

Lesbian, gay and bisexual workers rights

This factsheet contains information about the rights of lesbian, gay and bisexual workers and sets out a bargaining agenda for branches. It includes information on the law and a negotiating checklist, which is on page 9. In UNISON, lesbian, gay and bisexual members organise together with transgender members. There are many areas of common concern, but important areas of difference. There is a separate UNISON factsheet on *Transgender workers rights*.

INTRODUCTION

Lesbian, gay and bisexual workers face prejudice and discrimination when seeking work and once they are in a job. Every trade unionist has a responsibility to challenge this discrimination. It is part of our core agenda for workers' rights.

A large-scale national study which reported in January 2014 (*Ups and downs of LGBs workplace experiences*), found that lesbian, gay and bisexual workers were more than twice as likely to be bullied and discriminated against than heterosexual workers. The figures were particularly high for lesbian and bisexual workers. The study revealed a strong correlation between bullying and poor health, physical and mental.

Persistent harassment commonly leads to poor work performance and attendance, which in turn may lead to dismissal, with the root cause - homophobia or biphobia - never acknowledged. Many lesbian, gay and bisexual workers seek to avoid discrimination by concealing their sexual orientation. But such concealment comes at great personal cost. Bisexual workers can face particular issues of isolation, invisibility and prejudice.

The Equality Act 2010 bans workplace discrimination on grounds of sexual orientation and requires public bodies to take positive action on sexual orientation equality. Civil partnership and same sex marriage laws mean that same sex spouses or civil partners must be treated the same as mixed sex spouses in terms of workplace benefits.

But laws on their own don't stop discrimination. It is up to us to negotiate policies and practices that make a real difference to the working lives of our lesbian, gay and bisexual members and to challenge prejudice and discrimination.

UNISON POLICY

UNISON believes that lesbian, gay, bisexual and transgender people have the right to equal treatment, protection from discrimination and full support from the union. Allegations of discrimination will be taken very seriously. UNISON has developed an inclusive Equality Scheme to promote equality for all groups in everything we do.

LGBT members organise in UNISON at branch, regional and national level. There is an annual lesbian, gay, bisexual and transgender members conference and a national lesbian, gay, bisexual and transgender members committee.

UNISON recognises that lesbian, gay and bisexual workers are not a homogenous group. For example bisexual workers, women LGB workers, Black LGB workers and disabled LGB workers all face particular issues which we address in our work.

DEFINITIONS

Sexual orientation - orientation towards people of the same sex, the opposite sex or both sexes; in common language - lesbian/gay, straight or bisexual

Homosexual - dated and quasi-medical term for lesbians and gay men, rarely used by lesbians and gay men, but sometimes used in formal documents

Homophobia - prejudice towards lesbians and gay men and fear of same sex attraction

Biphobia - prejudice towards bisexual people

Heterosexism - attitudes, behaviour or policies and practices that arise from the assumption that everyone is heterosexual

To come out/be out - to be open about your own sexual orientation

To out someone - to reveal another person's sexual orientation, without their consent

Transgender person - a person whose sense of their own gender identity does not conform to the sex they were assigned at birth.

EQUALITY ACT 2010

The Equality Act 2010 (England, Scotland and Wales) protects against discrimination because of sexual orientation in employment and service delivery. It covers all sizes and types of employer and all types of worker, including agency, contract and temporary workers. It bans direct and indirect discrimination and victimisation. It requires public bodies – and other bodies when fulfilling a public function – to take active steps to promote sexual orientation equality (see **Public sector equality duty**, below).

There is similar legislation in Northern Ireland.

The Act protects all people, whatever their sexual orientation. For example, a straight person subjected to homophobic harassment has the same protection as a gay person. It makes no difference if the harasser knew they were straight or thought they were gay – the conduct is still unlawful. Workers are also protected from discrimination by association – for example because of an LGB family member.

Summary of sexual orientation employment protection

The employer cannot, because of sexual orientation:

- refuse to employ someone or dismiss them
- refuse access to training or promotion
- deny to lesbian, gay or bisexual workers benefits, facilities or services they offer to heterosexual workers, for example accommodation, childcare, travel concessions, social events
- give an unfair reference when someone leaves
- victimise someone because they made a complaint of discrimination or gave evidence or information in someone else's complaint.

It is also unlawful for employers to discriminate against an employee because they are in a civil partnership or same sex marriage. Civil partners and same sex spouses must have equal treatment with mixed sex spouses. Other same sex partners must have equal treatment with unmarried mixed sex partners.

