

Recruitment and employment in the meat and poultry processing industry

Complying with equality legislation

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Foreword

Mark Hammond
Chief Executive of the Equality and Human Rights Commission

It has been two years since the Commission concluded its inquiry into the meat and poultry processing industry. Our inquiry uncovered widespread evidence of the mistreatment and exploitation of British and migrant workers, particularly those working for agencies.

Our evidence showed there are significant challenges facing the industry if it is to uphold ethical standards and effectively promote equality and inclusion. The industry reacted positively to our recommendations and we have worked together to overcome many of the serious problems we highlighted.

One of the recommendations of the inquiry report was that the Commission should review the progress the sector has made 12 months after the report was published. We have now concluded our review, the findings of which will be published alongside this guidance. We are pleased with the progress the sector has made, but there remain a number of challenges facing the industry.

No sector is immune from the current economic downturn. Like most, the meat and poultry industry will be working within ever tighter margins. However, tough times should not mean that the industry lets its commitment to improving standards slip.

We are committed to working with employers in the industry to ensure they can benefit to the maximum from the workplace diversity that so many in this sector enjoy.

Of course, one aspect of that benefit is remaining on the right side of the law. The Equality Act 2010 marks a significant shift in equality legislation. We have produced this tailored guide for those working in the meat and poultry processing sector to assist in complying with the new equality landscape. We hope that other sectors, such as agriculture and food packaging more broadly, will also benefit from this guidance.

I hope this guidance will ensure employers can feel confident they are doing the right thing while continuing to make an important contribution to the British economy.



Section 1: Introduction

The Equality and Human Rights Commission has produced this guidance in response to the *Inquiry into recruitment and employment in the meat and poultry processing sector* in England and Wales. The findings, published in March 2010, revealed worrying issues of discrimination, mistreatment and exploitation of directly employed and agency staff by processing firms and their labour providers.

Twelve months after we published the inquiry report, we undertook a review of the progress made by the sector. Our findings will be published alongside this guidance. Improvements have been made in some areas: pregnant workers are treated significantly better, workers are no longer segregated by nationality or suffer physical abuse.

Significant problems still remain, however, and we are publishing this guidance to help the sector tackle some of the remaining challenges. This guidance is tailored to help the industry meet its obligations under the Equality Act. It will enable employers to address the specific issues raised in the inquiry on recruitment, harassment and pregnant workers, and put in place measures to help firms and labour providers comply with relevant legislation and regulations.¹

Who should read this guidance?

This guidance is for owners, employers, directors, HR managers and other managers in meat and poultry processing firms.

It should also be of interest to:

- labour providers supplying temporary workers to meat or poultry processing firms
- employees and agency workers working in meat and poultry processing firms
- relevant trade unions.

¹ Every effort has been made to ensure that the contents of this guidance on equality legislation is accurate. However, it is not to be relied on as legal advice in a particular case. The law in this field is regularly changing, and before engaging in legal action readers should seek up-to-date legal advice from an appropriate qualified source.

Section 2: Understanding the Equality Act 2010

Who does the Act apply to?

The Act makes it the responsibility of employers and their employees or agents, and of labour providers, recruitment and employment agencies to avoid subjecting applicants for work, employees, workers and agency workers to discrimination, harassment and victimisation.

You will be treated as an **employer** under the Act if you employ anyone:

- as an employee under a contract of employment
- under an apprenticeship contract
- under a contract to carry out particular work without any permanent obligations on the employer or the worker.

The Act therefore protects workers, including many **agency workers** supplied by labour providers. Agency workers are also protected from acts of discrimination by labour users they are supplied to do work for.

Who is liable for acts of discrimination?

Any employer is liable for discrimination by their employees or by any person acting under their authority (their agents), unless the employer can show they took 'all reasonable steps' to prevent the discrimination. Employees and agents

are liable for the acts of discrimination they commit, unless they relied on the employer saying that the particular action was not discrimination.

Labour users, for example processing firms, are liable for acts of discrimination against agency workers committed by them (or by their employees or agents).

The Act covers any person who is:

- an applicant for work – including applicants for permanent employment, temporary work, or through employment services
- a permanent or temporary worker
- an agency worker
- (in some cases) a self-employed person who has a contract to do particular work.

When does the Act apply?

The Act prohibits discrimination, harassment and victimisation in all aspects of employment:

Recruitment

- Selecting or rejecting applicants for work.
- The arrangements an employer makes for deciding who they will offer work to.
- The terms on which work is offered.

Employment

- Terms of employment – including pay, working time, holidays, sick pay.
- Opportunities for promotion, transfer or training.
- Opportunities for benefits, facilities or services.
- Any other disadvantage.

Dismissal.

The Act also prohibits discrimination, harassment and victimisation by a labour user against agency workers supplied to work for the labour user (including actions taken by employees or agents of the labour user) in:

- The terms on which the worker is allowed to do the work.
- Not allowing the worker to do, or to continue to do, the work.
- The way the worker is given or denied access to opportunities for receiving a benefit, facility or service.
- Subjecting the worker to any other disadvantage.

