rights of others.

It is broadly accepted that, for example, humanism, atheism and agnosticism are 'beliefs', but supporting a football team or loyalty to your native country are not.

Political belief

It is broadly accepted that supporting a political party is not a philosophical belief under the Equality Act. However, a political philosophy affecting significantly how a person lives their life may be protected. And, under other legislation – the Employment Act 2006 - dismissing an employee solely or mainly because of their political opinions or affiliation is likely to be unfair dismissal, unless misconduct by the employee would justify fair dismissal.

All protected beliefs are equal – whether religious or philosophical – so one protected belief cannot override another. And an employee can be protected because they do not hold a particular philosophical belief, regardless of any other religious or philosophical belief they may or may not hold.

The Equality Act does not give a list of philosophical beliefs. However, philosophical beliefs are being added, or claims ruled out, as cases go before Employment and Equality Tribunals. Although not binding in the Isle of Man, decisions in the UK have recognised the beliefs of a climate change environmentalist, an opponent of foxhunting and a supporter of BBC broadcasting to be protected in their individual cases. However, it is important to understand that whether someone's beliefs, principles, teachings or doctrines amount to a 'belief' in an individual case depends on all the particular facts of the case and whether that belief affects how the person lives their life.

How religion or belief discrimination can happen

There are four main types of discrimination under the Equality Act 2017:

- Direct discrimination
- Indirect discrimination

- Harassment
- Victimisation.

Employers should be aware that successfully dealing with a discrimination complaint is not always the end of the matter. It is useful to think how any future instances might be prevented. See guide Prevent discrimination: support equality.

Direct discrimination

This breaks down into three different types of direct discrimination where someone is treated less favourably than others because of:

- their own religion or belief, or lack of religion or belief – this is **ordinary direct discrimination**
- the religion or belief, or lack of religion or belief, of someone they are associated with, such as a friend, family member or colleague – this is **direct discrimination by association**
- a religion or belief they are thought to hold, or not hold, regardless of whether the perception is correct or not - this is **direct discrimination by perception.**

Direct discrimination in all its three forms could, for example, involve a decision not to employ someone, make them redundant or turn them down for promotion because of religion or belief. In almost all circumstances, it would be unlawful.

However, the Equality Act, in some limited circumstances, allows discrimination where the job requires someone of a particular religion or belief – this is known as an 'occupational requirement' explained later in this guide. And for the purposes of organised religion – for example, being the headteacher of a Catholic school or an imam – there are some additional exemptions to the Equality Act which can apply. Find out more in the section, Additional special rules for roles in religion.

For example... ordinary direct discrimination

Mark, the owner of a small firm, earmarks Philip for redundancy because the employee is a druid and Mark feels uncomfortable employing someone with Philip's beliefs. This is likely to be discriminatory.

For example... direct discrimination by association

Head of department Waseema turns down Russell for promotion to sales manager because his wife is a Buddhist and Waseema thinks his wife would not fit in at the away weekend where everyone brings their partner. This is likely to be discriminatory.

For example... direct discrimination by perception

Manager Tomasz decides not to select Adeep for a job interview because from the applicant's name he presumes he is a Sikh. Tomasz thinks Adeep would not fit in because the team like to drink in the pub and he assumes Sikhs don't drink alcohol. This is likely to be discriminatory.

Indirect discrimination

This type of discrimination is usually less obvious than direct discrimination and can often be unintended. In law, it is where a 'provision, criterion or practice' involves all these four things:

1. it is applied equally to a group of employees/job applicants, only some of whom share the protected characteristic – in this case, religion or belief
2. it has (or will have) the effect of putting those who share the protected characteristic at a particular disadvantage when compared to others without the characteristic in the group
3. it puts, or would put, an employee/job applicant at that disadvantage, and
4. the employer is unable to justify it.

An employee or job applicant claiming indirect discrimination must show that the 'provision, criterion or practice' puts, or would put, employees/job applicants of the same religion or belief at a disproportionate disadvantage when compared to employees/job applicants who do not hold that religion or belief. The individual employee or job applicant must then show that they have been disadvantaged by the application of the provision, criterion or practice.

Unless the employer can show the provision, criterion or practice is proportionate, appropriate and necessary (this is known as objective justification) there will be indirect discrimination. If the employer can show justification, there is no indirect discrimination. See the section, Where indirect discrimination may be justified.

The Equality Act does not define a 'provision, criterion or practice'. However, the term is most likely to include an employer's policies, procedures, requirements rules and arrangements, even if informal, and whether written down or not. It should be

borne in mind that what is 'proportionate' can depend on the size and resources of the business – for example, a big employer with a large workforce may have more flexibility to cover time off for religious reasons than a small firm.

Where indirect discrimination may be justified

Indirect discrimination may be what the law calls 'objectively justified' if the employer can prove the 'provision, criterion or practice' is 'a proportionate means of achieving a legitimate aim'. Employers should note this can be difficult to prove.

