

No minimum length of continuous employment is necessary for a discrimination claim to be made to an Employment Tribunal. Protection starts from when a role is advertised through to the last day of employment and beyond to include references.

Under the Equality Act, there are four main types of discrimination:

- Direct discrimination
- Indirect discrimination
- Harassment
- Victimisation.

Let's look at each of these in turn starting with Direct Discrimination

Direct discrimination occurs where someone is treated less favourably directly because of:

- a protected characteristic they possess
- a protected characteristic of someone they are associated with, such as a friend, family member or colleague – this is discrimination by association
- a protected characteristic they are thought to have, - this is discrimination by perception.

Direct discrimination in all its forms could involve a decision not to employ someone, to dismiss them, withhold promotion or training, offer poorer terms and conditions or deny contractual benefits because of a protected characteristic.

Here's an example:

“Jamie is not suitable for that role because he is dyslexic”

This is direct discrimination based on Jamie's disability. An assumption has been made that because of his disability he cannot do the role.

Next, let's look at 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 is applied equally to a group of employees or applicants, but has the effect of putting those who share a certain protected characteristic at a disadvantage and the employer is unable to justify it.

An employee or job applicant claiming indirect discrimination must show how they have been personally disadvantaged, as well as how the discrimination has or would disadvantage others with the same protected characteristic.

Indirect discrimination can also be intentional and sometimes this can be hidden within a provision, criterion or practice. Here's an example:

. “The ideal applicant will have GSCE Maths and English Grade C or above”

Although not directly evident, this example actually racially discriminates against anyone that hasn't achieved Maths and English qualifications in England. This is because the GCSE qualification is an English accreditation and other countries across the world have different names for accreditations at this level.

If the job advert included the words "Or equivalent" after this statement, then this would not be discriminative as it would cover anyone from anywhere across the world with an equivalent qualification in these subjects to apply.

This now brings us to Harassment.

Harassment is defined as 'unwanted conduct' and must be related to a relevant protected characteristic or be 'of a sexual nature'. It must also have the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

Generally, harassment includes:

- bullying or nicknames
- threats or jokes
- 'banter' or gossip
- inappropriate questions
- excluding an employee
- insults or unwanted physical contact

It can be verbal, written or physical and is based on the victim's perception of the unwanted behaviour rather than that of the harasser.

It can also apply to:

an employee who is harassed because they are perceived to have a protected characteristic, whether they actually have it or not

an employee who is harassed because they are associated with someone with a protected characteristic

an employee who witnesses harassment of another because of a protected characteristic which has a negative impact on their dignity at work or the working environment, irrespective of whether they share the protected characteristic.

And finally, there's Victimisation.

Victimisation is when an employee is treated less favourably than others for any of the following:

- making an allegation of discrimination,
- supporting a complaint of discrimination,
- giving evidence relating to a complaint about discrimination,
- raising a grievance concerning equality or discrimination,
- doing anything else in relation to the Equality Act

An employee is protected under the Equality Act if they make, or support, an allegation of victimisation 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 in bad faith – in other words maliciously.

So, to summarise, there are 4 key types of discrimination:

Number one – Direct Discrimination. Which occurs where a provision, criterion or practice is made against a protected characteristic and is easily spotted in the way it is stated.

Number two – Indirect Discrimination. Which occurs where a provision, criterion or practice is made against a protected characteristic and it is not obvious in the way it is stated.

Number three – Harassment. Which occurs when ‘unwanted conduct’ happens and must be related to a relevant protected characteristic or be ‘of a sexual nature’.

And number four – Victimisation. Which occurs when someone is treated less favourably than others.