

University of
South Wales
Prifysgol
De Cymru

A Beginner's Guide to Employment Law



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University of South Wales
in association with
LawWorks

Law
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Introduction

- Rachel Lewis, University of South Wales
- Employment Solicitor
- Deputy Director of Legal Advice Clinic

What we will cover



- Employment status;
- Termination of the employment relationship, including wrongful and unfair dismissal;
- Discrimination overview;
- Remedies available to successful claimants; and
- Employment tribunal procedure

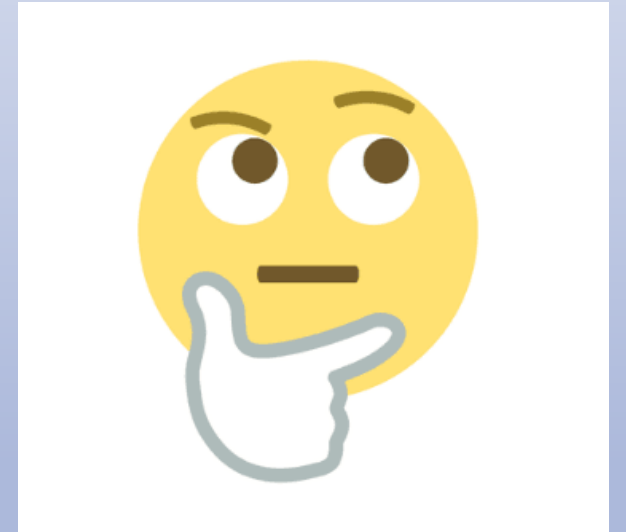
Employment Status



Establishing eligibility Employment status

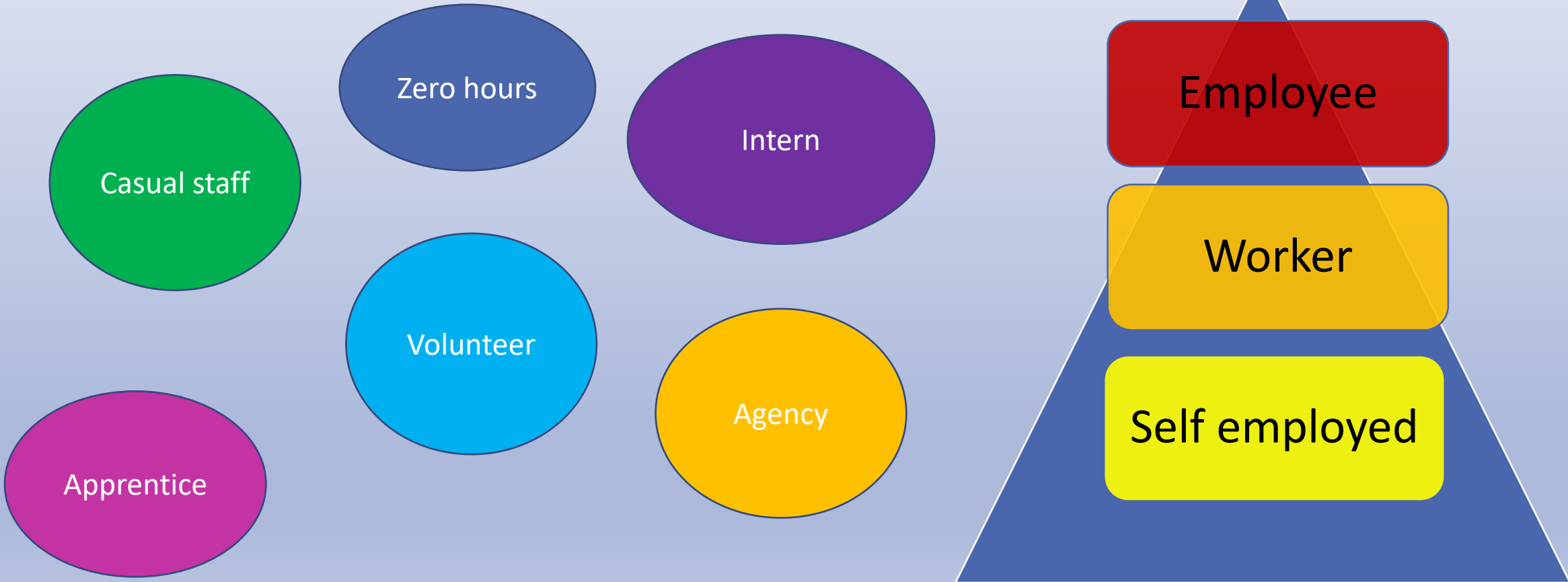


- Nature of relationship/ arrangement
- Important step when advising clients
- Legal protections
- Various relationships exist...