In attempting to demonstrate 'a proportionate means of achieving a legitimate aim', an employer must show:

- there is a legitimate aim such as a good business reason, but employers should note that cost alone is unlikely to be considered sufficient, and
- the actions are proportionate, appropriate and necessary.

Both points apply, not just one of them.

The process of determining whether discrimination is justified involves weighing up the employer's need against the discriminatory effect on the group of employees of the same religion or belief. The more discriminatory the effect, the more difficult it will be to justify. It can be very difficult to justify discrimination where the same aim could have been achieved without discrimination. The employer should look for and explore any alternatives.

Employers should scrutinise their policies, practices and rules to see whether they may be more difficult for people of a certain religion or belief to comply with, and whether they can really be justified. Otherwise, they may inadvertently indirectly discriminate. For example, policies, practices and rules which were not discriminatory when introduced may become discriminatory over time, perhaps because of a change in the make-up of the workforce, law or work arrangements.

Harassment

Harassment is defined as 'unwanted conduct' and must be related to a relevant protected characteristic – in this case, religion or belief. The harassment must have the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

This can include bullying, nicknames, threats, intrusive or inappropriate questions, excluding someone (ignoring, not inviting someone to meetings or events etc) or insults. It can be verbal, written or physical. Also, unwanted jokes and/or gossip

which the employee finds offensive can be harassment. To say the behaviour was not meant to be harassment or that the comments were 'banter' is no defence.

In practice in cases of harassment, the impact of unwanted conduct as perceived by the victim is more important than the perception of the harasser and their intent. Whether it is reasonable for the victim to feel the way they do is also taken into account.

It is possible for an employee to make a complaint of harassment where they are not on the receiving end of the conduct, but witness it and it has a negative impact on their dignity at work or working environment. The employee making a complaint of harassment in this situation would not need to share the same religion or belief as the colleague being harassed or have any religion or belief.

Managers should be careful not to let their own views influence a situation or dismiss a concern because they don't deem the behaviour offensive themselves. It is important to remember that if an employee feels strongly enough to raise a concern or make a complaint, the employer should take it seriously, and deal with it appropriately and correctly.

For more general information on harassment, including protecting employees from harassment from customers and clients, see the companion guide, Equality and discrimination: understand the basics.

For example... harassment

Manager Lucinda can be very outspoken about her religious beliefs, including often telling some of her team who are agnostics that 'they are not fit for God's Earth'. They find her behaviour offensive and hostile – this is likely to be harassment.

Victimisation

Victimisation is when an employee suffers what the law terms a 'detriment' - something that causes disadvantage, damage, harm or loss because of:

- making an allegation of discrimination, and/or
- supporting a complaint of discrimination, and/or
- giving evidence relating to a complaint about discrimination, and/or
- raising a grievance concerning equality or discrimination, and/or

- doing anything else for the purposes of (or in connection with) the Equality Act, such as bringing an Employment and Equality Tribunal claim of discrimination.

Victimisation can also occur because an employee is suspected of doing one or more of these things, or because it is believed they may do so in the future. 'Victimisation' is a term commonly misused and misunderstood, and only applies when it meets the explanation in this section. A 'detriment', for example, might include being labelled a 'troublemaker', being left out and ignored, being denied training, promotion or time off, or being given a poor reference.

For example... victimisation

Pam was a witness at an Employment and Equality Tribunal considering alleged religious discrimination at the company where she works. Some months later she applies for training to develop her career. She is turned down. Her manager, Ken, had told the rest of the selection panel Pam should not be considered because she is a 'troublemaker' who supported a discrimination claim against the firm at an Employment and Equality Tribunal. One of the panel objected to Ken's outburst, and word gets out to Pam. She could claim victimisation by Ken, any of the panel who supported Ken and the employer.

An employee is protected under the Equality Act from victimisation if they make, or support, an allegation of discrimination in good faith – even if the information or evidence they give proves to be inaccurate. However, an employee is not protected if they give, or support, information or evidence maliciously.

Where religion or belief discrimination are most likely to happen

Areas of employment where religion or belief discrimination may most frequently occur are:

- recruitment
- requests for taking annual leave, breaks and time away from work for religious reasons, and
- dress code

Recruitment

To avoid discrimination, **employers when recruiting should** take these steps when –

- **writing the essential documents:** be careful when writing an advertisement, job description and person specification for a vacancy. For certain limited circumstances, see the 'Occupational requirements' section below. Further, an employer **should not** include anything irrelevant to the job, and should avoid wording and illustrations it is unsure about - they might be open to legal challenge.
- **advertising:** use at least two different channels so as not to end up with candidates from too narrow an audience. So, generally avoid solely using one kind of place or media - for example, advertising only in a magazine or on a website targeted at people of one particular religion or belief.

Be mindful, if spreading word of vacancies through existing staff. Relying only on 'word of mouth' is likely to extend any imbalance in the make-up of the workforce, particularly where it is mainly made up of people of one religion or belief. And it is likely to produce only a small pool of candidates.