The Act prohibits discrimination, harassment and victimisation by employment services providers (employment agencies and labour providers) against people who seek or use their services. This applies to:

Offering their service

- Arrangements for selecting who to provide or offer a service to.
- Terms on which they offer their service, including payment, duration, conditions or restrictions.
- Not offering their service.

Providing employment services

- Refusing to provide the service.
- Terms on which the services are provided, including payment, duration, any conditions or restrictions subjecting the service user to any disadvantage.

Terminating the service.

Who is protected against discrimination?

The Equality Act prohibits certain conduct when it is carried out because of, or in relation to, one or more of the **protected characteristics** defined below. The term **equality group** is used in this guidance to refer to people who share a protected characteristic.

Age: A particular age or age group – for example, ‘age 18’, ‘under 21’, ‘over 50’, ‘young’.

Disability: Having a physical or mental impairment which has a substantial and long-term adverse effect on the person’s ability to carry out normal day-to-day activities.

Gender reassignment: Proposing to undergo, undergoing, or having undergone a process to reassign the person’s sex by changing physiological or other attributes of sex.

Marriage and civil partnership: Protects people who are married or in a civil partnership.

Pregnancy and maternity: A woman is protected from the beginning of her pregnancy until the end of her maternity leave, or when she returns to work, if earlier. If she is not entitled to maternity leave, this protection ends at the end of the week beginning two weeks after the birth of her child. Sex discrimination may also apply.



Race: Includes colour, nationality or citizenship, ethnic origins or national origins.

Religion or belief: Any religion or lack of religion, and any religious or philosophical belief or lack of belief.

Sex: Men and women, girls and boys, are protected.

Sexual orientation: Protects people whether they define themselves as heterosexual, gay, lesbian or bisexual.

What conduct does the Equality Act prohibit?

Direct discrimination

Direct discrimination occurs when – because of a protected characteristic – a person treats another person less favourably than they treat, have treated, or would treat others in the same circumstances.

Example: If you offer overtime pay to all your Polish workers, but not to any Lithuanian workers in the same section doing the same work, it is likely to be direct discrimination because of race.

It is direct discrimination to:

- segregate people because of race (see page 20)
- treat a person worse than others based on a stereotype relating to a protected characteristic – for example, to recruit only people under 25 because they are ‘fit and strong’
- advertise an intention to discriminate because of a protected characteristic – for example, to advertise for Polish workers only (see page 14).

The motive or intention is irrelevant. For example, it would be direct discrimination to recruit only British workers because you think they would ‘fit in’ better.

The Equality Act treats disability differently from other protected characteristics. It is never unlawful to treat a disabled person more favourably than a non-disabled person.

It may be lawful to treat people of different ages differently when this can be objectively justified (please see ‘Exceptions’ on page 13).

Direct discrimination can be because a person is ‘associated’ with a protected characteristic – for example, because their wife or husband or close friend is Russian, or because someone they regularly care for is disabled.

Example: A British manager refuses to employ a worker because her husband is Latvian, even though the husband is not seeking to work at the firm. If the worker is treated less favourably because of her association with a Latvian person, that would be unlawful race discrimination even though the worker herself may not be a migrant worker.

It can also be direct discrimination to treat someone less favourably because they are perceived (wrongly) to have that characteristic – for example, refusing to employ someone because they are perceived to be gay even if they are not gay.

Indirect discrimination

Indirect discrimination occurs when there is a formal or informal rule – a provision, criterion or practice – which is applied to everyone, but disadvantages people with a particular protected characteristic, and cannot be objectively justified.

Example: A company leaves it to supervisors of its different sections to fill vacancies when they occur. The supervisor of the packing section, who is Polish, finds it easiest to recruit through his network of friends and family. This is likely to be indirect discrimination since it disadvantages people who are not Polish. It is unlikely to be objectively justifiable as a necessary and appropriate way to recruit the most suitable workforce.

Other examples of possible indirect discrimination include:

- recruiting all new employees through a recruitment agency that only recruits workers in one particular country
- selecting part-time workers first for redundancy, where most part-time workers are women and most full-time workers are men.

Instructing someone to discriminate

A person must not instruct another person to discriminate, harass, or carry out any other form of prohibited conduct against a third person.

Example: It is unlawful for a senior manager to instruct the HR manager to reject job applicants who are not UK citizens.

Causing or inducing someone to discriminate

A person must not do, or attempt to do, anything that would cause or induce another person to discriminate or carry out any other form of prohibited conduct against a third person.

Example: It could be inducing discrimination deliberately to make it known within a firm that senior management is keen to reduce the number of Bangladeshis in the workforce.

Helping a person to discriminate

If you knowingly help another person to discriminate, harass, or commit other prohibited acts, you will also be liable for the unlawful act. It is not unlawful if you reasonably relied on reassurance by the discriminator that what you were doing was lawful. It is a criminal offence to dishonestly state that an act of discrimination is lawful.

