

COMBATING HOMOPHOBIA

AND ACHIEVING EQUALITY FOR LGBT WORKERS

A negotiators' guide



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Introduction

Amicus is committed to supporting our activists and workplace reps with the resources, information and training to update equal opportunities policies in the work place. With new legislation on equality, there is an opportunity for Amicus to develop proactive negotiations on equality and this guide is designed to support those negotiations. Amicus members can be confident that they will be treated with dignity and respect at work, and that where Amicus is organised, Amicus can deliver better terms and conditions for all members.



Derek Simpson
Amicus General Secretary

Since December 2003, when the Employment Equality (Sexual Orientation) Regulations came into force, it has been unlawful to discriminate against workers because of their sexual orientation. This was an important step forward for the rights of lesbian, gay and bisexual workers (LGB) as it was no longer legal to discriminate, dismiss or harass someone because of their sexual orientation.



Transgender workers are in a different legal position as the Sex Discrimination Act prohibits discrimination on the grounds of gender identity, whilst the Gender Recognition Act 2004 created full legal recognition for a transgender person in their new gender. However, transgender workers often face similar issues and discrimination at work as LGB workers.

However, there is still much work to be done to combat homophobia and transphobia and to achieve equality in the workplace for Lesbian, Gay, Bisexual and Transgender (LGBT) workers. Homophobia and transphobia can be defined as an irrational fear of, aversion to, hatred of, or discrimination against homosexuality and transgender, or individuals who identify themselves as LGBT. Amicus has highlighted that many employers and workers are not aware of LGBT legal rights. Despite the legal advances, prejudice still persists and LGBT workers still face harassment, discrimination, homophobia, and transphobia in the workplace.

As Amicus knows from 30 years of sex and race discrimination legislation, the law changes very little for some people unless there is a recognised trade union negotiating real change in the workplace. Amicus is committed to ensuring employers provide a positive working environment for LGBT workers, free from the fear of harassment and discrimination. Members are then confident that if discrimination occurs they will be supported by Amicus representatives and it will be dealt with effectively by the employer.

This Amicus negotiating guide advises shop stewards and workplace representatives on how to work with employers and workers to combat homophobia and transphobia, promote equality in the workplace for LGBT workers and ensure that employers are complying with the legislation that impacts on LGBT workers.

Siobhan Endean
Head of Equalities

■ The extent of discrimination

Although attitudes to LGBT people have changed significantly in this country in recent years, prejudice and discrimination still remains. Research carried out by the University of Cardiff in 2004 found that one in four LGB people in Wales had been dismissed or forced to leave their job at some point in their lives because of their sexuality. One in five lesbian and gay workers still feel unable to reveal their sexual orientation at work.

One of the commonest problems faced by LGBT workers is bullying and harassment. Homophobic “jokes” are commonplace at work and transgender workers can face similar kinds of abusive behaviour. This treatment is dehumanising, devaluing and can lead to stress and illness. Discrimination can also include not being appointed to jobs; unfair work allocation or over-supervision; and not being considered for promotion or training.

■ Negotiating in the workplace

The following should be considered in any negotiations on LGBT issues in the workplace:

1

Equal opportunities and harassment policies should be introduced if the organisation does not have these already. Representatives and shop stewards can refer to the Amicus guide to negotiating for equality for guidance on equal opportunities policies which is available on the Amicus Equal Rights website or Regional Office. If the organisation has implemented these policies they should be reviewed to check that they are up-to-date with the new sexual orientation regulations and if they are being implemented in practice.

2

An action plan should be set, with targets, towards achieving equality and monitored for effectiveness. However, care needs to be taken on monitoring the sexual orientation or gender identity of workers as many people would view that this is an invasion of privacy and staff are under no obligation to give such information.

Amicus recommends that unless there is a high level of confidence that the employer understands and is committed to LGBT equality, that the monitoring is part of a plan to bring about positive, real improvements, and that the data will be strictly confidential, that there should be no monitoring for sexual orientation or gender identity. If any monitoring is carried out it should be voluntary, confidential and anonymous.

3

Employers should provide training for all staff on equality to include LGBT issues. The training should include the promotion of equality and not concentrate solely on compliance with the law. It should make clear that homophobia, transphobia and the discrimination and harassment of LGBT workers is unacceptable and will not be tolerated. Extra training should be provided by the employer for managers and those staff who recruit, select and train employees.

