

Employment Equality Law Update

Equality Commission

FOR NORTHERN IRELAND

KEEPING YOU UP-TO-DATE

WITH DEVELOPMENTS IN EMPLOYMENT AND EQUALITY LAW



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Welcome to the second edition of the joint Equality Commission and Labour Relations Agency newsletter. The feedback we received from our stakeholders regarding edition one, has been very positive and we have taken onboard many of the things they said they liked about it, including user-friendly language, practical implications of legal developments and the promotion of joined-up thinking when it comes to addressing legal issues in the workplace.

There are always hot topics in employment and equality law depending on whether new legislation is around the corner or perhaps a new case decision has come from a superior court such as the Court of Justice for Europe.

Our second edition examines some key issues and cases that impact on organisations throughout Northern Ireland, including - complying with The Bribery Act (2010); pending changes in employment law in GB, “equality law in GB, ROI and NI - similar but not the same” and assistance for small employers provided by both the Labour Relations Agency and the Equality Commission.

As this is the final publication in this pilot exercise, we would particularly appreciate your feedback on how useful the two publications have been to you and what benefit you see in this type of publication becoming a permanent feature. Our contact details can be found on the final page of the Newsletter.

The Bribery Act 2010

This Act came into force in Northern Ireland in July 2011 and almost slipped in unnoticed because technically it is not employment law but rather a revamp of a specific criminal law.

As a result not many people took much notice of it during the summer, however, upon closer inspection, the Act contains sections which employers and employees in commercial organisations should be aware of.

The quick guide to the Bribery Act states that “..your organisation may be liable for failing to prevent a person (e.g. an employee) from bribing on your behalf but only if that person performs services for you in business...” but that “ there is a full defence if you can show you had adequate procedures in place to prevent bribery. But you do not need to put bribery prevention procedures in place if there is no risk of bribery on your behalf”.

Key questions to ask:

1. Do we have, or indeed need, an anti-bribery policy and procedure? (i.e. – is it relevant to your organisation in any way?)
2. What do we do about giving and receiving gifts? (e.g. – gifts recorded in a register of interests or returned, or simply taken without a word?)

3. What are our rules regarding hospitality? (How well are the lines drawn between appropriate hospitality and treatment that creates an expectation of an advantage?)
4. What job roles are most vulnerable to giving/receiving bribes? (sales etc, where there may be the possibility of “facilitation payments”)

Depending on the size, nature and complexity of your business, the issue of bribery may be of little or no relevance and so a basic approach may be required in terms of assessing the risk of bribery and, if necessary, devising a straightforward policy and procedure for tackling bribery.

Further questions to ask:

1. Has a policy been drafted and just been “shelved”? (i.e. - there is no active procedure to follow)
2. Is there a “nod and a wink” culture in the organisation? (i.e. - say nothing unless.....)
3. Are you aware of what may be considered - a perk of the job? in the normal course of business dealings? (i.e.- an unspoken fringe benefit)

The Bribery Act 2010 requires:

- Ensuring that your policy/procedure is appropriate to the size and nature of your organisation. A policy is not enough, there must be an active procedure.
- Top level commitment from the owner/ senior management is needed to ensure everyone knows there will be zero tolerance of bribery. It must not just be lip service by the boss.

- Knowing and measuring the risks of bribery and act, upon them – do a risk assessment in the context of your own organisation.
- Knowing the people who work for you and on your behalf - trustworthiness is essential and so people should know and be reminded of what is expected in terms of good faith.
- Communicating your position, policy and procedures on bribery and train, if necessary. Sometimes refresher training about what the rules on bribery are can be a good reminder.
- Monitoring and if necessary, amending your approach to bribery. All policies and procedures evolve and change with time and developments in the law.

If you are a small organisation with no risk of bribery at all then there may be nothing for you to do. In the event that an issue does arise, due regard should be paid to other areas which may be affected such as – recruitment, induction, grievance, discipline or dismissal.