Example: If Latvian workers join a Latvian line leader's campaign of harassment against a Russian worker, the Latvian workers and the line leader are acting unlawfully. If the line leader tries to reassure the workers that the harassment is not unlawful the line leader could be prosecuted in a criminal court.

Pregnancy and maternity discrimination

A woman must not be treated unfavourably because she is pregnant, because of pregnancy-related illness, or because she is, or has been, on maternity leave.

She is protected against pregnancy and maternity discrimination:

- from the beginning of her pregnancy to the date she returns to work after maternity leave, or if she is not entitled to maternity leave, to the end of the week that begins two weeks after she has given birth.

This is called the ‘protected period’.

It is not necessary to compare her treatment to anyone else’s, only to show that the woman has been put at a disadvantage because of being pregnant or on maternity leave.

Examples: It is likely to be pregnancy and maternity discrimination if a pregnant woman:

- tells the HR manager she is pregnant, and they dismiss her
- is disciplined or required to do extra work because she has been away from work due to pregnancy-related illnesses
- is denied opportunities for training or assigned to heavier work.

Discrimination when employing a disabled person

The Equality Act requires you to make reasonable adjustments to premises or ways of working, or to provide practical aids, so a disabled person can apply for work and be employed without substantial disadvantage. Failure to do so is a form of discrimination.² Reasonable adjustments are often low or no cost to the employer. The Access to Work scheme may be help with the costs of equipment.

It is also unlawful to treat a disabled person unfavourably because of something arising from their disability, unless the treatment can be objectively justified.

Example: If you are unwilling to take on a person who walks with an uneven gait due to a permanent spinal injury it is likely to be discrimination, unless you can show that a worker with an uneven gait could not carry out the work in question.

Harassment

Harassment occurs when unwanted conduct related to a protected characteristic violates a person’s dignity, or creates an intimidating, hostile, degrading, humiliating or offensive environment for that person. The harassment does not need to have been intentional.

² The Equality and Human Rights Commission’s Code of Practice on Employment paragraphs 6.32–6.35 sets out a number of examples of the types of reasonable adjustments an employer could make.

Example: A male supervisor thinks (wrongly) that a young female worker enjoys his comments about her appearance and occasional touching. It is sufficient for the young woman to demonstrate that it is reasonable for such words and gestures to violate her dignity or to create a hostile, degrading or offensive work environment for her.

It is not necessary for the person subjected or exposed to the conduct to have the protected characteristic themselves.

Example: A constant stream of abusive remarks about Chinese people would be harassment of a woman whose husband is Chinese if it creates an offensive or hostile atmosphere, even if that is not the intention.

Victimisation

Everyone working in an organisation needs to feel safe to complain about discrimination or harassment, and to enforce their rights under the Equality Act.

It is unlawful to subject a person to penalty or hardship because that person has, or is believed to have:

- brought proceedings under the Equality Act
- given evidence or information in connection with such proceedings
- alleged discrimination, harassment, or another breach of the Act by any person or organisation or done anything else in good faith in connection with the Act.

Example: It is likely to be victimisation if an agency worker complains to her agency of sexual harassment at the labour user's plant, and the agency ends that assignment and tells her they will not propose her for any more work.

Positive action

Positive action can help an equality group overcome past or continuing disadvantage. It is lawful to take positive action if:

- you have evidence that members of a particular equality group, for example women, are disadvantaged, have different needs, or have a proportionately low level of participation in particular work, and
- the aim of the proposed action is to meet those needs, overcome the disadvantage, or help them participate more fully, and
- the benefit of the action outweighs any disadvantage it may cause to other groups.

Example: If fewer women than men are employed as managers, offering six months' training to women only to prepare for promotion interviews could, as a temporary measure, be a proportionate way to increase the number of women managers. But if the employer restricted all promotions to women, this is likely to be unlawful discrimination.

Positive action in recruitment and promotion

It is lawful to treat one person more favourably than another in recruitment or promotion decisions because of a protected characteristic, such as race, if:

- you have evidence that people from that equality group are disadvantaged, or have a disproportionately low level of participation in particular work
- the aim is to enable members of that equality group to overcome their disadvantage or participate more fully
- the person from the disadvantaged group is as qualified as the other person
- the firm does not always favour people from the disadvantaged group, and treating that person more favourably is a proportionate means of achieving that aim.

Example: An employer with few women managers could use this form of positive action, provided all the Equality Act conditions are met, to tip the balance in favour of a female applicant for a manager's job, but only if she is as qualified as the male applicant and this is a one-off action.

Exceptions

In a few limited situations, discrimination is allowed if it can be shown that treating a particular equality group more favourably is a necessary and appropriate way of achieving a legitimate aim.

It is always permitted to treat a disabled person more favourably than a non-disabled person.

