



LGBT+ Rights At Work

An Advice Leaflet
for Usdaw Members

Rights for LGBT+ Workers

As a result of many years of campaigning by lesbian, gay, bisexual and transgender (LGBT+) organisations and Trade Unions, LGBT+ workers now enjoy the same rights at work as their heterosexual (straight) colleagues.

The Equality Act, introduced in October 2010 in England, Scotland and Wales, made it unlawful for employers to discriminate against someone or harass them for reasons relating to either their sexual orientation or their gender identity.

Although the Equality Act has not been enacted in Northern Ireland, similar legislation applies protecting LGBT+ people from discrimination. The information in this leaflet therefore applies equally to LGBT+ members in Northern Ireland.

As well as the recent improvements in legal rights, social attitudes have also dramatically changed but this doesn't mean that harassment and discrimination relating to sexual orientation or gender identity has disappeared from our workplaces.

Millions of LGBT+ workers still don't feel safe enough to be out about their sexual orientation or gender identity at work and thousands of these workers will be Usdaw members. This leaflet summarises the legal rights LGBT+ members have at work.

The Issues

Whilst Usdaw recognises that LGBT+ members each have distinct and separate problems at work, they also share a range of concerns and experiences.

For example, it is common for LGBT+ members to find themselves on the receiving end of harassment and unfair treatment simply for being who they are.

Ushaw LGBT+ members have experienced the following at work:

- Verbal abuse and name calling by colleagues, managers and customers.
- Graffiti and so called 'jokes' about their sexual orientation or gender identity.
- Being ignored or excluded by colleagues.
- Outing someone at work as being either LGB or T without their permission.
- Refused equal access to pensions, parental or adoption leave and other rights at work.
- Spreading rumours or gossip about someone's sexual orientation or gender identity.
- Physical violence.
- Sexual harassment.

Who is Covered By The Law?

Sexual Orientation

The law protects everyone from discrimination on the grounds of their sexual orientation, so it applies to straight as well as lesbian, gay and bisexual workers. However, as employment tribunal statistics tell us, it is overwhelmingly lesbians, gay men and bisexuals that experience unfair treatment and harassment because of their sexual orientation.

Gender Identity

The law also means that transgender members are fully protected from discrimination by the law. A transgender person is someone who lives their life in a gender different to that in which they were born.

The law makes it clear that a transgender person does not have to undergo any medical procedures to be protected.

In other words, the law now recognises the fact that many transgender people choose to live their lives in their 'affirmed' gender without undergoing medical or surgical treatment.

In Northern Ireland, the Sex Discrimination (Gender Reassignment) Regulations also cover trans people at all stages of transition.

The law in the UK makes it clear that it is unlawful to discriminate against a person on the grounds that the person intends to undergo gender reassignment, is undergoing gender reassignment, or has at some time in the past undergone gender reassignment. This makes sure that the various stages of the process, including the very initial stage, are covered by the regulations. In other words, a person may intend to undergo reassignment but never go through with it or they may be in the process of transitioning or it might have happened previously – at each or all of these stages they would be covered.

For more information on transgender issues, see the Usdaw guide *Changing Gender – Understanding the Issues* (Lft 424).

Non-Binary Workers

Non-binary is how some people choose to describe their gender. It means that they don't feel 100% male or female, but somewhere in-between. People who identify as non-binary often express their gender in a way that doesn't fit traditional expectations of what it is to be male or female. Non-binary people may also identify in another way entirely, with no reference to male/female.

Up until recently it was unclear whether non-binary workers were covered by the Equality Act, as the gender reassignment provisions only cover those who are proposing to undergo, are undergoing or have undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

However, in September 2020 a case was brought by a car plant worker who identified as non-binary. They were subject to insults, abusive jokes and received little, if any, support from management.

The employer argued that the worker didn't fall within the definition of gender reassignment as outlined in the Act. However the Tribunal disagreed. They found that "gender is a spectrum" and said it was "beyond any doubt" that the claimant was protected from discrimination by the Equality Act.

This is an important decision establishing that non-binary workers are protected by law from harassment and less favourable treatment at work.

What Does The Law Say?

Equality Act 2010/Sex Discrimination (Gender Reassignment) Regulations (NI) 1999

The law means an employer cannot:

- Refuse to employ someone or decide to dismiss someone because they are lesbian, gay, bisexual or transgender+.
- Refuse access to training or promotion because of someone's sexual orientation or gender identity.
- Deny LGBT+ workers goods, facilities and services they offer to straight and non-transgender workers. This would include access to insurance schemes, travel concessions, or social events.
- Give an unfair reference when someone leaves employment because of being lesbian, gay, bisexual or transgender.
- Victimise someone by treating them less favourably if they have complained about alleged discrimination or given evidence in such a case.
- Discriminate indirectly. This happens when an employer applies a rule or has a policy or a practice that applies to everyone but one group of workers (such as LGBT+ workers) cannot meet so easily.

However, remember the law allows employers to 'defend' a claim of 'indirect discrimination' where they can show they had very good reasons for it and it was in pursuit of a legitimate aim.

- Discriminate against someone because they 'associate' with an LGBT+ worker.

For example, it would be unlawful for an employer to treat a member less favourably because their brother is gay or their dad is transgender.

