

Religion and discrimination

If your workplace dress code conflicts with the religious beliefs of an employee, you could be entering the dangerous legal waters of discrimination. Lawyer *Julian Yew* charts a safe course for your business

THE PROBLEM

We recently offered a job to an ideal candidate for the position of front desk manager at our hotel. During her induction, the candidate mentioned that she had recently converted to Islam, and it was her religious belief that she must cover up her face in the presence of male colleagues and guests. She wants to wear a veil while on duty, but this is not compliant with the hotel's uniform policy.

The general manager wants to terminate her employment on the basis that she does not "fit" with the organisation.

THE LAW

The Employment Equality (Religion or Belief) Regulations 2003 protect job applicants and employees from direct discrimination, indirect discrimination, harassment and victimisation on grounds of religion or belief. Employees are protected from less-favourable treatment if they have to do certain things which are required of them by their religion or belief or which they reasonably believe are a manifestation of their belief. Wearing a veil is widely considered part of the Islamic faith.

EXPERT ADVICE

If all your employees are treated equally, there is no risk of direct discrimination. However, if you impose a practice or provision (eg, a uniform policy that bans veils and visible jewellery) on everyone, but that practice affects employees of a certain faith group; is to their detriment; and

cannot be justified as fulfilling a legitimate aim or as being a proportionate measure to adopt, the employee can complain of indirect discrimination.

In a recent case, the Employment Appeal Tribunal held that a refusal to allow a Muslim teacher to wear a veil in the classroom was indirectly discriminatory. However, this practice was justified because the veil would interfere with the teacher's ability to communicate effectively with her pupils.

This case is specific to its own facts, so you must still justify how the wearing of a veil would interfere with service delivery and your brand promise. This would ultimately depend on the type of guests the hotel attracts, the number of complaints you receive from your guests about the wearing of the veil, and whether it actually impedes the employee's proper performance of her job.

In addition, if you punish an employee (eg, by dismissal) because they have asserted their right not to be discriminated against, this can amount to victimisation. Dismissing someone because they do not "fit" with your organisation can potentially amount to direct discrimination.

CHECK LIST

Consult with your workforce to see whether any workplace policies are going to potentially infringe their religious beliefs.

Check your existing practices to ensure that they do not indirectly discriminate against employees from certain faith



groups. If the policy is indirectly discriminatory, you will need to establish good reasons and provide evidence to justify continuation of that policy.

Resolve grievances. Where possible, you should try to accommodate the employee's request.

BEWARE!

If an employee has been discriminated against on grounds of their religion or belief, the employee may claim discrimination in an employment tribunal. Compensation for injury to feelings is divided into three categories:

- £500-£5,000: one-off isolated incidents.

- £5,000-£15,000: moderate cases.

- £15,000-£25,000: serious cases, eg, where there has been a lengthy campaign of discrimination.

If the employee's position was made untenable and they had to resign and claim constructive dismissal, there will also be a claim for loss of earnings.

CONTACTS

→ Julian Yew, senior employment lawyer, head of the hotel & leisure group, Wedlake Bell

<http://hotels.wedlakebell.com>

→ Equality and Human Rights Commission

0845 604 6610

→ Acas Equality Direct

0845 600 3444

The briefing

● Help with parental legislation

The Department for Business has announced new support to help businesses deal with parental legislation. The free online service helps employers establish their employees' entitlement to maternity, paternity and adoption pay and leave as well as the right to request flexible working.

It includes a step-by-step tool guiding employers through all the legal requirements for managing new and expectant parents at work.

A statement of employer's rights and responsibilities can be saved online or downloaded for reference, ensuring guidelines are followed and, in turn, benefiting the business and its employees.

Pat McFadden, minister for employment relations, said: "We are doing all we can to support businesses at this time. These new web pages on parental legislation are part of our ongoing commitment to make it easier for employers to get the advice they

need in a free and simple way."

The information is available at www.businesslink.gov.uk/workandfamilies.

● Let our experts advise you

Caterer's Best for Business campaign to help operators run more efficiently in these difficult economic times is looking for volunteers. Time is running out for operators to come forward and take advantage of the opportunities to get advice from industry experts

and find out ways to help their business while also gaining publicity. For more information visit www.caterersearch.com/staticpages/best-for-business.htm.

**BEST
FOR
BUSINESS
2009**