- There is a general exception permitting different treatment because of age – for example, setting a minimum age for jobs with particular hazards for health and safety reasons. You can select or promote a person for particular work if the work needs to be done by a person with a certain protected characteristic – for example, to select only a Muslim as a Halal slaughterer, or only a Jew as a Kosher slaughterer.

Section 3: Avoiding discrimination in recruitment

Recruiting directly employed workers

Recruitment arrangements

The Equality Act requires that your arrangements – such as how you publicise job vacancies, how job seekers should apply, and how you will decide who should be offered employment – are non-discriminatory.

Publicising job vacancies

Make sure you do not discriminate in the way you publicise job vacancies – for example, relying on word of mouth by existing employees. If most employees are of one nationality it is unlikely that other nationalities will learn about the opportunities, and this is likely to be indirect discrimination. Relying on a recruitment agency which you know only recruits from one nationality is also likely to be indirect discrimination.

Advertising openly for new workers – for example, in newspapers, specialist publications, on local radio, the internet, and notices in local shops – can help you recruit people best suited for your jobs.

You should not:

- Advertise that you intend to discriminate in selecting new employees – for example, saying a job

is only for men or people of a particular nationality. This would be direct discrimination (unless an exception applies).

- Specify requirements which are likely to exclude people with a particular protected characteristic – for example, requiring that workers carrying out meat processing must be fluent in Portuguese. Unless you can justify imposing this requirement, this is likely to be indirect discrimination.
- Limit where you publish or display your advertisement so that it can only be seen by particular groups, for example in a Polish language publication only. Unless you can show that for the particular job this can be justified, this is likely to be indirect discrimination.

Other recruitment arrangements

- You need to make sure the application procedure for jobseekers is not discriminatory. For example, it could be indirect discrimination against non-UK nationalities if you asked all applicants to complete an application form requiring a higher standard of written English than the job itself requires.
- Any tests used to decide who you will offer work to must be relevant and proportionate to the job.

- You need to consider what adjustments it is reasonable to make for a disabled job applicant and then make those adjustments – for instance, agreeing to interview a person with a hearing impairment assisted by a signer.

Selecting or rejecting job applicants

- You must not discriminate directly or indirectly on the basis of any of the protected characteristics in selecting or rejecting people for work.
- If the people making selection decisions have equal opportunities or diversity training they will be better able to choose the best people for jobs without regard to protected characteristics.

‘Temp to perm’: recruiting employees from your agency workers

The ‘temp to perm’ system enables agency staff to move on to permanent work.

- If you have agency workers of different sexes, nationalities, ethnicities, religions, or ages, you should not offer permanent employment only or mainly to people of one group. This is likely to be direct discrimination.
- If your agency workers are nearly all of the same sex, nationality, or religion, you should not recruit only from your agency workers. This could be indirect discrimination. You also need to provide opportunities for people not currently working as agency workers to apply for permanent employment.

Asking job applicants about health and disability

When selecting new employees you should not take into account any factors that are not directly relevant to how well an applicant meets the job requirements. EC regulations require that no person with a disease likely to contaminate food products is able to carry out food handling. But you need to deal with this both when you are recruiting employees and on a daily basis, as many such diseases are short-term and temporary.

To make sure disabled people are given a fair chance of being considered for jobs, it is unlawful to ask someone seeking work about their health before offering employment.

It is lawful to:

- find out if a person is able to carry out an intrinsic function of the job – for example, if the work involves heavy lifting, the person can be asked if they are willing to be assessed for their ability to lift heavy weights
- check that a person can meet hygiene or health and safety requirements for particular work – for example, if a job cannot be carried out by people with particular medical conditions this should be made known to all job applicants.

You must not ask a person questions about their health or disability unless meeting certain health or disability criteria is essential to carrying out the job. You could carry out a preliminary selection process and offer the job on the condition that the person you have selected can meet the health criteria essential for the job in question.

You could use a questionnaire asking about the main types of symptoms or diseases which are not permitted for the particular job as a basis for further assessment, but this should not be used to exclude any applicants.

Harassment and victimisation

You must not harass or victimise prospective employees, and must take all reasonable steps to prevent your employees from doing so.

Positive action

Positive action can offer employers a wider choice of prospective employees and the opportunity to strengthen the diversity of their workforce at every level. Subject to certain conditions you can take positive action, provided that the measures you choose do not disproportionately disadvantage members of other groups.

If you have two applicants equally qualified for a job, one from an equality group under-represented in your workforce, you can give preference to that candidate provided all the Equality Act conditions are satisfied.

You can also take other steps – for example, advertising vacancies in publications where they are most likely to be seen by people from under-represented equality groups.

Recruitment carried out by an employment agency

If you use an employment agency it must not result in discrimination on any of the protected characteristics.

- Give clear instructions that you expect an employment agency to introduce potential workers who are capable of doing the work, regardless of any protected characteristics.
- Make sure any agency you use fully understands that they must not discriminate.
- Only use employment agencies you are satisfied do not discriminate.