Harassment

The most common form of discrimination experienced by lesbian, gay and bisexual workers is harassment. Yet many employers' policies don't make specific reference to sexual orientation. There is still a perception that some groups are 'fair game'. Bisexual workers often face additional prejudice and may feel particularly isolated. They can experience discrimination from both straight and lesbian/gay people.

All too often, lesbian, gay and bisexual workers complaining of harassment are accused of being over-sensitive, having no sense of humour, or of 'bringing it on themselves' by not hiding their sexual orientation. Most lesbian, gay and bisexual workers fear to even make a complaint. Straight workers may fear reprisals if *they* complain about homophobia or biphobia.

The Equality Act 2010 expressly outlaws harassment related to sexual orientation. It does not matter whether or not a harasser *intended* their behaviour to be offensive - the effect is just as important. Harassment does not have to be targeted at a particular victim who is known or thought to be LGB. It is enough that homophobic or biphobic language, imagery, gestures, 'jokes' or actions violate the dignity of a person and create an intimidating, hostile, degrading, humiliating or offensive environment. The perception of the person experiencing harassment must be taken into particular account, alongside other factors, when deciding if harassment has taken place.

The Act also forbids sexual harassment – unwelcome sexual advances, touching, sexual assault, sexual 'jokes' or materials of a sexual nature that violate a person's dignity and create an intimidating or offensive environment.

Employers must take positive steps to support and protect *all* workers from harassment by co-workers, service users and members of the public. This should include well publicised policies, monitored to check their effectiveness, and training of managers and all staff. Branches should ensure the harassment policy includes specific reference to sexual orientation or lesbian, gay and bisexual workers.

The Act also outlaws discrimination by trade unions and applies to how UNISON delivers services.

Exceptions

A post may be restricted to people of a certain sexual orientation where the job genuinely requires that the person employed is or is not of a particular sexual orientation, and applying this requirement is a 'proportionate means of achieving a legitimate aim'. There are very few jobs where being of a particular sexual orientation is essential to doing that job. Such an occupational requirement must be identified at the beginning of the recruitment process and clearly stated in recruitment materials. Occupational requirements are always open to challenge and it is up to the employer to prove why it is necessary and justified in this case. Only an employment tribunal (or higher court) can give an authoritative ruling on whether it is valid.

The Act allows employers who choose to, to take positive action to make their workforce better reflect the community they serve. This might be offering training to particular groups or encouraging people to take up opportunities. Positive action can also be used in the appointment or promotion process as a tie-breaker between candidates of equal merit. The employer must show this is a proportionate means of achieving a legitimate aim.

Public sector equality duty

Public bodies in England, Scotland and Wales have a statutory duty to give due regard to eliminating sexual orientation discrimination, advancing equality of opportunity and fostering good relations between people of different sexual orientations. A similar duty has been in force in Northern Ireland since 2000.

Having due regard means consciously thinking about the three equality duty aims as part of the decision-making process, such as employment, service delivery and financial decisions. This includes decisions on cuts and redundancies.

Complying with the duty may involve treating some people better than others to combat historic disadvantage.

Specific duties underpin the general duty, showing how public bodies can meet the general duty. These are different in England, Scotland and Wales, with those for England being less detailed or prescriptive than those for Scotland and Wales. However, whatever the specific duties, the general duty remains the same. Public bodies can only demonstrate that they are complying with the general duty by taking steps such as assessing the impact on equality of

their policies and practices. UNISON's detailed advice on the public sector equality duty is stock number 3062 and is available to download from unison.org.uk.

KEY NEGOTIATING AREAS

Recruitment

Job advertisements should state the employers commitment to sexual orientation equality and wherever possible, jobs should be advertised in LGBT media.

Equality policy and equality objectives

Make sure there is a robust and comprehensive equality policy, cross-referenced with all other policies. If sexual orientation - or another term with the same meaning - is not explicitly mentioned, most lesbian, gay and bisexual people will assume from bitter experience that their issues are not being taken seriously. Check national or employer agreements. These must be followed up locally, but can be a useful starting point.

Other policies should include an equality clause, including service delivery and procurement policies. A first step can be to get agreement on an overarching statement. Until all policies have been revised, they can be read in the light of this commitment to equality. While you have the employer's attention, make the most of it and include gender identity equality as well.

Model statement on sexual orientation and gender identity: unison.org.uk/out

Public bodies should include sexual orientation in their equality objectives and equality action plans. If they do not, they must explain why not.

AIMS Negotiate a comprehensive equality policy which specifically refers to sexual orientation

Make sure sexual orientation equality is included in equality action plans and equality objectives and that LGB workers are involved and consulted in assessments of equality impact

Agree an equality statement on sexual orientation and gender identity

Ensure all policies include a cross-reference to the equality policy.

