

LGBT+

Your rights at work
members' factcard

experts at work



EQUALITY IS IMPORTANT TO PROSPECT

We believe that LGBT+ rights are human rights. Not only should everyone have the right to work in an environment free from harassment and discrimination, our workplaces should embrace diversity.

Diversity means better workplaces. But sometimes we need a bit of help to ensure they are friendly, supportive places. And as a trade union, that's where we come in.

This factcard looks at the legal rights at work for LGBT+ members.

A person's sexuality or gender identity should not determine whether they are employed, promoted or selected for redundancy – nor indeed should they be the brunt of discriminatory jokes.

Prospect and BECTU sector representatives support and advise members at work every day – not just on equalities, but on all work matters.

We actively negotiate policies and procedures to eliminate discrimination and promote equality for all members. We have a LGBT+ network that brings people together from across our membership.

We can also help when things go wrong. Many disputes and difficulties are resolved informally in the workplace. But where issues cannot be resolved, we will use the law robustly to defend members against discrimination.



The Equality Act

The Equality Act 2010 prohibits discrimination in the workplace. It covers employees but many atypical workers are also protected by the law in this area. For example freelancers, interns, contractors, consultants, sessional and agency workers are all likely to be covered by the act.

The Equality Act does not apply in Northern Ireland, but there are very similar regulations, so the principles outlined below will mostly apply.

There are nine protected characteristics under the Act. These are: sexual orientation, gender



reassignment, sex, race, disability, religion and belief, age, pregnancy and maternity, and marriage and civil partnership.

Sexual orientation

The characteristic of sexual orientation is being gay, lesbian, bisexual or heterosexual. It is described in the Act as:

“a person’s sexual orientation towards

- persons of the same sex
- persons of the opposite sex, or
- persons of either sex.”

Gender identity

The law does not reflect the range of gender identity of all in the LGBT+ community.

The law does not explicitly recognise those who are non-binary or intersex.

However it does protect workers with perceived protected characteristics so it may be possible to argue that sex discrimination provisions apply.

The Equality Act covers gender reassignment. It protects trans people from the point of their intention to undergo a gender reassignment process through to completing it. But it is important to remember that it not only covers those who have medical intervention.

The Act defines the protected characteristic of gender reassignment as:

“where a person

- is proposing to undergo,
- is undergoing, or
- has undergone a process (or part of a process)

for the purpose of reassigning their sex by changing physiological or other attributes of sex”.

Unlawful discrimination

The Act outlaws:

- **Direct discrimination** – where someone is treated less favourably because of their sexual orientation or because of gender reassignment.

Harassment claim in the tribunal

Prospect member, Molly, confidentially told a colleague at work that she lived with her female partner. She was then really upset to overhear her manager gossiping about this with a couple of other colleagues a few days later. She plucked up the courage to confront her manager and he said that it was understandable that people would talk about it and she shouldn't be so sensitive. Shortly after this another co-worker told an anti-lesbian 'joke' when they knew she could overhear. Molly was so distressed that she resigned from her job.

Molly raised it with her Prospect negotiator. Prospect presented a claim of harassment, direct discrimination and unfair constructive dismissal. The case was eventually settled out of court. Molly received compensation to reflect her loss of earnings and injury to feelings.

33%

of LGBT respondents to Prospect's workplace behaviours survey in 2018 reported that they had been bullied, harassed or experienced some other unwanted behaviour at work. 68% of these incidents occurred in the previous 12 months.

- **Indirect discrimination** – where the employer applies a provision, criterion, or practice to all, but the practice has a disproportionately adverse effect on people sharing a protected characteristic and the practice is not objectively justifiable.
- **Harassment** – Unwanted conduct related to sexual orientation or gender reassignment, which has the purpose or effect of violating the other's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment.
- **Victimisation** – Where someone is treated unfavourably because they have brought a case, supported someone else bringing a case, or have alleged that the employer has infringed their rights under the Act.

Harassment

We know that many workers are subjected to harassment because they are gay, lesbian, bisexual or trans.

Under the law, the key issues are that the conduct is unwanted and related to the protected characteristic of sexual orientation or gender reassignment.

It is important to note that the conduct must have 'the purpose or effect' of harassment, so there does not need to be a deliberate attempt to harass, but rather an act can be unlawful if it has the effect of creating a hostile environment.

Supporting trans members

Andrea sought advice from her Prospect negotiator when she was transitioning at work. Her union officer helped her raise issues with her employer and HR to ensure that her manager and colleagues respected her decision and were happy to support her in the workplace.

From practical issues such as change of name through to ensuring she was protected against any harassment, the union engaged with management to ensure Andrea was accepted.

Prospect worked with the employer to create a new workplace policy for equality for trans workers.



When considering a complaint of harassment the tribunal must take account of three factors:

- the perception of the complainant
- the other circumstances of the case, and
- 'whether it is reasonable for the conduct to have that effect'.

The employer is legally liable for actions by their employees that are done in the course of employment. This applies whether or not the harassment is done with the employer's knowledge or approval.

Employment tribunals

Claims of unlawful discrimination at work are brought to an employment tribunal. Legal proceedings must be started within three months of the act of harassment or discrimination occurring.

A tribunal can only allow a late claim if they think it is just and equitable to do so. But this discretion is used very sparingly, so it is extremely important that members raise their issue with Prospect or the BECTU sector as early as possible.

Union legal advice and assistance

Legal advice and assistance is offered at the union's discretion and is decided on the facts and merits of each case. See our legal advice guide (bit.ly/prospect-legal-advice) for details of our services and the terms and conditions for advice.

The law in the Channel Isles and the Isle of Man is different, so check with your Prospect or your BECTU sector representative or negotiator for advice in your area.

Prospect's LGBT+ network

Prospect's LGBT+ network brings members together to campaign against discrimination in the workplace.

Members of the network provide Prospect with their experience and views on legislative and workplace developments. They are also able to contact and support each other.

For more information or to join our LGBT+ network, please email rainbow@prospect.org.uk.

More information

- **Prospect and BECTU sector guide to sexual harassment** – <http://bit.ly/sexual-harass-pro>
- **Prospect members' guide to equality at work** – <http://bit.ly/MG-equality>
- **Prospect members' guide to harassment and bullying** – <http://bit.ly/MG-harass>
- **Equality and Human Rights Commission** – equalityhumanrights.com/en
- **Stonewall** – stonewall.org.uk/



For more info, to get involved or to join online, visit prospect.org.uk/join or bectu.org.uk/join