Example: If an agency only recruits Lithuanians, restricting your recruitment to that agency would disadvantage jobseekers of other nationalities. This is likely to be indirect discrimination on your part, and the agency could be liable for direct discrimination.

Recruitment by labour users

In many firms a significant proportion of the workforce is composed of agency workers. The prohibition of discrimination, harassment and victimisation under the Equality Act applies to your firm as a labour user in exactly the same way as it does to it as an employer.

It is easier to avoid discrimination in selecting agency workers if you determine in advance the skills, knowledge and experience workers should have. This should help labour providers identify suitable agency workers regardless of any protected characteristic.

- If you propose to take on agency workers you will be expected to avoid discrimination in your arrangements with labour providers and in any decisions to offer work to the agency workers they propose to supply.
- You should not use, as your sole supplier of workers, a labour provider you know mainly employs only from one nationality. You can avoid indirect discrimination if you include both specialist and general labour providers when you are looking for new agency workers.
- If labour providers propose a greater number of agency workers than you need at a particular time, you, and your employees involved in these decisions, must not discriminate directly or indirectly in selecting workers.

Both the Equality Act restriction on pre-employment health questions and the EC hygiene regulations apply when you are recruiting agency workers. As when recruiting employees, you must not ask about agency workers' health or disability beyond what you need to know for them to be able to do particular work.

You must not harass or victimise prospective agency workers at any stage in the recruitment process, and should take all reasonable steps to prevent your employees from doing so.

Positive action

As you are dependent on labour providers to propose agency workers who could work for you, you may be more effective in achieving greater diversity by collaborating in positive action with your labour providers.



Section 4: Avoiding discrimination, harassment and victimisation in the workplace

This section explains how to avoid discrimination, harassment and victimisation in managing both your directly employed employees and the agency workers supplied by labour providers.

Language in the workplace

Your firm's basic policies and procedures must be understood by everyone working there. You need to consider how you will enable employees and agency workers who have difficulty understanding English to understand your policies and procedures and their employment contracts. In Wales employers need to be aware of requirements relating to the Welsh language.

- During the induction of new employees or agency workers you should identify different language needs so you can take, or refrain from, certain actions to avoid discrimination.
- It could be indirect discrimination to treat all employees as bound by your standard contract of employment if employees of certain nationalities or national origins are not able to understand the terms and conditions stated in that contract. You will need to find ways to ensure that non-English speakers are aware of and agree to all of the terms and conditions in their employment contract.
- Your line leaders or supervisors and shift managers should be aware of employees' and agency workers' language needs. It could be indirect discrimination to provide information or instructions in a language which excludes people of particular nationalities or national origins.
- When conversation is directly related to work or health and safety standards, it is likely to be proportionate for you to regulate the languages used to make sure everyone concerned understands what they and others must, or must not, do.
- In conversations during break time unrelated to employees' or agency workers' duties, an English-only rule is likely to be difficult to justify.
- Where casual conversations take place during work time between operatives on a production line, you need to consider whether there is any need to regulate the languages used. For example, if Latvian workers chat to each other in Latvian instead of English, do workers of other nationalities feel excluded? If so, is there evidence that this affects their work performance?

If not, then you may not be able to justify an English-only rule.

Allocation of shifts/type of work

Firms are expected to avoid discrimination, harassment and victimisation in the allocation of work and the assignment of employees and agency workers to different shifts.

To comply with the Equality Act:

- You must ensure that in allocating employees and agency workers to particular shifts or particular types of work you are not **segregating** them on the basis of race, including colour, nationality ethnic or national origins. Such segregation is direct discrimination under the Equality Act and cannot be justified. You must not assign agency workers of only one nationality or only one colour to work separately from other people of different nationalities or national origins or different colour. The fact that some people are direct employees and some are agency workers will not alter a situation in which you play some role in imposing and maintaining segregation based on race within your workplace.

Example: It is likely to be unlawful to assign only Bulgarian agency workers to work in a distinctly separate part of your workplace or to assign only Bulgarian workers on one line to a particular shift. Likewise, as an employer, you cannot give choice to an employee to work in an integrated workplace or, for example, a Bulgarian work station. This can be seen as the employer reinforcing segregation. Workers must be assigned work according to their skills and not according to race or any of the other equality groups.

Racial segregation can never be justified; this means that segregation will always be unlawful whatever the intention.

It will be unlawful to segregate Bulgarian workers even if the shift manager thought that by doing so it would be easier to manage their work.

- It is likely to be lawful if you bring together employees and agency workers who share a single language, who will normally also all share the same nationality or national origins, if this were for short periods, for example to provide health and safety training and training on equality rights in a language they could easily understand. Ideally you would also offer ESOL training so that separate training for different nationalities would soon cease to be needed.
- It is also unlikely to be segregation if your firm tries to meet the requests of employees or agency workers of a particular nationality, for example Polish workers, to work together, so long as you do not do anything to create or maintain an enforced segregation situation, for example by insisting that new Polish employees or agency workers must join the others or by refusing to assign or to permit non-Polish agency workers or employees to work with the Polish workers.
- Where particular types of work require certain abilities or skills then you should allocate such work to employees or agency workers who meet the requirements regardless of their nationality, sex, age, disability, religion or belief or other characteristic.