'Occupational requirements'

In very limited circumstances, it may be lawful for an employer to specify that employees or job applicants must have, or not have, a particular protected characteristic under the Equality Act.

For example, this might be a particular religion or philosophical belief. In law, this is known as an 'occupational requirement'. If one or more occupational requirements apply to a post, there are some exceptions in the steps in recruitment. For example:

- an occupational requirement and the reasoning behind it should be made clear in the advert marketing the post and application pack sent to candidates
- advertising only in a magazine or on a website targeted at people of the particular religion or belief required may be permissible
- in the job interview, relevant questions about the candidate's religion or belief in meeting an occupational requirement would be permitted. Other questions about their religion or belief would not be.
- in a job reference, mention of the occupational requirement may be relevant.

For more on 'Occupational requirements' including 'Additional special Equality Act rules for roles in religion' see sections with these headings further into the guide.

- **using social media:** be aware that checking on social media a candidate's background, including any religion or belief, risks being discriminatory.
- **interviewing:** make sure personal information requested, either on the application form or in interview, is relevant to the job and/or administration of the recruitment process. For example, asking a candidate in an interview 'Are you religious?', if the question is irrelevant to the job, is likely to be perceived as intrusive and discriminatory. So may 'Which school did you attend?' to try to find out the candidate's religion. Generally, where such information is volunteered, or appears obvious, interviewers or others in the selection process should take care not to be influenced by it.

Get interviewers on a panel to agree to constructively 'call each other out' if one or more of them may be stereotyping.

- **shortlisting candidates after interviews:** those on the interview panel, and/or any other managers or staff involved, should take care when discussing which candidates should go on the shortlist for the job. Talking informally and unguardedly is where discrimination can happen.
- **seeking job references:** an employer should be aware that a candidate's referees should not give them a negative job reference because of the candidate's religion or philosophical belief, and the employer must not discriminate based on that information.
- **offering the job:** select and appoint the best candidate – generally, an employer must not rule out the best applicant because they belong to a particular religion or belief. If the candidate's religion or belief conflicts with the job, candidate and employer should try to resolve this if possible. However, an employer does not have to employ someone whose religion or belief would make it impossible for them to do essential parts of the role. But it would be discriminatory to offer less attractive terms – for example, six months' probation instead of the usual three because it is feared they would not fit in because of their religion or belief.
- **using a recruitment agency:** tell the agency it must comply with the Equality Act. Generally, an employer must not suggest to the agency that it would prefer candidates who have, or don't have, a particular religion or belief. And generally an agency must not follow such an instruction.

Other important considerations when hiring

To avoid discrimination, **employers should** also take these steps when recruiting –

- **pinpointing skills, experience and qualifications for the job:** be clear on exactly what is needed for the post so managers are objective in assessing and selecting candidates. For example, an employer must not be biased against a candidate because they hold a particular religion or belief when this is not relevant to the role.
- **arranging interviews or assessments:** an employer should be as flexible as it can around religious times - for example, Friday afternoons, Sundays or periods of fasting - to prevent candidates with religious beliefs being put at a disadvantage. Where possible be reasonable and flexible around timing if a suitable candidate asks to change date and/or time because of a religion or belief reason. However, if there is a good business reason why the employer cannot make the change – for example, the interview panel can only get together on one day – the decision is unlikely to be discriminatory, but the employer may lose out on potential talent.
- **explaining the job's duties and hours of work:** spell them out, especially the main tasks and any core hours and days, so there are no misunderstandings about what the role entails. See the section, Job duties and religion or belief.

For example... recruitment discrimination

At a job interview, Kevin demonstrates he has all the skills, experience and qualifications essential for the role and that he is the best candidate for the position. It also becomes apparent to the interviewers that he is an environmental campaigner. Later, he receives a letter saying his application has been unsuccessful and that the post has gone to another candidate. The real reason Kevin was turned down was that the interviewers thought his passion as a campaigner highlighting climate change could embarrass the firm. The reason for rejecting Kevin is likely to be discriminatory.

Considerations when promoting, training and allocating work

Employers should be careful not to discriminate because of religion or belief, or lack of religion or belief, when providing training opportunities, deciding on promotions or allocating work to staff.

Training opportunities – for example, it would be discriminatory to deny an employee training because of their religion or belief. Also, if an employee asks to be

excused training at a certain time because, for example, of a religious holiday or festival, or they are fasting, the employer should carefully consider the reason. To refuse the request could be discriminatory. See the sections, Taking annual leave, breaks and time away from work for religious reasons, and Fasting.

Promotion opportunities – for example, it would be discriminatory to only accept applications from people of a particular religion or belief (apart from in rare circumstances where an ‘occupational requirement’ could be justified as lawful). As another example, it would be discriminatory to discourage an employee from applying because they belong to a particular religion or hold a particular belief.

