

# Equal Opportunities Management Guidance

## 1. Introduction

## 2. Legislation

## 3. Public Sector Duty

## 4. Discrimination

- Direct Discrimination
- Indirect Discrimination
- Associative Discrimination
- Perceptive Discrimination
- Harassment
- Third Party Harassment
- Victimisation
- Genuine Occupational Requirement

## 5. Protected Characteristics

- Age
- Disability
- Gender Reassignment
- Marriage and Civil Partnership
- Pregnancy and Maternity
- Race
- Religion or Belief
- Sex
- Sexual Orientation

## 6. Conclusion

## 1. Introduction

The Equal Opportunities policy was approved by the Highland Council on 30th October 1996 and updated on 3rd December 2003. A further update was made on October 2010 following the introduction of the Equality Act 2010.

The policy statement confirms that the Highland Council, as a corporate organisation is committed to the promotion of equality of opportunity in its employment practices. Through the policy statement, and approved Action Plan, the Council has stated that it intends that no job applicant or employee shall receive less favourable treatment because of sex, marital or family status, age, ethnic origin, disability, race, colour, nationality, religion, belief, sexual orientation, gender reassignment or any other non-job related factor.

Equal Opportunities mean making the best possible use of the organisation's most important resource - its employees. These guidelines provide a clear message in terms of the economic benefits gained in having an effective equal opportunities policy in the Highland Council.

The purpose of the guidelines is to provide advice to managers on the implementation of the Council's policy. Implementation is not dependant on special or unusual measures, but rather on fair and effective employment practices across a whole range of employment decisions, whether or not such decisions are subject to specific legislation.

The guidelines stress that decisions made about individuals should be objective. Every individual has the right to be assessed for his/her own personal qualities and against carefully thought out criteria. Each manager should concentrate on the requirements of the job and the unique aptitudes and abilities of people as individuals.

These guidelines address the main areas for the application of the policy. They do not attempt to be an exhaustive guide to equal opportunities in employment. HR will provide advice and guidance on any employment issue.

## 2. Legislation

In 2006 The Equalities and Human Rights Commission replaced the three previous discrimination bodies.

The Equality Act 2010 brought together all previous discrimination legislation and established 'protected characteristics'. These are;

- Age
- Disability
- Gender Reassignment
- Race
- Religion or Belief
- Sex
- Sexual Orientation
- Marriage and Civil Partnership
- Pregnancy and Maternity

### 3. Public Sector Duty

The Act requires public sector employers to lead by example in promoting equality in their workplaces. All public sector organisations are under a single equality duty to demonstrate that they are achieving equality in their workforce across all the protected characteristics.

Additionally, public sector organisations will be subject to specific guidance issued by ministers to drive equality in their workplaces. This guidance can be issued only after consultation with the Equality and Human Rights Commission.

### 4. Discrimination

These guidelines aim to establish good employment practice in the recruitment and management of staff within the Highland Council. The employment practices adhere to the above legislation and the approved Highland Council policy statement but have been developed by addressing the key element within legislation which is the elimination of discrimination.

Discrimination in the context of equal opportunities means:

- using inappropriate, biased or subjective criteria
- or
- establishing conditions that cannot be justified

which result in one group of people being treated less favourably than others.

The law recognises various kinds of discrimination:

#### **Direct Discrimination**

This occurs when people are treated less favourably in their employment because of a protective characteristic they have or are thought to have. For example:

- Direct sex discrimination - not considering the application of a woman for a job that requires occasional evening work, assuming she has home care responsibilities.
- Direct marital status discrimination - not employing a married person with children because the job involves working away from home a percentage of the time
- Direct racial discrimination –not considering the application of an Asian person for a supervisors post, because the staff may not accept them in that role.

## Indirect Discrimination

This occurs when a condition or requirement is applied equally to men and women but the condition makes it harder for one particular group, which is significantly smaller to comply with them, and so they are put at a disadvantage. Indirect discrimination need not be meant or obvious. For example:

- Indirect sex discrimination - advertising for a post requiring manual dexterity, stating that the post requires 'nimble fingers' without providing a test which assesses the candidate's ability. This could be seen as discriminating against men because of the terminology used.
- Indirect marriage discrimination - asking people to be fully mobile in their job, when they are rarely required to travel far - therefore criteria not justified.
- Indirect racial discrimination - insisting on a dress code for women consisting of a blouse and skirt, which Muslim women could not comply with because, for religious reasons, their legs have to be covered.

Indirect discrimination is far more common, largely because people can practice it without realising it is illegal. However, ignorance of the law is not taken as a valid defence.

In exceptional circumstances indirect discrimination can be justified if employers can show you acted rationally and that the discrimination is a reasonable way to meet a lawful objective. If this is the case you must be able to show that you have considered less discriminatory alternatives to any decision you make.

