

Frequently Asked Questions on Employment and Faith

Do organisations have to collect data on religion or belief?

The Regulations do not require the collection of such data but it may help organisations to provide appropriate facilities for their staff and to understand employees' needs (e.g. when they might seek discretionary leave). It is important that managers talk to people and/or their trade unions to ensure an understanding of individual needs and to avoid making assumptions about them. Not all followers of each religion or belief will necessarily have the same practices or follow their religion in exactly the same way.

If an organisation decides to collect data, it may give staff added confidence if it is made clear why they want the information, how it is going to be used and that giving such information is entirely voluntary. All such information should be confidential and anonymous. It is designated 'sensitive' under the Data Protection Act 1998. Staff permission should be obtained before using such information.

How will organisations know if they are discriminating inadvertently?

Individual staff, or their trade union, will generally tell managers, particularly if managers are able to create a culture where staff feel comfortable in sharing such information. It can be helpful for organisations to have a designated individual to whom people can go in confidence. It is a good idea for management teams, staff representatives or a specially convened group of employees to think through and test whether any organisational policies and procedures impact on people's religion or belief, or discriminate on any other grounds such as disability, sexual orientation, sex or race. It is good practice to include age in your equality policies ahead of age discrimination becoming unlawful in October 2006.

Organisations should consider carefully whether they are inadvertently discriminating indirectly.

Good practice example: if team meetings always take place on a Friday afternoon this may discriminate against Jewish and Muslim staff for whom Friday afternoon has a particular religious significance, although not everyone follows their faith in the same way. (Nb employers will not escape liability in an Employment Tribunal by showing that discrimination was inadvertent or accidental.) The school reschedules meetings avoiding Friday afternoons.

No one in my organisation has ever complained of discrimination or harassment so we don't need to do anything new, do we?

People do not always feel able or confident enough to complain, particularly if the harasser is a manager or senior executive. Sometimes they will simply resign. One way to find out is to undertake exit interviews when people leave your organisation and as part of that process to ask if they have ever felt harassed, bullied or discriminated against at work. If it is possible, exit interviews should be undertaken by someone out of the individual's line of management.

Discrimination includes harassment, which can take place without management being aware of it. Organisations should make sure all their staff understand that harassment means any unwanted behaviour that makes someone feel either intimidated, humiliated or offended and that includes teasing, tormenting, name calling, etc and applies to whoever the perpetrator may be. The victim's perception of the effect of the behaviour is also important. Managers should take all practical steps to make sure staff understand that organisations and their management teams will not tolerate such behaviour and that they will deal with whoever is causing the problem through the disciplinary process.

Should we ban discussions about religion and belief in the workplace? We are concerned that someone might complain about harassment.

If harassment has been explained to staff they should be able to distinguish between reasonable discussion and offensive behaviour. Staff should be aware that if their discussions cause offence then this may be considered to be harassment and therefore unlawful. A ban on discussions about religion or belief may create more bad feeling amongst staff and cause more problems than it solves.

I am concerned that, on the grounds of religion, some of my staff may refuse to work with their gay or lesbian colleagues.

Some religions do have strong views concerning sexual orientation but most do not advocate persecution of people because of their sexual orientation. Everyone has the right to be treated with dignity and respect in the workplace whatever their sex, race, colour, disability, age, religion or sexual orientation. You should include this overriding premise in your Equality Policy and show that you take a robust view when this principle is not adhered to. Your workers do not have to be friends but you can insist that they treat each other professionally.

Our organisation has a religious ethos. How do we determine if a person's religion or belief can be justified as a genuine occupational requirement for a post?

Staff can be recruited on the basis of their religion or belief where this is a genuine occupational requirement for the job. The Regulations require you to consider the nature of the job and the context within which it is carried out when considering whether the job holder needs to practice a specific religion in order to undertake the role within the ethos of the organisation.

When considering applying such a requirement look at each post individually both in terms of the duties of the job and the context within which it is carried out.

Organisations should not expect to apply a blanket requirement to all its posts even if it has a religious ethos.

Organisations should consider whether there are alternatives to applying an occupational requirement. For instance, if only a small part of the job needs someone from that religion then it may be possible to redistribute work or reorganise roles in such a way as to avoid applying a religious requirement to a particular post. Organisations can reasonably expect their staff to keep to their organisational values and culture and should bear in mind that people may be able to maintain those values and culture, and therefore the ethos of the organisation, without actually belonging to the particular religion or belief.

Organisations should be clear about the link between the requirements of the job and the requirement to be of a particular religion or belief as, in the event of an Employment Tribunal claim on the grounds of religious or belief discrimination, the burden of proof will be on the employer to show a genuine occupational requirement. Tribunals tend to interpret such requirements very narrowly since they effectively go against the principle of equal treatment.

A genuine occupational requirement on the grounds of religion or belief should not be used to discriminate on any other grounds such as sex, race or disability; although in some very limited circumstances a religious organisation may lawfully be able to discriminate on the grounds of sexual orientation or sex.

Some religions require their followers to pray at specific times during the day. How do we cater for this?

Staff may request access to an appropriate quiet place (or prayer room) to undertake their religious observance. Employers are not required to provide a prayer room. However, if a

quiet place is available and allowing its use for prayer does not cause problems for other members of the community, schools should agree to the request.

Where possible, it is good employee relations practice for organisations to set aside a quiet room or area for prayer or private contemplation. In consultation with staff, it may be possible to designate an area for all staff for the specific purpose of prayer or contemplation rather than just a general rest room. Such a room might also be welcomed by those for whom prayer is a religious obligation and also by those who, for example, have suffered a recent bereavement. Organisations should consider providing separate storage facilities for ceremonial objects.