Allocation of work – for example, it would be discriminatory to stop or restrict an employee from working in parts of the business, when it is part of their job role, because of their religion or belief, or lack of religion or belief. For example, blocking an employee from working with customers, and confining them to a back-office role, because of their religious dress is likely to be discriminatory.

Taking annual leave, breaks and time away from work for religious reasons

An employer is under no obligation to automatically give staff time off for religious holidays or festivals, time to pray or a place to pray. However, it should consider requests carefully and sympathetically, be reasonable and flexible where possible, and discuss the request and explore any concerns with the employee. Refusing a request without a good business reason could amount to discrimination.

An employee, in making a request, should be reasonable, flexible and sympathetic too in taking into account the demands of their job and the needs of the organisation employing them.

Not all followers of a religion will necessarily make similar requests. Their levels of adherence to the religion, or beliefs concerning that religion, could vary. For example, one employee of a particular faith may ask to take all of a religious holiday, another part of the holiday, while another may make no request. Also, some requests may include taking the day before a religious holiday or festival for religious reasons. An employer should not turn down a request from an employee because another employee of the same faith has made a different request or no request.

An agreement between employer and employee for time off for religious reasons could be written into a contract of employment. However, as times for religious holidays, festivals and to pray often vary, as may the organisation’s needs, addressing these changes in a contract might prove challenging. For these reasons, it is often best to have a general term in the contract saying that requests for time off for religious reasons will be considered on an individual basis.

In considering requests, an employer must not favour the needs of one religious group over another so colleagues of a different religion, or no religion or belief, are at a disadvantage. Religious observance does not necessarily override any other good reason for granting leave.

Religious holidays and festivals: An employer should where possible approve employees' requests where the business can function satisfactorily while they are on leave. But, for example, in a circumstance where too many staff want the same time off for the same festival, or other reasons nothing to do with religion or belief, and the business can't function with that many away, it does not have to grant all the requests.

In a business where too many staff could ask for the same time off, the employer should make clear to all staff there is no statutory right to time off for religious reasons and that only so many can be on leave at any one time – whether for reasons of religion or belief, or reasons nothing to do with religion or belief.

The employer should consult with staff, including relevant employee-run networks and recognised trade unions if they are in the workplace, on how they would prefer to see leave requests managed to try to get their buy-in to a policy.

For example, there might be agreement for a first-come, first-served basis for all leave requests, but with each still decided on its individual merits. Or, there might be an agreement to a quota for staff off for religious holidays and festivals, and for a rota for them to take it in turns – that way, also allowing some staff to take leave for reasons that are nothing to do with religion or belief.

An employer should think carefully about requests. For example, where time off is sought for religious observance during a religious festival, the employer, in making its decision, should take into account its effect on others. This would include the effect of:

- allowing the request on other employees who might also want time off during the same period, and
- another protected characteristic – for example, the possible discriminatory impact because of their sex on female employees with young children when the period is also a school holiday.

Workplace shutdowns: An employer might say that staff must take leave during a workplace shutdown - perhaps for a week or two, or several days. For example, this can happen at some employers at Christmas and has been known during Eid.

An employer should make sure it has very good business reasons for complete closure and for staff using annual leave. For instance, it might be that it would be

too costly and uneconomic to keep the business open during the Christmas and New Year period. But an employer should be aware that insisting, for example, that a Buddhist employee takes annual leave at Christmas may risk being discriminatory because of religion or belief, if there is no good business reason for the total shutdown and the employee did not want to take leave then. Also, for example, asking an employee who wanted Christmas Day off to work that day and cover for Christian colleagues because he is a Sikh may risk being discriminatory.

Prayer: Some religions require followers to pray, often at specific times during the day, so employees may request time to do this. For example, an employer could consider whether it is practical and reasonable for an employee making a request:

- to take their break to coincide with prayer times, and/or
- to take a shorter lunch break and use the remaining time for prayer during other parts of the day, and/or
- to have some flexibility in their working day, and start and finish times, so they can pray before, during and/or after work, and still work their full hours

Also, staff may ask for a quiet place to pray. While an employer is not obliged to provide a prayer room, it should agree to the request if a quiet place is available and its use for prayer would not disrupt the business or other staff. The employer should consult with staff, including relevant employee-run networks and recognised trade unions if they are in the workplace.

They might discuss the idea of having the place, or room, as a multi-faith area for all staff who want to pray, meditate or quietly reflect. An employer is not expected to spend a significant sum or alter buildings, but should consider providing separate storage facilities for ceremonial objects. It should also talk to staff to see whether there is anything reasonable and practical which can be done to help them meet rituals of their religions, and agree on rules for use of the place/room.

If the employer does not have a place for a dedicated prayer or multi-faith room, it should discuss with staff how else it might be able to help – for example, would they accept using a place as a temporary prayer room at certain times of the day? For example, use of a first aid room or communal area for staff might be possible. An employer should be aware that refusing a request for a place to pray, when it provides other comparable facilities for staff, is likely to be discriminatory.