- Discriminate against someone because they are 'perceived' to be LGBT+ even though they aren't. The Code of Practice to the Equality Act gives the following example:

"A masculine looking woman applies for a job as a sales assistant. The sales manager thinks she is transgender because of her appearance and doesn't offer her the job, even though she performed the best at interview. The woman would have a claim for direct discrimination because of perceived gender reassignment, even though she is not in fact transgender."

The Code of Practice to the Equality Act states:

"Under the Act 'gender reassignment' is a personal process, that is, moving away from one's birth sex to the preferred gender, rather than a medical process."

- Deny LGBT+ workers benefits or pay offered to straight and non-transgender colleagues. This includes overtime rates and allowances, travel allowances as well as access to pension schemes and benefits under pension schemes.

However, there are some exceptions to this rule. For example, employers can restrict benefits to married workers, on the condition that workers in a same-sex civil partnership or marriage also have equal access to the same benefit.

In other words, an employer can still lawfully restrict benefits to straight married couples and same-sex couples who have registered their partnership or married but deny them to unmarried couples and same-sex couples who haven't registered their partnership or married.

The Civil Partnership Act 2004 gave same-sex couples the right to register as civil partners from 21 December 2005. The Marriage (Same Sex Couples) Act 2013 and equivalent legislation in Northern Ireland enables same-sex couples to marry.

For the purposes of State Pension and occupational pension rights, same-sex married couples and civil partners must be treated in the same way as heterosexual married couples.



The Code of Practice to the Equality Act states:

"Harassment covers a wide range of behaviour that can include spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour."

Harassment

Harassment is one of the biggest problems LGBT+ members face in the workplace. The Equality Act makes it clear that harassment, including so called 'jokes', is unlawful. Employers must deal with any incidents quickly and effectively and take reasonable steps to prevent any such incidents from arising in the first place.

Remember, the offensive remarks or behaviour don't have to be aimed at an LGBT+ member for it to be harassment as long as the remarks or behaviour are related to sexual orientation or gender reassignment.



What Can You Do?

As important as the law is, we know that on its own it won't stop harassment or discrimination from happening in our workplaces. Trade unions have an important job of work to do challenging harassment and the Equality Act has helped to strengthen our arm.

Displaying Usdaw leaflets on tackling harassment and bullying, as well as LGBT+ literature, can send a strong signal to members and non-members alike that the Union understands the issues facing LGBT+ members. It also helps to show that the Union is committed to building workplaces where LGBT+ workers feel safe about being out about their sexual orientation or gender identity at work.

Usdaw's Legal Plus Service

Usdaw has a legal service which is completely free. If you have a problem and need help and advice or you want to join the Union, contact your union rep or ring the Usdaw Helpline **0800 030 80 30** or visit the website at **www.usdaw.org.uk**

The Union's Legal Department can advise on whether a member has a case under the sexual orientation regulations.

Contact Usdaw

Usdaw has seven Regional Equalities Forums - one for every region. There are seats on the forums for under involved groups of members, including LGBT+ members.

The forums take the equalities agenda out into the workplace by organising workplace visits, local get-togethers and working with representatives and officers to recruit more members. If you are interested in finding out more about the equalities work of the Union or your Regional Equalities Forum, email **equalitymatters@usdaw.org.uk** or contact the Equalities Section on **0161 224 2804**



Usdaw is committed to building workplaces where LGBT+ workers feel safe about being out about their sexual orientation or gender identity at work.

Useful Contacts

England, Scotland and Wales

The TUC has a range of information on LGBT+ equality at work:

tuc.org.uk/union-reps/equality-and-discrimination/lgbt

Acas (the Advisory Conciliation and Arbitration Service) has a national helpline:

0300 123 1100 (text relay users: **18001 0300 123 1100**). They have produced guidance on the regulations with examples of good practice for employers to follow.

www.acas.org.uk

The Gender Trust offer advice and information to people affected by gender identity issues in the UK.

www.gendertrust.org.uk

The Gender Identity Research and Education Society (GIRES) provide information, guidance, advice and training:

www.gires.org.uk

GIRES have also produced a useful policy guide for employers:

www.gires.org.uk/transgender-policy-guide-for-employers-2019

The Equality and Human Rights Commission has produced a statutory code of practice on the Equality Act:

www.equalityhumanrights.com/en/publication-download/employment-statutory-code-practice

The LGBT Foundation provide a wide range of support services to lesbian, gay, bi and transgender people.

<https://lgbt.foundation>

Tel: **0345 330 3030**

Northern Ireland

The Equality Commission Northern Ireland is the independent body with responsibility for enforcing equality law in Northern Ireland.

www.equalityni.org

Tel: **028 90 500 600**

FOCUS is a voluntary Trust which runs peer support groups for transgender and intersex individuals and their families:

www.thefocustrust.com

More information

Usdaw nationwide

Wherever you work, an Usdaw rep or official (Area Organiser) is not far away. For further information or assistance, contact your Usdaw rep or local Usdaw office. Alternatively you can phone our Freephone Helpline **0800 030 80 30** to connect you to your regional office or visit our website www.usdaw.org.uk You can also write to the Union's Head Office. Just write **FREEPOST USDAW** on the envelope and put it in the post.

Join Usdaw

You can join online at www.usdaw.org.uk/join



Scan the QR code to join today.

What happens next

Once we process your application, you will receive a membership card with our Helpline telephone number and a New Member's Pack giving details of all the benefits and professional services available to you.



www.usdaw.org.uk

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