Harassment policies

Good practice in tackling other forms of harassment apply to tackling homophobic and biphobic harassment. Issues particular to this area include:

- **confidentiality and being 'out' at work** – surveys show many lesbian, gay and bisexual workers are not out (open about their sexual orientation) to their managers. Our ultimate goal is a society where no-one feels the need to conceal their sexual orientation, but we are still far from that. The choice to come out is personal and depends on many factors. The fact that some LGB workers are out does not mean others in the same workplace will want

to be. People should be able to come out to their manager or particular co-workers without it being spread throughout the work team.

- **confidential complaints procedure** - most lesbian, gay and bisexual workers do not complain because they don't think they will be taken seriously or fear it will make the situation worse. A confidential complaints procedure enables people to make a complaint without fear of reprisal or outing themselves to anyone apart from the designated person/people. This should be someone other than their line manager.
- **tackling harassment by service users** - managers sometimes advise (or even instruct) front-line workers who are lesbian, gay or bisexual to conceal their sexual orientation from service users or the public. This is only acceptable if it is applied to workers of every sexual orientation. It is no more acceptable to stop lesbian, gay and bisexual people talking about a same sex partner or spouse than to stop married heterosexual colleagues referring to their spouses. .

AIMS Make sure the harassment policy includes specific reference to homophobic and biphobic harassment and includes a confidential complaints procedure and steps to tackle harassment by managers, co-workers, service users and the public.

Family friendly and work/life balance policies

Partly because lesbian, gay and bisexual workers keep their family life private to avoid prejudice, there is sometimes a perception that they *have* no family life. In fact, everyone needs to take time off for family responsibilities at some time in their working lives. Although non-traditional family patterns are increasingly common, they are still not recognised in many so called 'family-friendly' policies.

Statutory rights to maternity support, parental and dependent care leave are based on a social view of family, not restricted to biological or legally recognised relationships. Employers are required to recognise same sex families, whatever their legal status. Check that the wording of policies is inclusive. Childcare policies should refer to 'parents' rather than 'mothers and fathers'. Leave around the birth of a child should be called 'maternity support leave' rather than 'paternity leave'. Any reference to marriage must include same sex marriage and civil partnership.

Many local special leave agreements are highly discretionary. This can cause enormous problems for people in same sex relationships who have homophobic or biphobic managers or who are not out at work. This can be a crushing blow at what is already a stressful time - for example when bereaved or needing leave to care for a sick partner or partner's child.

Negotiate a confidential point of contact for special or family leave for people who – for good reason - do not want to go to their line manager. This might be a named person in human resources. In most cases, no-one else needs to know why special leave has been granted.

Assurances of confidentiality can be a lifeline to lesbian, gay and bisexual workers, but benefit any worker needing leave for personal circumstances they cannot talk to colleagues about.

Workers may be asked to provide 'evidence' of relationships before being granted special leave. It is doubtful whether this is necessary to avoid abuse of the system. If procedures do require evidence, make sure there is proper guidance and that requirements are applied equally to all workers, whatever their sexual orientation.

When negotiating on work/life balance, remember that everyone has a right to a private and social life. For example, there can be an expectation that people without children always provide cover at Christmas or work the anti-social shifts. If lesbian, gay and bisexual people are perceived as having no family life, this can have a negative impact on them.

AIMS Negotiate family friendly policies that are accessible to lesbian, gay and bisexual workers without having to jump through hoops to 'prove' their entitlement and which they can access confidentially, if this is what they want.

Make sure that work/life balance policies respect the different lives that people lead and do not end up discriminating against any group of workers.

IT firewalls and filters

Some IT firewalls and filters have very basic screening which blocks e-mails containing the words lesbian, gay or bisexual, automatically quarantining them as offensive, adult or unprofessional. This is not acceptable. There have even been cases of union activists threatened with disciplinary procedures for receiving UNISON LGBT emails. It can be hard for an individual to raise this so branches should make sure their employers do not block such e-mails.

Staff networks

A growing number of employers are setting up staff LGB or LGBT networks. Problems arise where they are a hand picked or self-selecting minority who are wrongly seen to represent all LGB workers and where the employer talks to them rather than consulting staff unions on LGB equality. Many UNISON LGBT activists have found that the best way to deal with such staff networks is to get involved with them, while demanding that the role of the unions continues to be recognised.