What is 'proportionate' in deciding a request for a place to pray can be particularly important. For example, it may be easier for a small firm with limited space to justify turning down such a request than a large firm.

For example... prayer room discrimination

A group of Christian employees ask their employer if they can use in their own time a room for prayer when it is not being used for company business. The employer turns down the request without any explanation, other than saying it is not an option. The employer's behaviour and refusal are likely to be discriminatory, particularly as it has provided other facilities for staff including a games room and exercise room.

Dress code and appearance

There can be many reasons why an employer may have a dress code or policy, which, as well as **clothes**, may cover **jewellery, hair and symbols of religion or belief**. For example, a dress code could be to communicate a corporate image, ensure customers can easily identify a member of staff and/or for reasons of security, health and safety, or the organisation's ethos.

From the very start of thinking about a dress code, an employer should consult staff, including relevant employee-run networks and recognised trade unions if they are in the workplace. This should be to get their input and support, and take into consideration that some employees may wish to dress in a certain way or avoid certain styles, cuts/fit, or items of clothing because of their religion or belief.

When drawing up the code or policy, the employer should look to be flexible and reasonable where possible. If it does include appearance restrictions or requirements, these must be for good business reasons which are proportionate, appropriate and necessary. They should be explained to staff.

An employee should be allowed to raise concerns about a dress code because of their religion or belief. In the individual case, employer and employee should both be reasonable about each other's needs and try to come to an agreement. And an employer must be clear why an item or items of religious clothing or a symbol are acceptable or not acceptable in that particular case.

The employer's decision should be based on factors which might include:

- health and safety
- the employer's duty of care to all staff
- the effect on the business
- the impact on the employee's ability to do their job
- the impact on any people in the employee's care

- its overall equality policy, ensuring no disadvantage to others because of other protected characteristics such as race, disability, sex, sexual orientation, gender reassignment, and marriage and civil partnership
- whether there is a compromise both can accept - for instance, it might be wearing a symbol as a brooch rather than hanging on a chain, and
- would the employee have to leave their job?

The employer should allow an employee to appeal against its decision where there is new evidence or doubt.

If the matter goes as far as an Employment and Equality Tribunal, employer and employee should understand that in deciding the matter the tribunal or court will consider if there is any direct discrimination and balance the right to display a religion or belief against the employer's business reasons in the particular case. A ruling will depend on circumstances which might include the line of work and working environment. So, a ruling in one area of work may not always be the same as in another. For example, a crucifix on a chain or long religious dress may not be a health and safety concern in an office, but might be in a factory with machinery and trailing leads and cables.

Further, a general ban on the display of all religious symbols at work is likely to be discriminatory.

For example... preventing dress code discrimination

Towards the end of a job interview, applicant Tawfiqa is asked if she has any other questions. She asks about dress code and is told the staff uniform for women is a skirt, matching jacket and blouse. She asks, that if she gets the job, could she wear matching trousers instead of a skirt, as she must cover her legs as part of her Muslim beliefs. She also asks whether it would be acceptable for her to not tuck in the blouse, also for modesty. The employer says 'yes', realising it's time the firm updated its dress code to accommodate reasonable requests such as Tawfiqa's. Rejecting her application because of her requests, or refusing the requests, is likely to have been discriminatory.

Considerations for everyone

Employers, managers, HR personnel, employees and their employee or trade union representatives should make sure they understand:

- what religion or belief discrimination is and how it can happen
- their rights and responsibilities
- the employer's policy for preventing discrimination, and
- what behaviour and actions are unacceptable such as derogatory comments about an employee's religion or belief.

Also, employer and employees should be very careful regarding questions related to an individual's religion or belief, as these might be or become discriminatory, particularly if they are intrusive or handled insensitively.

It can be beneficial for an employer to offer all staff a grounding in religion or belief in the workplace. Further, an employer should provide training for all staff in constructively developing their understanding of each other. In the organisation, these steps can help foster good relations and prevent discrimination. Find out more in companion guide Prevent discrimination: support equality.

Develop policies for handling requests for reasons of religion or belief

An employer may find it beneficial to have clear policies for employees on making requests, and managers handling them, on matters including:

- leave, breaks and time away from work for reasons of religion or belief
- dress code and appearance
- use of any prayer or multi-faith space or room, and
- being excused certain tasks because of religion or belief.

The policies should include telling an employee of the decision on their request in writing. Also, it should be in line with the organisation's overall equality policy for promoting fairness at work. In developing policies, an employer should consult with staff, including relevant employee-run networks and recognised trade unions if they are in the workplace.

Job duties and religion or belief

There are some jobs where an employee may ask to opt out of certain duties because of their religion or belief. Examples might include handling meat, alcohol or contraceptives.

An employer should consider the request, and approve it if possible and reasonable. However, it does not have to agree if there are good business reasons for refusing the request and that refusal is proportionate. For example, reasons might include serious disruption to the business, putting too much extra work on other staff, or the task being an essential part of the job.