Employment Law Developments in GB

As employment law is a devolved matter we cannot assume that every new employment law that comes into force in GB will be automatically introduced in Northern Ireland.

Employment law is constantly changing and over the coming years in GB there are developments pending in the following areas:

- Qualification periods for claiming unfair dismissal (rising to 2 years)
- Possible introduction of fees for employees who are lodging tribunal claims
- Changes in maternity and paternity leave and how it can be taken
- Changes in relation to unpaid parental leave
- Amendments to the law on working time for long term sickness and holiday entitlement
- Changes in aspects of equality law regarding equal pay

Other reviews of employment related law are on-going in GB and at this time it is not possible to say what will become law and if it will impact on Northern Ireland. One thing is for certain and that is changes are constant and it is vital that everyone involved in the employment relationship is aware of pending, possible or perhaps inevitable change.

Equality Law in GB, NI and ROI

‘SIMILAR BUT NOT THE SAME’

This article is for those employers who operate across the regions of Northern Ireland (NI), Great Britain (GB) and/or the Republic of Ireland (RoI). It is a very short guide to the key similarities and differences between the employment aspects of the equality laws of each region.

Domestic equality laws

The main domestic equality laws which presently apply in each region and which seek to ban discrimination by employers are-

Northern Ireland	Great Britain	Republic of Ireland
<p>Equal Pay Act (NI) 1970</p> <p>Sex Discrimination (NI) Order 1976</p> <p>Fair Employment & Treatment (NI) Order 1998</p> <p>Disability Discrimination Act 1995</p> <p>Race Relations (NI) Order 1997</p> <p>Employment Equality (Sexual Orientation) Regulations (NI) 2003</p> <p>Employment Equality (Age) Regulations (NI) 2006</p>	<p>Equality Act 2010</p>	<p>Employment Equality Acts 1998 to 2011</p>

Despite what initial appearances may suggest, the several NI laws do not together contain much more law, in the sense of more rights and duties, than the fewer laws of GB and RoI.

EU equality laws

In addition, several European Union (EU) equality laws also apply in the three regions. The ones which seek to ban discrimination in employment are the *Equal Treatment Directive (Recast)*, the *Racial Equality Directive* and the *Framework Employment Directive*.

For the purposes of this article, it is sufficient to note that EU law tends to have a levelling impact across the regions by removing some of the apparent differences that exist between the domestic laws. Some examples of this will be noted below.

The equality grounds

The overriding aim of the regional laws lies in their common general rule that it is unlawful for employers to discriminate against job seekers, employees or former employees on certain specified grounds, which for the purposes of this article we will call the “equality grounds”. They are-

Northern Ireland	Great Britain	Republic of Ireland
Sex / Pregnancy / Maternity leave	Sex / Pregnancy / Maternity leave	Gender (this includes sex, pregnancy or maternity leave)
Gender reassignment	Gender reassignment	[Gender reassignment is not a specified statutory ground]
Being married or in a civil partnership	Being married or in a civil partnership	Civil Status (means being single, married, separated, divorced, widowed or in a civil partnership (or a former one)).
[Family status is not a specified statutory ground]	[Family status is not a specified statutory ground]	Family status (means having responsibility as a parent of a child below 18 years of age or as the resident primary carer of a person (of any age) who is disabled)
Religious or similar philosophical belief	Religious or philosophical belief	Religious belief

Political opinion	[Political opinion is not a specified statutory ground]	[Political opinion is not a specified statutory ground]
Race (includes colour / nationality / ethnic or national origins)	Race (includes colour / nationality / ethnic or national origins)	Race (includes colour / nationality / ethnic or national origins)
[Irish Traveller status is not a standalone ground, but discrimination for this reason is deemed to be race discrimination]	[Irish Traveller status is not a standalone ground, but discrimination for this reason is deemed to be race discrimination]	Irish Traveller status (i.e. whether one is or is not an Irish Traveller)
Disability	Disability	Disability
Sexual orientation	Sexual orientation	Sexual orientation
Age (but see below)	Age (but see below)	Age (but see below)

The following points should be noted about how some of these equality grounds apply in each region.