It would be unlawful for a shift manager to move employees from one type of work to another in order to give cleaner, easier work with fewer health risks to employees of one nationality or to allocate to employees of a different nationality work which is dirtier, heavier or more dangerous.

You should not use stereotypes based on race, sex, disability, or other characteristics as the basis for allocating employees or agency workers to particular types of work, for example stereotypes that Asian women are only capable of doing certain work.

If men of a particular nationality are consistently assigned only to certain work this could establish a pattern which, in practice, may not be welcome by all men of that nationality who could complain of direct discrimination.

In many meat and poultry processing firms some jobs are regarded as better or worse than others. Employees and agency workers may also have a preference for certain shifts. While you could try to change perceptions or improve conditions for certain jobs, if employees or agency workers have such perceptions then you should use fair, objective criteria not related to any of the protected characteristics for allocating different jobs.

It is likely to be direct discrimination to regularly allocate jobs regarded as dirty and unpleasant to agency workers from, for example, Pakistan and jobs regarded as less onerous to agency workers from, for example, Poland.

Access to health and safety protection

It is a breach of both health and safety law and the Equality Act to fail to meet your health and safety obligations for employees or agency workers because of their nationality, national origins, sex, age, disability, or other protected characteristics.

- All employees and agency workers should have working conditions that are as free from risk of harm as possible, and suitable sanitary, washing and rest facilities; they must all be provided with all necessary protective equipment and clothing in sound condition and good repair.
- You cannot require employees or agency workers of particular nationalities to work in substandard conditions, or to work without necessary protective equipment or equipment that is substandard, ill-fitting or damaged.

The agreement between the labour provider and the labour user should specify their respective responsibilities for the health and safety of agency workers.

- You must not harass, victimise or discriminate against agency workers on the basis of any protected characteristic – for example, by allowing agency workers of a particular equality group to be exposed to greater risks.

Complaints of discrimination relating to health and safety should be investigated and must not give rise to victimisation – for example, by restricting a Hungarian worker's access to rest facilities after they complained that Hungarians, but not other nationalities, were regularly given damaged protective footwear.

Treatment of pregnant employees

Health and safety laws and employment laws include requirements on employers to protect the wellbeing and the employment rights of pregnant women at work. Under the Equality Act you must not treat a woman unfavourably because she is pregnant, because of pregnancy-related illness, or because she is on maternity leave.

From 1 October 2011, most of the distinctions under health and safety and employment laws between the rights of employees and the rights of agency workers who are new or expectant mothers will cease to apply to women who satisfy the qualifying period under the Agency Workers Regulations 2010. See Section 7 for more information.

You must not:

- penalise a woman employee or agency worker because she is a new or expectant mother
- give her more onerous tasks, deny her facilities she has previously had access to, reduce her rest periods or toilet breaks, threaten or harass her, or treat her unfavourably because of pregnancy-related sickness – for example, disciplining her if she arrives late because of ‘morning sickness’
- if she is an employee, dismiss her, reduce her pay, deny her any facilities or benefits, exclude her from opportunities for training or promotion or annual pay awards, or select her for redundancy because she is on maternity leave

- if she is an agency worker, ask the labour provider to end her assignment simply because she is pregnant or because, due to illness linked to her pregnancy, she has begun to arrive late or has needed time off
- treat a pregnant woman, or a woman on maternity leave, unfavourably because she seeks to exercise her rights under health and safety or employment laws – for example, for taking the paid time off she is entitled to for antenatal appointments.

You must protect a pregnant woman and her unborn child from risks, regardless of her colour, nationality, religion, age, or other characteristic. Any steps taken to avoid the risk must not involve less favourable treatment of women of particular nationalities – for example, insisting that an alternative job is suitable for a pregnant Polish employee but not a pregnant British woman.

You may need to provide pregnant employees or agency workers with special treatment; a male worker cannot complain of sex discrimination if he is not given the same treatment. For example, if a pregnant agency worker is allowed to do some of her work sitting down, a man cannot complain of sex discrimination when he is required to stand to do the same work.

Complaints and grievances

All of your employees and agency workers should feel able to raise a complaint or formal grievance alleging discrimination or harassment, without fear of victimisation. Your firm should have a formal complaints procedure, made known to all employees, and any employee or agency worker should be able to make a confidential complaint and expect the firm to carry out a fair investigation.

- The procedure should be accessible to employees and agency workers who do not have English as a main language.
- You may need to make reasonable accommodation to make the complaints procedure fully accessible to any disabled employees or agency workers.
- Access to the complaints procedure, the time and methods of investigation, and any remedial action must be without discrimination, harassment or victimisation.



