

## **THE DISCRIMINATION (JERSEY) LAW 2013 - Guidelines for Employment**

*This guideline is intended to explain to employers and employees the principal requirements of the Law from the perspective of employment only. It is not intended to cover all the requirements of the Law, nor does it represent a statement of the Law.*

**The Law covers the ‘protected characteristics’ of Race (2014) Sex (2015), Age (2016) and Disability Discrimination from 1 September 2018. The Law defines types of discrimination, the role of the employer, the role of the Tribunal and remedies that can be awarded:**

1. Direct Discrimination
2. Indirect Discrimination
3. Harassment
4. Victimisation
5. Liability on employers (including the making of reasonable adjustments)
6. Tribunal role

### **Important Definitions**

#### **Protected Characteristic of Race:**

1. Race includes:
  - a) Colour;
  - b) Nationality – covers citizenship of either a country of birth or naturalization;
  - c) National origins – this includes being from Jersey;
  - d) Ethnic origins.

#### **Protected Characteristic of Sex:**

- a) Sex
- b) Sexual Orientation
- c) Gender Reassignment
- d) Pregnancy and Maternity

#### **Protected Characteristic of Age:**

- a) a person of a particular age;
- b) people who share the same protected characteristic means they are of the same age group.

#### **Protected Characteristic of Disability:**

- a) a long term physical, mental, intellectual or sensory impairment or disfigurement;

- b) the impact of (a) is that it can have an adverse effect on someone's ability to engage or participate in any activity covered by the legislation.

### **Direct Discrimination (Part 1 Article 6)**

1. A person is directly discriminated against when subjected to less favourable treatment by another because of a protected characteristic.
2. Less favourable treatment includes segregating a person from others because of a protected characteristic.
3. In the case of Age Discrimination – from 1 September 2018 – the requirement for an employee to retire (at any age) will be an act of direct discrimination unless the employer can show this to be a proportionate means of achieving a legitimate aim
4. In the case of Disability Discrimination **Only**:
  - (i) Positive discrimination is permitted, meaning that a person who does not have a disability (or does not have the same disability) cannot argue that they have been treated less favourably than someone who does have a does have a disability (or a different disability).
  - (ii) A person with a disability is treated less favourably because of something associated with their disability (but not the disability itself), unless it can be shown to be a proportionate means of achieving a legitimate aim.

### **Indirect Discrimination (Part 1 Article 7)**

1. A person is indirectly discriminated against if an employer applies a 'provision, criterion or practice' which is discriminatory because of a protected characteristic..
2. A 'provision, practice or criterion (PPC)' is a working condition or rule that even though applied to the whole workforce disadvantages one (or more than one) employee (s), unless it can be shown that the 'PPC' was a proportionate way or achieving a justifiable aim.
3. The failure to make reasonable adjustments in respect of disability, if the provision places a disabled person at a substantial disadvantage when compared to other employees.

### **Part 6 – Other Prohibited Conduct**

#### **Victimization (Part 6 Article 27)**

1. A person is victimized when treated less favourably than others because the person has:
  - a) Tried to make or have made a complaint under this Law;
  - b) Given evidence in support of a complaint under this Law (whether on behalf of themselves or others);
  - c) Raised a complaint against alleging that an act prohibited by this Law has occurred.

#### **Harassment (Part 6 Article 28)**

1. A person is harassed when they are subjected to unwanted conduct in relation to a protected characteristic and is:
  - a) Violates the dignity of an individual;

- b) Creates an intimidating, hostile, degrading, humiliating or offensive environment for that person.

## **PROHIBITED ACTS**

### **Part 3:**

Acts of discrimination are prohibited in the following circumstances:

- a) Recruitment and selection of prospective employees;
- b) Terms of employment offered;
- c) Dismissal or selection for redundancy;
- d) Prevention of opportunities for promotion and/ or training;
- e) Engagement of Contract workers;
- f) Partnerships;
- g) Professional or Trade Organizations;
- h) Professional bodies;
- i) Vocational training;
- j) Employment agencies
- k) Retirement at any age (unless an employer can justify such this)
- l) Failure to make reasonable adjustments?

## **LIABILITY OF EMPLOYEE AND EMPLOYER**

### **Part 6 (Article 32)**

1. The Law makes an employer liable if employees commit discriminatory acts during their employment, whether they knew about the acts or not; however:
2. If an employer is able to show that they took preventative steps to stop any such acts of discrimination by their employees from taking place, then they can be protected from such liability;
3. The Law also makes employees personally liable if they act in a discriminatory manner.

## **THE TRIBUNAL AND REMEDIES**

### **Part 7**

1. The Jersey Employment and Discrimination Tribunal (will hear all cases of discrimination and not just those that fall under employment).
2. JACS is available to conciliate on any matter that falls under the employment contract;
3. Claims have to be lodged with the Tribunal within 8 weeks of the act of discrimination taking place (or the last act);
4. The Tribunal can make an order under any or all of the following:
  - a) Declare the rights of the Claimant (employee) and the Respondent (employer or other employees/colleagues)
  - b) Recommend the Respondent takes certain action within a period of time to reduce the effect of the act on the employee;
  - c) Order compensation up to a maximum of £10,000 for any financial loss; and up to £5,000 for hurt and distress – however the overall limit is capped at £10,000.
  - d) If there is more than one Respondent the Tribunal may order compensation be divided between them.