4

Recruitment and selection procedures should be reviewed to ensure that they do not discriminate against LGBT workers.

5

Job descriptions and criteria for applications should be reviewed to check that there is no bias that prevents certain groups of people applying. The ACAS guide on sexual orientation and the workplace gives the example of a sports club advertising for a husband and wife team to manage the facility. This would discriminate against same sex partners or couples in a civil partnership.¹

6

Employers should ensure that advertisements for jobs are in a form that will encourage a diverse range of applicants. Do job advertisements and applications include information on an equal opportunities policy, including welcoming applications from LGBT people?

7

There should be a review of the organisation's image. Does it encourage under-represented groups to apply for

jobs and promotion? Is it viewed as an organisation that is committed to equality and diversity?

Employee benefits

8

Parental leave policies should be reviewed to ensure that they reflect same sex partners.

9

Occupational pension schemes should be checked to ensure that they reflect same sex and civil partnerships where relevant.

10

Other benefits and policies, such as compassionate leave and sickness absence, should be reviewed to ensure they are applied equally to LGBT workers and that they comply with the sexual orientation and transgender regulations.



¹ ACAS guide for employers and employees on sexual orientation in the workplace.

■ Transgender at work

The Department for Education and Employment Guide to the Sex Discrimination (Gender Reassignment) Regulations 1999 recommends that an employer should discuss in confidence how a transgender worker prefers to deal with the situation and to follow a process agreed with them. Issues that may be considered include:

- Whether the employee wishes to stay in their current post or be redeployed;
- The expected timescale of medical and surgical procedures and the time required off for medical treatment. Employers should aim to allow some flexibility and should be aware that it may constitute unlawful discrimination if their treatment of an individual absent while undergoing gender reassignment treatment is less favourable than their treatment of those who are or would be absent because of illness or other medical treatment;
- The expected point or phase of change of name, personal details and social gender;
- Whether the employee wishes to inform line managers, colleagues and clients. There is no obligation or need to inform colleagues and clients that an employee is intending to undergo, is undergoing, or has undergone gender reassignment. It is usually good practice for employers to take responsibility for informing those who need to know on a strictly confidential basis, **ensuring the wishes of the individual are respected. It is a criminal offence for anyone who becomes aware in an official capacity that someone has been issued a Gender Recognition Certificate to reveal that information, or that they are transgender, or were anything other than their present gender;**
- Is training of colleagues required and when this should be carried out;
- What amendments will be required to records and systems? It is good practice for employers to update their records to ensure that any references reflect current name, title and sex. In some instances it may be necessary to retain



records relating to an individual's identity at birth, e.g. for pension or insurance purposes. **Access to such records showing the name and any other details associated with the individual's transgender status, (e.g. absence for medical treatment), should be restricted to staff who require such information to perform their specific duties. It does not refer to colleagues, clients or line managers. Breaches of confidentiality should be treated in the same manner as disclosure of personal details of any other member of staff;**

- If giving a reference for someone moving to a new job the employer must use the name which is used by the transgender employee and not refer to a former name or gender identity;
- Whether a transgender employee is adequately covered by existing policy on issues such as confidentiality, harassment and insurance and if not, how these will be amended;
- Agree the point at which the employee will commence using single sex facilities in their new gender, e.g. toilets. It is not acceptable to insist for the long term that a transgender employee uses separate facilities, e.g. a disabled toilet.

■ Transgender and pensions

Everyone born after April 1955 will receive a state pension at 65, but women born before 1950 can claim state pension at 60, and those born between 1950 and 1955 can claim at a point between 60 and 65.

Following a successful application for a Gender Recognition Certificate, a claim for state pension will be that which is appropriate in the acquired gender.

Full guidance on Benefits and Pensions in relation to Gender Recognition is available at http://www.grp.gov.uk/forms_guidance/documents/guide_benefits_pension_05.pdf.

■ The Employment Equality (Sexual Orientation) Regulations

The Employment Equality (Sexual Orientation) Regulations came into force on 1 December 2003, since when it has been illegal for any employer to discriminate on the grounds of a worker's sexual orientation. The Regulations only relate to sexual orientation that is lesbians, gay men, heterosexual and bisexual people. Transgender people are not covered under these Regulations, but are provided with protection by the Sex Discrimination (Gender Reassignment Regulations 1999).