Working abroad

With more and more transnational employers, it is increasingly common for workers to be asked (or want) to work abroad. The situation for LGB people varies greatly across the globe, with homosexuality a criminal offence in over 80 countries. This should not be used as a reason to ban LGB workers from taking up opportunities, but employers must accept their duty of care.

Employers must be properly informed about the law and culture in the specific countries and managers must be trained in steps to ensure the health and safety of staff, including LGB staff.

LGB workers who refuse such a posting should not be penalised by damage to their career prospects.

Publicity, implementation, training and monitoring

Negotiations on policy should include agreement on publicity, implementation and monitoring. New and amended policies should be circulated to all workers, explaining why they have been adopted. LGB equality should be included in training for managers and for all staff.

Practice must be in line with policies. If local managers have discretion in implementation, members must be aware of their rights and know how to make a complaint if necessary. The complaints procedure should be confidential and well publicised.

Seek agreement on regular reviews of the effectiveness of the policies and how they are impacting on groups of workers facing discrimination. For example, a record should be kept of the numbers of complaints of harassment by lesbian, gay and bisexual workers, and the outcomes of these complaints. Remember that an absence of complaints does not mean there is no harassment. Indeed it can suggest a culture where such harassment is so everyday that people don't think to complain.

AIMS The commitment to lesbian, gay and bisexual equality should be publicised widely, including in contracts of employment, on internal and external websites, induction packs, newsletters, noticeboards, handbooks and annual reports.

All new or amended policies should include an action plan on equality, including equality for lesbian, gay and bisexual workers.

Local managers' discretion should be kept to a minimum and confidential complaints procedures should be well publicised.

Monitoring of the take-up of policies should be put in place, to be fed into a regular review of their effectiveness and equalities impact.

Staff training should include LGBT equality issues, from induction onwards.

Workforce monitoring

UNISON argues strongly that the implementation of all policies should be monitored, including the impact on sexual orientation equality. Whether or not employers should monitor the sexual orientation of individual workers is a separate question. It should never be a first step, but should follow a programme of action on sexual orientation equality. Staff should be consulted, the use of the data clearly explained, confidentiality guaranteed and questions should be optional. There is detailed guidance in the factsheet 'Workforce monitoring for sexual orientation and gender identity' at www.unison.org.uk/out.

BRANCH ORGANISATION

Many lesbian, gay and bisexual UNISON members are not out in their branch. Your branch may not know of any LGB members – but be assured – they do exist. The government estimates that 6% of the adult population is lesbian, gay or bisexual. Many work delivering public services.

Ideally, all branches should have a lesbian, gay, bisexual and transgender (LGBT) members officer, who can be a confidential point of contact. If no-one has come forward to take up this post, there is an even greater need to publicise regional and national LGBT events and information widely in your branch. This is the only way to reach members who need this information. All branches are encouraged to send members to UNISON's national LGBT conference.

There is more information on self-organisation in UNISON's guide *Organising for Equality* stock number 1577.

CHECKLIST OF NEGOTIATING POINTS

- make sure the equality policy, equality objectives and equality impact assessment process explicitly include sexual orientation
- negotiate an equality statement on sexual orientation (and gender identity)
- make sure all other policies include an equality clause - again, including sexual orientation
- make sure policies include equality for bisexual workers as well as lesbian and gay workers and tackling biphobia as well as homophobia
- pay particular attention to the harassment policy, ensuring it includes a confidential route for making complaints
- make sure family friendly and work/life balance policies work for people with non-traditional families and that they can be accessed without having to jump through hoops to 'prove' entitlement or jeopardise confidentiality
- check policies and practice on working abroad pay due regard to the health and safety of LGB workers
- reach agreement that policies will be widely publicised, training put in place and policies' effectiveness regularly monitored and reviewed
- seek to ensure local managers' discretion on how policies are implemented is kept to a minimum
- make sure e-mails about LGBT equality are not screened out by crude fire-walls
- involve your branch LGBT group or LGBT members in negotiations
- negotiate time off for trade union LGBT activities.

FURTHER INFORMATION

Visit UNISON's LGBT webpages for up to date advice, information and events – **unison.org.uk/out** (members may need to sign in to see all documents) Sign up for the monthly e-bulletin and hard copy mailings on LGBT issues. Find the contact for your regional LGBT group, who can put you in touch with your branch LGBT group or advise you on how to set up a group.

If you don't have internet access, or for help when you need it, call UNISONdirect on 0800 0857 857 (voice) or 0800 0 967 968 (minicom) between 6 am and midnight, Monday to Friday and 9 am to 4 pm on Saturday.

UNISON welcomes comments on this factsheet and examples of agreements that you have negotiated. Please write to or email us:

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