An employer may take into account whether an approval might introduce a practice that could damage the business and/or the service to clients/customers. However, the employer must not discriminate against staff because of any prejudice, including from clients or customers.

At job interviews, the employer should make clear the tasks of a job to all job applicants. See the Recruitment section earlier in this guide.

Also, an employee must not refuse to work with a colleague or client, or refuse to provide a service to a customer, because of their religion or belief, or because of the colleague/client/customer's sexual orientation, sex, gender reassignment, race, disability, marriage or civil partnership, or religion or belief. Refusal would be discriminatory. The employer could take disciplinary action against the employee, and the refusal could also lead to a discrimination claim against the employee.

Talking about religion or belief at work

An employer should try to make its workplace 'inclusive', so employees do not put at a disadvantage a colleague who may be different from them because, for example, of their religion or belief.

This means an employer should not try to ban outright discussion of religion or belief at work. However, an employer may be able to justify some restrictions for reasons such as:

- protecting the rights of others
- protecting the firm's reputation
- preventing a figure of authority forcing their personal views on others – for example, an executive on a junior employee, a teacher on a pupil or doctor on a patient.

An employee forcing their religion or belief on other staff or customers who do not want to hear their views or join their following could cause offence, or make them feel harassed, particularly to people because, for example:

- they hold a different religion or belief, or no religion or belief

- of their sex, sexual orientation, gender reassignment or disability.

A colleague who is offended may claim harassment. However, if that colleague starts a discussion with an employee when they know they disagree with their views, and the employee then expresses those views, that colleague is less likely to be able to claim harassment.

An employer should have a policy on what use of social media is acceptable or unacceptable at work and away from the workplace when the use is still connected to the employer in some way. This includes views on religion or belief, and/or other opinions, such as on sexual orientation, because of the employee's religion or belief. For example, an employee, because of their religious belief, insulting online a colleague in a same-sex marriage is likely to be discriminatory.

A policy will need to be balanced, because while an employee has a right to freedom of expression, that right is not boundless. The employer has a right to ensure an employee's personal views are not mistaken as its own.

Unacceptable language

Derogatory and abusive terms about an employee or job applicant are likely to be discriminatory because of their:

- religion or belief
- lack of religion or belief
- perceived religion or belief (whether the perception is correct or not), and/or
- association with someone with a particular religion or belief, or lack of that religion or belief.

In discrimination, how the recipient perceives words and actions matters more than the intention of the person delivering them.

The term 'banter' is often used when there is disparity between what was intended by one person and how it has been perceived by another. Employers should manage these situations with care. Sometimes a situation, where a 'joke', 'banter' or 'expression' has caused offence or upset, can be dealt with by a manager having an informal discussion with an employee and explaining that they have caused offence, and to make sure they do not do it again. And in a situation where someone has used a word by mistake, or there has been a misunderstanding, a manager may be able to handle it informally.

In such situations, there can be a need for tolerance to avoid over-sensitivity about expressions commonly used, but not to cause offence. For example, 'Oh My God' might be one. However, an employer should make clear that all staff should try to moderate their language and consider those around them.

In other situations, where a term has been used on purpose and maliciously, or to embarrass and humiliate, the employer should look into the matter formally. There is more information about handling complaints in the companion guide, Discrimination: what to do if it happens, at www.mirs.org.im/equality

Food and fasting

Food: Religions or beliefs can have dietary requirements, but an employer does not have to cater for them, or provide facilities other than a clean seating area for breaks. However, it is advisable to consult with staff, including relevant employee-run networks and recognised trade unions if they are in the workplace. This should be on how they would prefer to see dietary requirements managed and to try to get their agreement on a policy.

For religious or belief reasons, staff may bring their own food into the workplace and may want to store and/or heat it separately from other food. For example, people of some religions are likely to want to ensure their food is not in contact with pork or anything that may have been in contact with pork.

If the employer does provide a staff canteen or food service of some kind, it should consider the make-up of the workforce in deciding what's on the menu. For example, even if it was a proportionate step to provide halal or kosher food to reflect the make-up of the workforce, it should still offer suitable alternatives. In such a scenario, not offering alternatives may, for example, discriminate against employees who cannot eat halal or kosher food because of their religion or belief.

If an employer refuses a request from employees for a type of food for reasons of religion or belief, it would have to be for a good business reason that was proportionate, appropriate and necessary. And that is likely to depend on the workplace's facilities and number of staff, and the size of the overall organisation.

If an employer organises an event with food and drink for employees, it should ask them if they have any dietary requirements.

Alcohol: At any work-related occasion, an employer should ensure non-alcoholic drinks are available as some employees may not drink alcohol because of their religion or belief. Further, an employer, managers and employees should bear in mind, when arranging work-related gatherings and outings including at lunch or after work, that some employees because of their religion or belief may feel

extremely uncomfortable going into a place where alcohol is served, and may feel unable to go for that reason and excluded.