Section 5: Managing your directly employed employees

Terms and conditions

Your firm may agree different terms and conditions in contracts of employment with different employees based on the different types of work they are employed to do, different degrees of responsibility, and other work-related factors.

Make sure any differences in terms and conditions are related to aspects of the job – not to the sex, nationality, religion, disability or other protected characteristics of the employee.

Example: It is likely to be direct discrimination to impose different conditions for annual leave based on employees' nationality – for example, to limit Pakistani employees to no more than two weeks leave at one time, but to allow Portuguese employees to take their full annual leave at one time.

Example: If nearly all employees with 9 to 5 jobs are British, and most employees expected to do shift work are non-British, it is likely to be indirect discrimination to only provide overtime pay for employees working 9 to 5.

You may need to make reasonable adjustments to the terms and conditions for disabled employees – for example, agreeing that an employee with severe respiratory problems could have different start and finishing times so they can travel to work in less crowded conditions and therefore without undue risk to their health.

You must not pay a woman less than a man you employ if, compared to his work, her work is:

- the same or broadly similar
- rated as equivalent by a job evaluation study, or
- of equal value in terms of effort, skill and decision-making

unless you can show that the difference in pay is for a reason other than difference of sex.

If you haven't conducted an equal pay review or audit, it is recommended as a way to check that your pay system is sound and lawful.

Access to training and promotion

Firms are likely to make some employee training compulsory – for example, induction, health and safety, or equal opportunities training – while offering other training as optional.

- Your arrangements for providing compulsory training should not involve direct or indirect discrimination because of any protected characteristics that apply to your employees – for example, insisting on compulsory training on days that are religious holidays for some employees.
- You may need to make reasonable adjustments to enable disabled employees to have equal access to training and training materials.
- You should make sure opportunities for optional training are available to employees, without discrimination, and publicise training opportunities directly to all employees, rather than relying on word of mouth.

Training can be a useful form of positive action. If, for example, you have no Lithuanian employees applying for promotion you could consider offering a relevant training session just for Lithuanian employees.

In selecting employees for promotion, all of the above guidance on avoiding discrimination in recruitment applies.

Discipline and dismissal

Employment law defines when you can dismiss an employee, and provides protection for employees against unfair dismissal. The Equality Act expressly prohibits all forms of discrimination, harassment and victimisation in dismissing an employee.

You should:

- have written disciplinary and dismissal procedures which are fair and available and in a form accessible to all employees
- take steps to ensure that employees with limited English fully understand what constitutes a disciplinary offence and the sanctions that can be imposed
- not victimise your employees – for example, taking disciplinary action against an employee because they have complained of discrimination in good faith.

Disciplinary action should be free from discrimination – for example, a line leader cannot impose different disciplinary sanctions on employees equally involved in an incident because of their different nationalities.

If your line leaders and shift managers have had equal opportunities training they should be more able to act fairly and avoid discrimination in dealing with disciplinary matters.

Section 6: Managing agency workers supplied by labour providers

Labour providers are responsible for the pay, statutory sick pay and paid holidays of agency workers. As a labour user, your firm is responsible for allocating work and the day-to-day management of agency workers. Agency workers who complete the statutory qualifying period are entitled to the same terms and conditions as a directly employed employee doing the same or similar work.

Terms and conditions

The formal agreement setting out the terms for the supply of agency workers will be between your firm as a labour user and the labour provider. Separately, agency workers will have a contract of employment or a contract for services with the labour provider.

You must not discriminate on any of the protected characteristics in the terms on which you allow agency workers to do their work, including their hours, break times, and access to the firm's facilities.

You need to make sure all agency workers are aware of these terms and conditions. This may involve helping those who have difficulty understanding English and making reasonable adjustments for people with particular disabilities.

Make sure you do not apply different terms to agency workers in different equality groups doing the same or similar work. For example, if you take on agency workers of different nationalities to do the same work they should work the same number of hours a day and get the same number of rest breaks lasting the same amount of time.

You must make sure none of your employees discriminate against, or harass, agency workers on the basis of any of the protected characteristics.

Your labour provider should be licensed with the Gangmasters Licensing Authority, and any agreement should state:

A. That in supplying agency workers to your firm the labour provider will not breach the Equality Act:

- in rates of pay or other terms and conditions
- by discriminating in the treatment of agency workers, including access to facilities, benefits, discipline and dismissal
- by harassing or victimising agency workers.

You also need to:

- meet agency workers' language needs, and make sure they understand the contents of the contract between them and the labour provider
- provide induction training, which should include health and safety and equal opportunities training
- comply with legal obligations to your workers under employment laws and other relevant laws
- establish confidential arrangements, for example a confidential telephone helpline, for agency workers to raise complaints about their treatment by the labour provider or your firm.

B. That as the user of agency workers supplied by the labour provider, your firm will not breach the Equality Act:

- in allocating work and determining hours of work and working conditions for agency workers
- by ceasing to provide work for agency workers supplied by the labour provider
- by harassing or victimising agency workers by taking reasonable steps to meet agency workers' language needs, in particular to ensure they understand the different legal obligations of your firm and the labour provider in relation to pay, working conditions, health and safety and non-discrimination.