■ Who is protected?

The Regulations cover:

- all employees and contract workers
- the police
- colleges of further education
- the armed forces
- employment agencies
- barristers and advocates
- providers of vocational training
- trade associations including trade unions.

Employers are liable for discriminatory actions taken by another employee acting on their behalf, whether or not it was done with their knowledge, unless the employer can show that they had tried to prevent such actions.



■ What do the Regulations mean?

Types of discrimination

The Regulations make less favourable treatment of a person on the grounds of sexual orientation unlawful in respect of four specific types of discrimination:

- (i) Direct Discrimination
- (ii) Indirect Discrimination
- (iii) Victimisation
- (iv) Harassment

Direct Discrimination

An employer must not treat workers or job applicants less favourably because of their sexual orientation or their perceived sexual orientation. For example, it would be direct discrimination if an employer decided not to employ, promote, or dismissed someone because of his or her sexual orientation.

Direct discrimination can only be justified in the limited circumstances where a genuine occupational requirement can be shown to apply.

Indirect Discrimination

An employer must not have selection criteria, policies, benefits, employment rules, or any other practice, which, although they are applied to all workers, has the effect of disadvantaging people of any sexual orientation unless the practice can be justified. Indirect discrimination is unlawful whether it is intentional or not.

However, indirect discrimination will not be unlawful if it can be justified. An employer would have to show that there is a legitimate aim, (i.e. a real business need) and that the practice is proportionate to that aim (i.e. necessary and there is no alternative means available.)

Harassment

Harassment is unwanted conduct, which has the purpose or effect of:

- Either violating a person's dignity, or
- Creating an intimidating, hostile,

degrading, humiliating or offensive environment for that person

Harassment includes behaviour that is offensive, frightening or in any way distressing. This may be intentional bullying which is obvious or violent, but it also includes unintentional, subtle and insidious behaviour. Examples include nicknames, teasing, name-calling or other behaviour, which is upsetting to the recipient. It can be targeted at individual(s), or about the sexual orientation (real or perceived) of those with whom an individual associates. It may not be targeted at an individual(s), but consist of a general culture, e.g. a workplace that tolerates the telling of homophobic jokes.

Organisations may be held responsible for the actions of their staff as well as the staff being individually responsible.

Victimisation

Victimisation is where an individual is treated detrimentally because they have made a complaint, intend to make a complaint about discrimination or harassment, or have given evidence, or intend to give evidence relating to a complaint about discrimination or harassment. If this happens, or if organisations fail to take reasonable steps to prevent it from happening, the organisation will be liable and may be ordered to pay compensation if a case is taken to tribunal. Individuals that victimise may also be ordered to pay compensation.

Discrimination, harassment or victimisation following the end of employment covers issues such as references, either written or verbal.

■ Genuine occupational requirement

In very limited circumstances it is lawful for an employer to treat people differently if it is a genuine occupational requirement that the job holder must be of a particular sexual orientation. Any decision about whether this applies requires careful consideration regarding the nature of the work and the context in which it is carried out. For example, an organisation advising on and promoting gay rights may be able to show that it is essential that the chief executive, as the public face of the organisation, should be gay.

The Regulations also allow differences of treatment where the employment is for the purposes of an organised religion. Any organisation that wishes to rely on this provision will have to establish that the requirement is necessary to comply with a religious doctrine, or to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers.

■ What to do if a member has suffered discrimination or harassment on the grounds of sexual orientation

If a member has suffered discrimination, or harassment on the grounds of sexual orientation, please contact your Amicus Regional Officer who will be able to advise you on representing a member.

Many issues can be resolved in workplace, but this is not always possible and a case can be made to an employment tribunal within 3 months of the discrimination or harassment taking place.

However, a member must follow their employer's grievance procedure before making a tribunal claim as a failure to do so may result in a complaint being inadmissible at the tribunal.

Therefore, it is vital that you contact the Amicus Regional Officer to ensure that you are aware of the correct way to deal with the issue.



■ A guide to transgender rights and legislation

Sex Discrimination (Gender Reassignment) Regulations 1999

In 1999 the Sex Discrimination Act (Gender Reassignment) Regulations introduced protection for transgender people who are about to undergo, are undergoing, or have undergone treatment for gender reassignment.

The effect of the Regulations is to insert into the Sex Discrimination Act 1975 a provision which extends that Act with reference to employment and vocational training, that discrimination on the grounds of gender reassignment constitutes discrimination on the grounds of sex.