An employer should also try to avoid holding job interviews in places where alcohol is served. Further, an employer may think it best not to give or present alcohol as a gift or prize. It may think it better to offer a choice of prizes, some of which are not alcohol.

Fasting: Some religions require periods of fasting and/or not eating certain foods at these times. Some followers of a religion may fast, others may not, depending on their level of observance.

If an employee is fasting they should tell their employer. Although an employer does not have to do so, it should consider how it might support them through such a period. For example, if the employee asks to adjust their hours during the fasting period, the employer should try to accommodate the request if reasonable and possible to avoid any potential discrimination.

Once there is an understanding between employer and employee, the employee's manager should, with the employee's agreement, tell relevant colleagues:

- the employee is fasting and for how long, so they understand its possible effects on the employee, especially in hot weather when there is a risk they may become dehydrated
- whether there will be any temporary adjustment in the employee's working hours during the fasting period, such as them starting work later and finishing later, or starting earlier and finishing earlier, and making up any hours another time. The employer should not in any way suggest to colleagues that the employee is being allowed to work fewer hours.

If the employer refuses a request concerning fasting, it would have to be for a good business reason that is proportionate, appropriate and necessary. It should ensure the request does not place unreasonable extra burdens on other staff.

In making a request, the employee should be reasonable in taking into account the demands of their job and the needs of the organisation employing them. Managers should anticipate that if an employee is fasting it might reduce their job performance during this period. They are advised to make allowances. Criticising the employee's productivity or performance at this time could be discriminatory.

Behaviours based on religious belief

An employer should be aware that some behaviours commonly accepted as standard by many employees may not be acceptable to others because of their religious belief. These can include:

- shaking hands or being alone in a room with someone of the opposite sex
- undergoing a security search, even by someone of the same sex
- having their photograph taken.

An employer should consider whether it can change, without damaging the business, any workplace practice which could disadvantage an employee because of their religion or belief. However, at the same time, employees should understand that their employer has a right to expect certain things to happen if they are proportionate, appropriate and necessary in the running of the business. And, further, it needs to be understood that the employer must act lawfully too regarding employees with other protected characteristics – for example, sex, sexual orientation and disability.

So, as explained earlier in the Recruitment section of this guide, an employer should, for example, spell out to job applicants a job's duties and check they are acceptable to the candidate. For example, it could be the case that an employer would not have to employ someone who refused to shake hands in a job where the key roles were entertaining clients, networking and hosting events, or someone who refused to have a photo ID pass when it was necessary towards the security of the firm's building.

Also, for example, it is likely to be discriminatory for a male employee to refuse to have a one-to-one performance management meeting with his manager because she is female.

Working on a holy day of the week

Depending on the particular religion, a regular holy day or days might, for example, be Friday, Saturday or Sunday. Generally, whether an employee works on a holy day or some holy days is likely to be determined by what they have agreed with their employer. Their working hours must be in their Written Statement of Terms and Conditions of Employment.

Job applicants should take into account that a business operating seven days a week will need at least some staff working on a holy day. A successful applicant should be clear about their working hours and days before accepting a job offer.

However, if an employee asks not to work on a holy day, the employer should consider the request carefully and sympathetically, be reasonable and flexible where possible, and discuss the request and explore any concerns with the employee. Refusing the request without a good business reason could amount to discrimination.

The employee, in making the request, should be reasonable, flexible and sympathetic too in taking into account their contract, the demands of their job and the needs of the organisation employing them.

It should be noted there are **special rules on Sunday working for employees in the retail trade**. Under the Shops Act 2000, they can opt out by giving their employer one month's notice of their intention to stop working Sundays.

Avoiding stereotyping

Employers and employees should avoid making assumptions about job applicants and employees because of their religion or philosophical belief. Such guesswork can often be done without realising – this is known as unconscious bias. Whether intended or not, stereotyping often has negative connotations and repercussions.

For example, employers and employees should be aware that people who belong to a religion may hold different levels of belief, may interpret them in different ways, may not follow all the same religious practices and may disagree with other branches of the same faith. Employers should listen to job applicants and employees about requirements because of their religion or belief, and not make assumptions. Assumptions and uninformed decisions about job applicants or employees could lead to discrimination claims.

Occupational requirements

In very limited circumstances, it may be lawful for an employer to specify that employees or job applicants must have, or not have, a particular protected characteristic under the Equality Act.

In law, this approach is known as an 'occupational requirement' and can provide the employer with a defence to a direct discrimination claim. For example, there might be a leading role where the employer might specify that job applicants must hold a particular belief under the Equality Act.

Concerning religion or philosophical belief, an occupational requirement can most commonly occur where:

- an organisation, with an ethos based on religion or belief, requires some key roles to be held by people who share its belief;

- an organisation's services are targeted at a particular religion or belief group and the organisation can justify why it has to employ someone who has a particular protected characteristic, rather than someone who understands the needs of the target group without belonging to it, to ensure the target group will use the service.