You also need to:

- collaborate with the labour provider to provide induction training, including health and safety and equal opportunities training
- comply with legal obligations under health and safety and other relevant laws

- establish confidential arrangements, for example a confidential helpline for agency workers to raise complaints regarding their treatment by your firm and the labour provider.

Access to training and other benefits, facilities or services

You must not discriminate when offering opportunities to agency workers to apply for training, or when selecting agency workers who can attend training, and you must make opportunities known to all agency workers the training is relevant to.

Example: It is likely to be indirect discrimination if the shift manager publicises training opportunities only to agency workers on the night shift, the majority being non-EU nationals, when overall most of the firm's agency workers come from the EU.

You need to consider the language abilities of agency workers you believe would benefit from particular training. In publicising and delivering such training they must not be excluded on the basis of limited ability to understand English, unless knowing English is necessary to apply the knowledge or skills that are the subject of the training. In Wales employers need to be aware of requirements relating to the Welsh language.

You should ensure that no direct or indirect discrimination, harassment or victimisation affects the access by agency workers of different equality groups to benefits, facilities or services you make available to agency workers generally. This would include access to toilets and washing facilities, first aid and medical services, staff canteen, transport, prayer room, or childcare.

Discipline and dismissal

You are expected to establish disciplinary rules for agency workers as well as employees. Agency workers should be made aware of these rules when they begin to do work for you, and should be assisted to understand the rules, which should be free from discrimination, harassment or victimisation. Bringing a complaint of discrimination should never be treated as a breach of discipline.

You are likely to stop making work available for an agency worker who has seriously breached discipline. But you should make sure line leaders or shift managers are not using this sanction to victimise agency workers who complain of discrimination or harassment, or to reduce the number of agency workers of a particular nationality.



Section 7: Equality implications of the Agency Workers Regulations 2010

Under the Agency Workers Regulations, which came into force on 1 October 2011, agency workers' terms and conditions are now based on the terms and conditions of the labour user's directly employed employees.

After a 12-week qualifying period, an agency worker is entitled to the terms and conditions of a directly employed employee engaged in the same, or similar, work, including pay, working hours, night work, rest periods, rest breaks, annual leave, and equivalent pregnancy and maternity rights.

Without a qualifying period, agency workers are entitled to equal access to the labour user's collective facilities and amenities, such as canteen facilities, child care facilities and transport services, and to the right to be informed of any vacant posts with the labour user.

There is a concern that existing patterns of discrimination in the treatment of agency workers by labour providers and labour users, which the Equality and Human Rights Commission identified in its inquiry into recruitment and employment in the meat and poultry processing sector, may simply continue under the new Regulations. The result could be that well informed agency workers of favoured nationalities will benefit from

these important new rights, while other agency workers may find little change. We hope this guidance will help employers to understand their responsibilities to all agency workers under the new Regulations.

Section 8: Further information

Equality and Human Rights Commission

www.equalityhumanrights.com

Access to Work

www.direct.gov.uk/en/DisabledPeople/Employmentsupport/WorkSchemesAndProgrammes/DG_4000347

Agency Workers Directive

www.businesslink.gov.uk/bdotg/action/detail?itemId=1073793881&type=RESOURCES

Association of Labour Providers

www.labourproviders.org.uk

Business and Human Rights Resource Centre

www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples

Chartered Institute of Personnel and Development

www.cipd.co.uk

Ethical Trading Initiative

www.ethicaltrade.org

Health and Safety Executive

www.hse.gov.uk

Gangmasters Licensing Authority

www.gla.defra.gov.uk

International Labour Organisation: Labour Standards

www.ilo.org/global/standards/lang--en/index.htm

Organisation for Economic Co-operation and Development

www.oecd-ilibrary.org

Recruitment and Employment Confederation

www.rec.uk.com

TUC

www.tuc.org.uk

Unite the Union

www.unitetheunion.org

USDAW

www.usdaw.org.uk

www.equalityhumanrights.com

The Commission's publications are available to download on our website:

www.equalityhumanrights.com. If you are an organisation and would like to discuss the option of accessing a publication in an alternative format or language please contact engagementdesk@equalityhumanrights.com. If you are an individual please contact the Equality Advisory and Support Service (EASS) using the contact methods below.

Equality Advisory and Support Service (EASS)

The Equality Advisory Support Service has replaced the Equality and Human Rights Commission Helpline. It gives free advice, information and guidance to individuals on equality, discrimination and human rights issues.

Telephone: 0800 444 205

Textphone: 0800 444 206

Opening hours:

09:00 to 20:00 Monday to Friday

10:00 to 14:00 Saturday

Website: www.equalityadvisoryservice.com

Post: FREEPOST Equality Advisory Support Service FPN4431

www.equalityhumanrights.com