Who is protected by this Legislation?

The Legislation covers:

- a broad range of employees and contract workers
- people who are applying for jobs or vocational training and
- applies regardless of length of service in employment and the number of hours worked.

Employers must not discriminate on the grounds of gender reassignment at recruitment, during employment, dismissal or redundancy. Employers are liable for discriminatory actions taken by another employee acting on their behalf, whether or not it was done with their knowledge, unless the employer can show that they have tried to prevent such actions.

Genuine Occupational Requirement

In limited circumstances it may not be unlawful to discriminate on the grounds of gender reassignment where:

- A person's sex is a Genuine Occupational Requirement for that job
- The job involves the holder conducting intimate searches pursuant to statutory powers, e.g. the Police and Criminal Evidence Act
- The job involves the holder working in a private home and reasonable objection can be shown by the employer because of the intimate contact in these circumstances.

What to do if you have suffered discrimination or harassment on the grounds of gender reassignment

If a member has suffered discrimination, or harassment on the grounds of gender reassignment, please contact your Amicus Regional Officer who will be able to advise you. Many issues can be resolved in workplace, but this is not always possible and a case can be made to an employment tribunal within 3 months of the discrimination or harassment taking place. However, the member must follow the employer's grievance procedure before making a tribunal claim as a failure to do so may result in a complaint being inadmissible at the tribunal. Therefore, it is vital that you contact your Regional Officer to ensure that you are aware of the correct way to deal with the issue.

The Gender Recognition Act 2004

The Gender Recognition Act 2004 permits transgender people who have received a diagnosis of gender dysphoria and have lived for at least 2 years in their true gender to apply for recognition of that gender. This Act means that transgender people do

not have to live in state of legal limbo and are afforded all the rights and responsibilities appropriate to their acquired gender.

The Act gives transgender people the right, from the date of recognition, to marry in their acquired gender and be given birth certificates that recognise the acquired gender. If successful a Gender Recognition Certificate is issued, which allows a birth certificate in the new gender to be issued. The records are kept in a similar way to those for adoption, ensuring privacy.

There are some restrictions in the Act and this includes the requirement for any existing marriage to be annulled before a full Gender Recognition Certificate can be issued. This is very difficult for people in this situation who have to choose between preserving a marriage, or abandon it in favour of being recognised in their new gender.

It is a criminal offence for anyone who becomes aware in an official capacity that someone has been issued a Gender Recognition Certificate to reveal that information, or that they are transgender, or were anything other than their present gender.

Civil Partnership Act 2004

The Civil Partnership Act 2004 came into force in December 2005 and gives same-sex couples the right to have their relationship legally recognised. Any couple that registers for a civil partnership will have the same rights as a married couple in areas like tax, social security, inheritance and workplace benefits.

More details about this are available from the Women and Equality Unit Website – www.womenandequalityunit.gov.uk/civilpartnership.htm

Civil partners must be:

- Of the same sex
- Not already married or in a civil partnership
- 16 or over (with consent in if under 18)
- Not closely related (e.g. parent, sister, niece, uncle)

Those in civil partnerships will now be treated the same as married couples in respect of benefits such as pensions, means tested state benefits and tax.

Useful LGBT website links

The Amicus Equal Rights Website

<http://www.amicustheunion.org/Default.aspx?page=39>

The Amicus Equal Rights LGBT Website

<http://www.amicustheunion.org/Default.aspx?page=3019>

The TUC website for LGBT Workers

<http://www.tuc.org.uk/equality/index.cfm?mins=21&minors=21>

Women and Equality Unit's Website on LGBT Issues

<http://www.womenandequalityunit.gov.uk/lgbt/orientation.htm>

ACAS Guide for employers and employees on Sexual Orientation in the Workplace http://www.acas.org.uk/media/pdf/e/n/sexual_1.pdf

The Stonewall Lesbian and Gay Guide to Recruitment

<http://www.stonewall.org.uk/workplace/618.asp>

Press for Change – Campaigning organisation for all trans people

<http://www.pfc.org.uk/>

More information about civil partnership is available at the Women Equality Unit Website at

www.womenandequalityunit.gov.uk/civilpartnership.htm or write to Civil Partnership, WEU, 1 Victoria Street, London, SW1H 0ET

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