

CHAPTER 14 DISCRIMINATION AND HEALTH AND SAFETY

After studying this chapter students should be able to:

OUTLINE THE PROTECTED CHARACTERISTICS UNDER THE EQUALITY ACT 2010

- The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

DESCRIBE THE DIFFERENCE BETWEEN DIRECT AND INDIRECT DISCRIMINATION

- Direct discrimination is deliberate treatment (whether well-motivated or otherwise) towards someone because of a characteristic such as sex or race, and which has a less favourable effect on that person than on someone else who is in a similar situation.
- Indirect discrimination is not deliberately targeted, but applies to a number of people. Some of those people, who are of a particular characteristic will find it harder to comply than the others in the pool.
- Direct discrimination cannot be justified but can be the subject of an occupational requirement, which is essential to the job, such as having a black actor play the role of Othello
- Indirect discrimination can be justified if the employer has a proportionate means of achieving a legitimate aim.

UNDERSTAND THE DIFFERENCE BETWEEN POSITIVE DISCRIMINATION AND POSITIVE ACTION

- Positive discrimination is unlawful and is when a person treats someone more favourably than another because of a protected characteristic
- Positive action is lawful and is when an employer is allowed to take measure to address disadvantage, such as stating that they encourage applications from ethnic minorities and older people, without shortlisting such people, or giving them jobs based solely on their protected characteristic
- It is lawful to take action that is more favourable to a disabled person.

EXPLAIN HOW THE PROTECTED CHARACTERISTICS AND PROHIBITED CONDUCT INTERACT

- Direct discrimination and victimization apply to all protected characteristics.
- Discrimination by association and perception apply to all except marriage/civil partnership and pregnancy.
- Harassment and third party harassment apply to all except marriage/civil partnership and pregnancy.
- Indirect discrimination applies to all except pregnancy.
- Almost all characteristics are symmetrical, apart from pregnancy, disability, and marriage/civil partnership.

EXPLAIN THE DIFFERENCE BETWEEN CRIMINAL AND CIVIL HEALTH AND SAFETY

- The Criminal Law is enforced by local authorities and the HSE.
- Criminal prosecutions result in a fine and/or imprisonment.
- Civil cases are brought by injured individuals who are seeking compensation for their injuries.
- People who bring civil cases are seeking compensation for their injuries.

- For both kinds of cases the employer can defend itself if it did a risk assessment, and took appropriate action to avoid the risks present.