Gender reassignment: NI, GB and EU law explicitly ban discrimination on this ground, but the law in the RoI does not. However, it is generally accepted that the “gender ground” in the RoI’s law must be interpreted, in line with EU law, as banning this type of discrimination. This principle was recently followed, for example, by the Equality Tribunal in the case of Hannon –v- First Direct Logistics Limited [2011].

Married status / Civil status: In GB and NI, the laws ban discrimination against people because they are married or in civil partnerships only. In the RoI, the “civil status ground” bans discrimination against people on the grounds of other marital statuses too, such as being single. But, these differences are not as wide as first appears after other statutory provisions are considered. For example, the RoI law has an exception (section 34) that

allows employers to discriminate on this ground in certain circumstances. So, for example, in all three regions an employer would be allowed to give a few days special paid “marriage leave” to a newly married employee, without fear of facing discrimination complaints from employees who are single and who cannot therefore receive such a benefit.

Family status: In NI and GB, the laws do not specifically mention this ground, but here again, EU law has a levelling impact, and it seems that they do ban this type of discrimination, at least to some extent. This becomes clearer when one recognises that the RoI’s “family status ground” is similar to a special form of direct disability and direct age discrimination known in the UK as associative disability and age discrimination (i.e. discriminating against an employee or job seeker because they are associated with a disabled person or a young person).

Philosophical beliefs: In NI and GB, discrimination on the ground of non-religious philosophical beliefs is banned and case law has set out principles to determine the boundaries of this. For example, it has been held to cover beliefs that climate change is man-made, in spiritualism, in sanctity of life (in relation to the promotion of animal rights). The fact that the RoI law does not expressly ban this type of discrimination may not be as significant as it first appears. Again, EU law could arguably close the apparent gap, for this ground originates from there, where the Framework Employment Directive bans discrimination on the ground of “religion or belief”.

Political opinion: Discrimination on this ground is expressly banned in NI but not in GB or RoI. Some commentators have argued that some political opinions may be of such a nature as to come within the definition of “philosophical belief” and thus may be protected from discrimination on that basis. Case law has not satisfactorily answered this question yet.

Age: Age discrimination in employment is banned in all three regions, yet there are some apparent differences in how the laws deal with the subject. For example, in NI and GB, employers may only compulsorily retire an employee on grounds of age where the decision can be objectively justified. By contrast, in the RoI, the section 34 exception purports to allow employers to set compulsory retirement ages without a need for justification. It is certain that the RoI law is out-of-step with EU law on this point and this has been recognised by the Equality Tribunal, which has ruled that EU law prevails (see the case of Saunders –v- CHC Ireland Ltd [2011]). So, here again, EU law has a levelling impact.

Definitions of discrimination

The laws ban several different types of discriminatory conduct. These are commonly known by the names of direct discrimination, indirect discrimination, victimisation, harassment and sexual harassment. EU law has strongly influenced the meanings of these terms in all three regions so that, despite some differences on paper, the underlying meanings can reasonably be taken to be the same for most practical purposes.

However, some apparently big differences lie in the area of disability discrimination. The laws in each region ban direct disability discrimination, harassment and victimisation, but regional variations exist in relation to other forms of disability discrimination: i.e. disability-related discrimination (NI only); indirect disability discrimination (GB and RoI only); discrimination arising from disability (GB only).

Perhaps the most important thing to note is an extraordinary positive measure that they all share in common: i.e. in each region there is a duty on employers to make reasonable adjustments or accommodations for disabled people. There is often a lot of overlap between this duty and the other forms of disability discrimination. Indeed, it is often a failure to comply with this duty in the first place, that leads to the other forms of discrimination occurring.

The Northern Ireland Fair Employment Monitoring System

There is one feature of the system in NI which makes it very different to those which apply in GB and RoI: this is the mandatory equality monitoring scheme. The system operates under the Fair Employment & Treatment (NI) Order (i.e. the religious discrimination law that operates in NI) and is enforced by the Equality Commission.