Establishing eligibility Employment status



Establishing eligibility Employment status

Employment Rights Act 1996, s.230

Employees

“**employee**” means an individual who has entered into or works under ... a **contract of employment**

Workers

“**worker**” ... means an individual who has entered into or works under ... **any other contract**, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform **personally** any work or services for another party to the contract **whose status is not by virtue of the contract that of a client or customer or any profession or business undertaking** carried on by the individual

Self-
Employed

Establishing eligibility Employment status



- *Ready Mixed Concrete (South East) Limited v Minister of Pensions and National Insurance* [1968] 1 All ER 433
- Mckenna J
- Multiple factor test:
 1. Mutuality of obligation/ personal service
 2. Control
 3. Other factors

Establishing eligibility Employment status



Mutuality of
obligation
Personal service
Right to
substitute

Ultimate control
Working hours,
location,
policies/
procedures, day
to day direction

Other factors
Uniform,
tools/equipment,
tax, policies &
procedures,
company
benefits...

Legal Reform

Employment status



- Call for reform due to modern working practices, e.g. gig economy
- In 2018, Good Work Plan (Taylor) advised legislation required
- July 2022 government response to employment status consultation
- New framework could create cost and uncertainty for businesses trying to recover from Covid-19 impact
- Watch this space...

Legal Reform

Employment status



- Not a complete waste of time! July 2022 guidance:
 - Government published employment status checklist - [Employment status and rights: checklist for employers and other engagers - GOV.UK \(www.gov.uk\)](#)
 - Employment status and employment rights: guidance for HR professionals, legal professionals and other groups: [Employment status and employment rights: guidance for HR professionals, legal professionals and other groups - GOV.UK \(www.gov.uk\)](#)

Termination of Employment Relationship



Termination of the employment relationship Wrongful Dismissal



- Common law remedy – not statute based
- Breach of contract
- Fairness is not an issue
- Damages as if the breach has not occurred



Wrongful Dismissal Forums



Civil Courts

6 year limitation
period

No upper limit on
damages



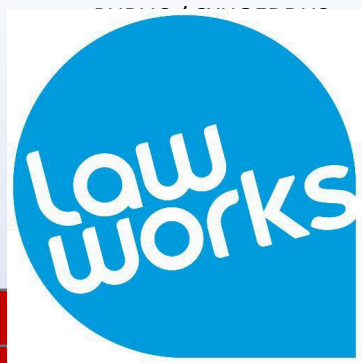
Employment

Tribunals

3 month limitation
period

£25,000 limit

Unfair Dismissal – are you eligible?



Employment Rights Act 1996, s.94:
“An **employee** has the right not to be unfairly **dismissed** ...”