## Associative Discrimination

This previously applied to race, religion or belief and sexual orientation and has now been extended to cover disability, gender reassignment and sex. Associative discrimination is direct discrimination against someone because they associate with someone who possesses a protected characteristic.

## Perceptive Discrimination

This has been extended to cover age, race, religion or belief, sexual orientation, disability, gender reassignment and sex. This is direct discrimination against someone because others think that they possess a particular protected characteristic. This applies even if the person does not actually possess that characteristic.

## Harassment

Harassment is behaviour which causes offence or makes a person feel uncomfortable. The Highland Council has approved a policy on Harassment at Work to inform staff that it will not be condoned in any form within the organisation. The 2010 legislation enabled employees to complain of behaviour that they find offensive even if it is not directed at them, and the complainant need not possess the protected characteristic themselves.

There are several forms of harassment; the most common are sexual, racial and bullying.

For example:

- displaying sexually suggestive pictures, objects, literature or videos in the workplace.
- making offensive or derogatory remarks about a person's work, attitudes, character or personal life.

### **Third Party Harassment**

This has been extended to cover age, disability, gender reassignment, race, religion or belief and sexual orientation as well as sex. Third party harassment is where an employee is harassed by someone who is not an employee of the Council (for example a customer or a contractor). If an employee complains of third party harassment it is important to take action to prevent it from happening again. If the Council does not take action after receiving two complaints and the problem re-occurs then the employee can complain under the Equalities Act.

### **Victimisation**

This occurs when an employee is treated badly because they have raised or supported a complaint or grievance under the Equality Act, or because they are suspected of doing so. An employee no longer needs to compare their treatment with that of someone who has not made or supported a complaint. An employee is not protected if it can be shown that they maliciously made or supported an untrue complaint.

### **Genuine Occupational Requirement**

Discrimination on the grounds of sex, race, disability, religion, belief or sexual orientation is only lawful in certain circumstances, where genuine occupational requirement (GOR) rules are applicable to the posts where, for example, an employer can show that:

- they recruited a man/woman to preserve decency/privacy
- the job is situated in a single sex establishment
- the employee must live in and there are no separate sleeping/toilet facilities etc.

## **5. Protected Characteristics**

### **Age**

The Equality Act protects people of all ages. However, age is the only protected characteristic that allows employers to justify direct discrimination if it can be demonstrated that the discrimination was a proportionate means of meeting a legitimate aim.

## **Disability**

A person is defined as having a disability if they have a physical or mental impairment which has a substantial and long term adverse effect on their ability to carry out normal day to day activities. The Council has a duty to make reasonable adjustments to help employees overcome a disadvantage resulting from impairment.

## **Gender Reassignment**

The Act provides protection for transsexual people. A transsexual is a person who proposes to, starts or has completed a process to change his or her gender. Transgender people (those who do not intend to live permanently as a member of the opposite sex) are not protected by the Act. Additionally, medical procedures for gender reassignment should not be treated as a lifestyle choice.

## **Marriage and Civil Partnership**

Employees who are married or who are in a civil partnership are protected from being discriminated against because of their status.

## **Pregnancy and Maternity**

A woman is protected against discrimination on the grounds of maternity and pregnancy during the period of her pregnancy or statutory maternity leave. During this period, pregnancy and maternity discrimination cannot be treated as sex discrimination.

## **Race**

An employee cannot be discriminated against because of their race. 'Race' includes colour, nationality and ethnic or national origins.

## **Religion or belief**

For the purposes of the Equality Act, religion means any religion or lack of religion. Belief means any religious or philosophical belief or a lack of such belief. It is unlawful to discriminate against a person on the grounds of their religion or belief.

## **Sex**

A person cannot be discriminated against because of their sex. Both men and women are protected under the Act.

## **Sexual Orientation**

The Equality Act protects bisexual, gay, heterosexual and lesbian people.

## 6. Conclusion

Equal Opportunities, its acceptance and development within the Council, depend on the implementation and understanding of the policy and action plan.

Each member of staff needs to be aware of the implications of adhering to the policy and meeting legislative requirements.

HR are able to give advice and guidance on the application of the policy. Staff will be supported on effective implementation through awareness raising, directed training and in the review and monitoring of employment policies and procedures.

Your post, as a Manager, involves ensuring the success of the policy through:

- being aware of the law relating to Equal Opportunities and the type of action which can result in discrimination. Use your HR Representative for information, advice and support regarding the interpretation of legislation
- trying to recognise your own prejudices and accept that we all have the capacity to change
- being aware of your own assumptions which may cause harm to others
- encouraging others to question their own prejudices and assumptions
- aiming to find out more about how minority groups can be given practical help in the workplace e.g. how specialised equipment helps disabled people to work effectively. Remember to consult with disadvantaged groups - don't assume you know their problems or work related issues
- contacting your Line Manager or HR if you feel a working practice or procedure could be made fair or is discriminatory in application.