The duties are imposed on a wide range of employers in both the public and private sectors. In the case of the private sector, the duties are imposed on those organisations that employ more than 10 employees in NI (i.e. counting only those employees who work for 16 or more hours per week). A failure to comply with the duties may open up an employer to criminal prosecution by the Equality Commission. The penalties can include fines of up to £5,000. The ultimate penalty is that a defaulting employer may be barred from tendering for work and from entering into contracts for the supply of goods and services with Government departments and other public authorities.

In brief, employers who are bound by the duties are required to-

- register with the Equality Commission,
- monitor the community background of job applicants and staff (i.e. collect data on whether individuals are members of the Protestant or Roman Catholic communities in NI),

- send monitoring reports to the Equality Commission every year,
- carry-out periodic reviews (i.e. every 3 years) of the composition of their workforces and of their employment practices, and take affirmative action, where it is reasonable and appropriate to do so.

Official Equality Bodies

Each region has its own separate and independent “equality body”. Their main duties are to promote equality of opportunity and to work for the elimination of discrimination. They each perform a range of similar functions and provide similar services in their respective regions, such as issuing codes of practice and other guidance materials and offering information and advice, providing legal services to the victims of discrimination. The bodies are-

Northern Ireland

Equality Commission for Northern Ireland

Great Britain

Equality and Human Rights Commission

Republic of Ireland

Equality Authority (RoI government currently proposing a merger between RoI Human Rights Commission and Equality Authority).

Small Employer Assistance

The Labour Relations Agency and Equality Commission provide a FREE service for small employers regarding key employment and equality issues through our advice lines, employer guidance, websites and training.

The LRA focuses on providing advice in relation to employment law matters including Written Statement of main terms and conditions of employment and Contracts of Employment whilst the Equality Commission addresses the equality aspect of employment policies.

A key priority for both organisations is reaching out to small employers and making them aware of the services which are available from both organisations. In particular the LRA's support involves assessing employers' policies and documents to determine the extent to which they meet legislative requirements and best practice.

Types of document include:

- Written Statement of main Terms and Conditions of Employment
- Flexible Working policy and procedure
- Contract of Employment
- Discipline and Grievance Procedures
- Absence Notification and Certification Procedure
- Company Handbooks
- Specific paragraphs of other policies that relate to an employment relations issue, for example, where a section relates to employee discipline.

The Equality Commission focuses in particular on supporting small employers through the provision of advice and support on day to day queries that they have. However, it also supports small employers in developing equality related policies such as equal opportunity and anti harassment policies.

If you would like to know more about the free services provided by both organisations you will find relevant contact details at the back of this document.

Employers can contact the Equality Commission and Labour Relations Agency for general or specific advice on:



Equality Commission 028 90 500 600



Labour Relations Agency 028 90 321 442



LRA and Small Business representatives at a recent equality seminar in Craigavon



Evelyn Collins and Wilfred Mitchell OBE, Policy Chair of the FSB

Support for smaller businesses

Click www.equalityni.org



The Equality Commission's role is to help you understand about equality and what you should and shouldn't do. We can provide you with a range of advice and support - see below for guidance on some common challenges you may face. If you need more information please do not hesitate to contact us.

- one** Taking on new staff?
- two** Dealing with flexible working requests?
- three** Managing absence?
- four** Dealing with pregnancy and maternity?
- five** Staff reaching retirement age?
- six** Making staff redundant?

“Launching a new online resource to help address the equality aspects of these issues, Chief Executive of the Equality Commission for Northern Ireland, Evelyn Collins, CBE said: “We are very focused on ensuring that we provide all businesses with expert advice on equality issues.”

Assistance with keeping up to date with employment and equality law

The Labour Relations Agency and Equality Commission will continue to work together to make stakeholders aware of changes in the areas of employment and equality law. One way in which we seek to do this is through the provision of training. You can find details of the joint training we provide on the websites of both organisations.

Contact Details:

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