

The Equality Act 2010 and Staff

Podbriefing Audio Transcript

00:12

[Inaudible speakers] Dave, Dave come have a look at this one...She's alright isn't she?

00:23

You could say that!

00:29

Don't worry Sally, you could hold your own next to her.

00:32

Oh grow up!

00:33

Oh come on Sally, it's just a joke. It's all equal opportunities these days. You girls have your torso of the week in Heat magazine. Fair's fair!

00:40

It's not the same and you know it, it's like some childish morning fix for you two!

00:48

Yeah whatever!

00:55

The Equality Act 2010 consolidates 40 years' worth of equality legislation and it protects both employees and job applicants.

01:07

Discrimination is prohibited in the employment relationship and also in relation to job recruitment. It can apply to employees who work abroad, as long as they spend part or some of their time living or working in Great Britain, or that there is a substantial connection between Great Britain and the employment relationship. And it can also affect employees who provide personal services to the University such as agency workers.

01:39

So the University is prohibited from discriminating directly, indirectly and from harassing or victimising in relation to any of nine protected characteristics. Now those characteristics are: sex; gender reassignment; race and that includes skin colour, nationality, ethnic and national origins; sexual orientation; religion and belief and that includes a lack of religion or belief; age; disability; maternity and pregnancy; and civil partnership and marriage.

02:20

Direct discrimination occurs when somebody is treated less favourably specifically in relation to a protected characteristic. Generally, there are very few defences, although you can justify it by reason of somebody's occupation. So if they are an actor or an actress having a protected characteristic might be justified in relation to any particular role. Indirect discrimination is where a provision, a criterion or a practice is applied to everybody, it appears to have a neutral effect, but it actually affects adversely one particular group. So if for example employees were required to work on Sunday, or another particular day of the week which had an impact on those with a particular religion who couldn't work on that day that would be indirect discrimination. Indirect discrimination can be justified if it's a proportionate means of achieving a legitimate aim, so

that would require balancing motivational and business needs against the impact that the event has on those in a protected group.

03:26

Yep?... Hi Sally, take a seat.

03:35

Okay, well thanks for your email and for bringing this matter to my attention. Now I've spoken to Rob and Dave about your complaint, and they say it's just harmless banter, that they are just having a laugh.

03:47

They would say that wouldn't they, but they are not on the receiving end of it!

03:51

So, would you say that their behaviour was directed at you?

03:55

Not specifically, but there's only a few women in the team and on this occasion Rob made some comment comparing me with the women he was looking at on the screen... I find it totally unacceptable! This is a progressive University and in this day and age I don't expect to be subjected to this laddish behaviour when I come into work!

04:18

So you're saying it's more than just the comments you allege that Rob made last week?

04:22

Absolutely, it happens regularly! ... They're looking at pornography in work!

04:26

Did you see what they were looking at because they say it was a picture of a woman, but she had clothes on?

04:32

No, I didn't see the screen, but, the impression I got as I have many times before is that they're looking at pornographic images.

04:43

Look John, I'm not after Rob and Dave being formally punished. I'm just fed up of it and want it to stop ... I thought that you as line manager for all of us could have a quiet word and make them stop doing it.

05:00

Harassment, including sexual harassment is unwanted conduct which relates to a protected characteristic and it has the purpose or the effect of violating somebody's dignity, or creating a hostile, or degrading, or intimidating environment. Harassment can apply to a single act and it is judged both objectively, but also from the person's perspective.

05:27

I just feel a bit out of my depth. See that's why I wanted a word with you so I could get some guidance from HR as to where to move forward.

05:35

So have you spoken with Rob and Dave and heard their side of the story?

05:38

Yeah, I've already spoken to them both separately.

05:42

And how do they explain it?

05:44

Well, they said they were looking at a picture of a woman on Rob's screen.

05:47

A naked picture?

05:49

They said not, but I don't really believe them to be honest. They both gave a different description of what the woman was wearing and neither were very convincing about why they were looking at the image in the first place.

06:00

And did you ask about the previous incidents that Sally referred to?

06:02

No. It was after I had spoken to Rob and Dave that I had the meeting with Sally, which is when she alleged it was a regular occurrence.

06:10

Did Sally raise this as a formal complaint or grievance?

06:13

She emailed me her complaint about the incident last week, but she said in her email and later in our meeting that she just wanted the matter dealt with informally. That way she could continue working with Rob and Dave without you know, worrying about what they may say or do.

06:29

Okay...Well we need to investigate the matter further before we reach any conclusion as to what action to take. Particularly now that we know that Sally is saying this happens regularly. We need to see what Rob and Dave have to say, and we may need to instigate a formal disciplinary procedure. We have a code of practice, for the use of the University's computers and harassment may be an issue. Even though Sally's saying she doesn't want formal action to be taken, she may have a different view later.

07:07

Sounds like a lot of work.

07:09

I know, but you'll appreciate that we need to ensure that everybody works in an appropriate environment. There's no point in us having an 'Equal Opportunities' statement and a 'Dignity' policy, if we're not prepared to treat complaints appropriately, whether they are formal or informal. Given the allegations we need to be sensitive to Sally and to Rob and Dave as well. I'll help guide you with the approach that you need to take and what you'll need to discuss with Sally. In the meantime, I suggest that you keep an eye out, to ensure that Rob and Dave don't ostracise Sally, or take against her because she's this complaint about them.

08:03

If the University doesn't take reasonably practicable steps to prevent the discrimination of its employees during employment, then it can be liable for the acts of its employees, that's known as 'vicarious liability'. But that's not to forget that individual members of staff can also face discrimination claims because of their own actions.

08:27

So victimisation is where somebody's done what's called a 'protected act' and then is discriminated by reason of that and a 'protected act' would include if they have made allegations of discrimination, or if they brought a claim alleging discrimination.

08:42

When I met with Sally she raised another issue. It's about her arthritis; she thinks it's hampering her work within the team.

08:50

I had a look at Sally's personnel file before this meeting and I don't remember seeing anything recorded on it about a medical condition. What is it that Sally suffers from?

09:00

She says it's the arthritis in her fingers; it makes her type quite slowly. I think it must be getting worse you know.

09:08

Has she mentioned this before?

09:09

I think so yeah, but I've only really noticed it recently since Shaun left the team. You see he has not been replaced yet, so the rest of the team have had to absorb the extra workload. She's not keeping up as fast as the rest of the team. What should I do, should I start performance management?

09:23

Not for the moment. We need to understand more about Sally's condition and support her. It's possible that it may amount to a disability, if so, we need to consider whether we can make any reasonable adjustments to help her. It might be as simple as giving her extra time to complete tasks, or a smaller portion of the overall workload. I'm sure Sally would have some ideas herself as to what might help. But look, we're getting too far ahead. First we need to speak with Sally to understand her position.

10.05

Additional rules apply to employees with a disability, and so disability is defined as a mental or physical impairment which has a substantial and long term adverse effect on that employee's ability to carry out day to day activities. Discrimination arising from disability is prohibited, so if there is a no dog's policy and somebody has a guide dog then that would discriminate against them. But that discrimination can be defended if it's objectively justifiable. The University also has a duty to make reasonable adjustments for disabled people, so this happens where a provision, a criterion or a practice, or something connected with the University's physical premises puts a disabled employee at a substantial disadvantage compared with a non-disabled employee. If the University doesn't know that an employee or a job applicant has a disability that could place that person at a substantial disadvantage then the University isn't under a duty to consider a reasonable adjustment being made.