However, it is not enough for an employer to simply decide they would prefer, for example, not to employ someone who does not hold a particular protected characteristic or particular belief. Any such requirement must:

- be crucial to the post, and not just one of several important factors, **and**
- relate to the nature of the job, **and**
- be 'a proportionate means of achieving a legitimate aim'. If there is any reasonable and less discriminatory way of achieving the same aim, it is unlikely the employer could claim an occupational requirement.

All three points apply to an occupational requirement, not just one or two of them. There is more on 'legitimate aims' in this guide's section, Indirect discrimination.

Further, interviewers should only ask a candidate for sufficient information to confirm that they meet an occupational requirement for a job.

An occupational requirement should be reassessed each time the job is advertised, even if it was valid for the same post in the past. Circumstances may have changed, meaning the requirement may no longer be applicable.

Generally, an employer should think carefully, and consider seeking legal advice, before claiming an occupational requirement, as it can be **difficult to prove** and will be rare. Also, a job applicant might make an Employment and Equality Tribunal claim where an occupational requirement appears to be unjustified. An occupational requirement can only be used in a defence against claims of direct discrimination.

If holding a particular religion or belief is an occupational requirement of a job, and the employer appoints an applicant with that religion or belief, and they later no longer hold that religion or belief, the employer could consider dismissing them. However, the occupational requirement would still have to apply to the post and there would have to be no alternative roles they could move to.

Additional special Equality Act rules for roles in religion

These, too, can be occupational requirements and mean some roles in an organised religion, because of its doctrines and/or beliefs, can be withheld from people

because of a protected characteristic in addition to religion or belief. These might include sexual orientation, sex, gender reassignment, and marriage and civil partnership.

So, because of a religion's doctrine, or the strongly and widely-held beliefs of members of that religion, a role might, for example, be restricted to people of:

- one sex, **and/or**
- a certain sexual orientation, **and/or**
- non-transgender people, **and/or**
- people who are not married or in a civil partnership, **and/or**
- people not in a same-sex marriage, **and/or**
- people who are not divorced or married to (or in a civil partnership with) someone who has been divorced.

Depending on the religion, there might also be an additional occupational requirement – for example, for gay men or lesbians to be celibate.

While special Equality Act rules for roles in religion could apply where the religion's doctrine is key to the job – for example, an imam, the headteacher of a Catholic school or a key role representing or promoting the religion - it is far less likely to apply where the doctrine is not involved in the role – for example, a church cleaner.

A restriction can only apply when:

- appointing a person who meets the occupational requirement/s is a proportionate way of complying with the doctrines of the religion, **or**
- because of the nature or context of the employment, employing a person who does not meet the occupational requirement/s would conflict with a significant number of the religion's followers' strongly-held religious convictions. However, the occupational requirement must still be a proportionate condition.

Bereavement

When an employee suffers a bereavement, they may ask for extra time off because of their religion or belief concerning death, mourning and funeral arrangements. Also, for example, they may ask for time off straightaway because of their faith. The

employee's manager, or a senior manager, should discuss with the employee their needs, try to accommodate them and come to an agreement.

At such a time, there are various ways an employee can have the time off – for example, special leave, compassionate leave, plus maybe some annual leave or unpaid leave. To avoid potential religion or belief discrimination, a refusal of the requested time off would have to be for a good business reason that was proportionate, appropriate and necessary.

Also, an employer should be aware that an employee's level of observance may increase after a loved one dies.

Bereavement requirements can vary from religion to religion, and belief to belief, and not everyone who follows the same religion or belief will necessarily mourn in the same way.

Washing and changing rooms

An employer may require employees, because of their roles and for health and safety reasons, to change their clothes and/or shower at work. However, some religions or beliefs say their followers must undress and/or shower in private. In these circumstances, an employer insisting on providing only communal showers and changing rooms could be discriminating, unless the decision was for a good business reason that was proportionate, appropriate and necessary.

Regarding gender-neutral facilities, see the MIRS guide, Gender reassignment discrimination.

Raising and handling complaints

How an employee should raise a complaint of alleged discrimination, including the option of raising the matter with a trade union representative, and how the employer should handle it, are explained in companion guide **Discrimination: what to do if it happens**. Also, employers should be aware that after dealing successfully with a complaint of discrimination, there can be further steps. For example, it is useful to think of how any future instances might be prevented. Find out more in the companion guide, **Prevent discrimination: support equality**.



Industrial Relations Service (MIRS)

The Manx Industrial Relations Service (MIRS) is an independent organisation funded by Government and we provide a free, impartial and confidential service on any employment relations matter. We are here to help employers, employees and trade unions work together for the prosperity of the Isle of Man.

Information in this booklet has been revised up to the date of the last reprint – see date below. For more up-to-date information go to the MIRS website www.mirs.org.im

Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

December 2019