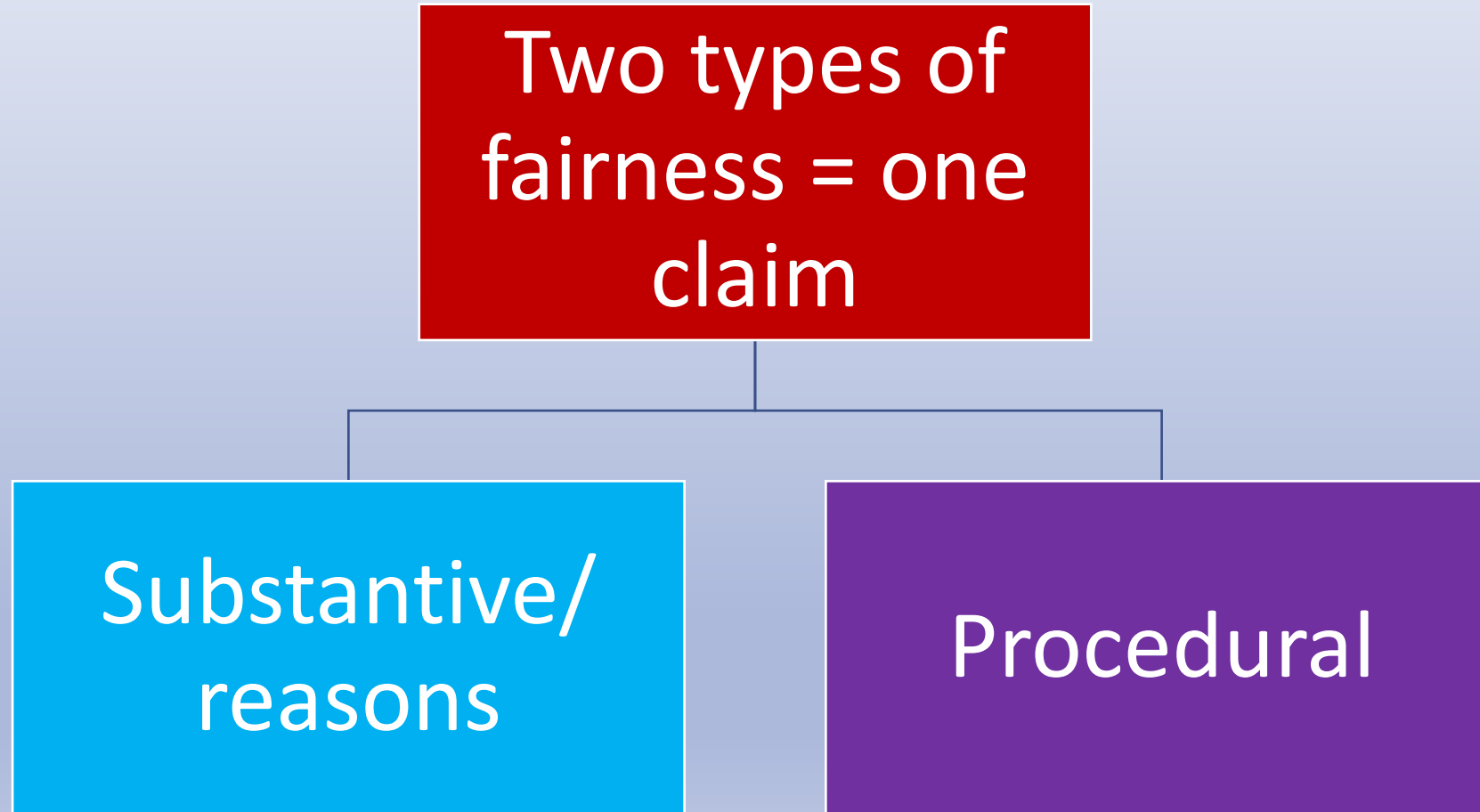
**Employment Rights Act 1996,
s.108:**

“Section 94 does not apply to the dismissal of an employee unless he has been **continuously employed** for a period of not less than **two years** ending with the effective date of termination.”

**Employment Rights Act 1996,
s.111:**

“...presented to the tribunal –
(a) before the end of the period of **three months** beginning with the effective date of termination, or, (b) within such further period as the tribunal considers reasonable ...where ...it was **not reasonably practicable** for the complaint to be presented before the end of that period of three months”

Unfair Dismissal – next steps



Unfair Dismissal

Fair reasons to dismiss



Capability (ERA, 1996 s.98(2)(a))

Conduct (ERA, 1996 s.98(2)(b))

Redundancy (ERA, 1996 s.98(2)(c))

Illegality (ERA, 1996 s.98(2)(d))

Some other substantial reason "SOSR" (ERA, 1996 s.98(1)(b))

Unfair Dismissal

Procedural fairness



- Contractual procedures/ handbooks/ policies
- ACAS Code of Practice on Disciplinary and Grievance Procedures: <https://www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures#:~:text=The%20Acas%20Code%20of%20Practice%20on%20disciplinary%20and,Acas%20Code%20for%20any%20discipline%20or%20grievance%20case>
- ACAS guides, e.g.
<https://www.acas.org.uk/redundancy>



Unfair Dismissal Remedies



Order for re-instatement

Order for re-engagement

Basic award

Compensatory award

Unfair dismissal Damages



Basic award

- Same as SRP
- Statutory formula
- Max service – 20 years
- Max week pay -
£571 from 6th April 2022
= £17,130

Compensatory award

- "to compensate fully, but not to award a bonus" & "just and equitable"
- Past loss and future loss
- Mitigation
- Lower of the numerical cap (£93,878) or 52 weeks' pay

Discrimination



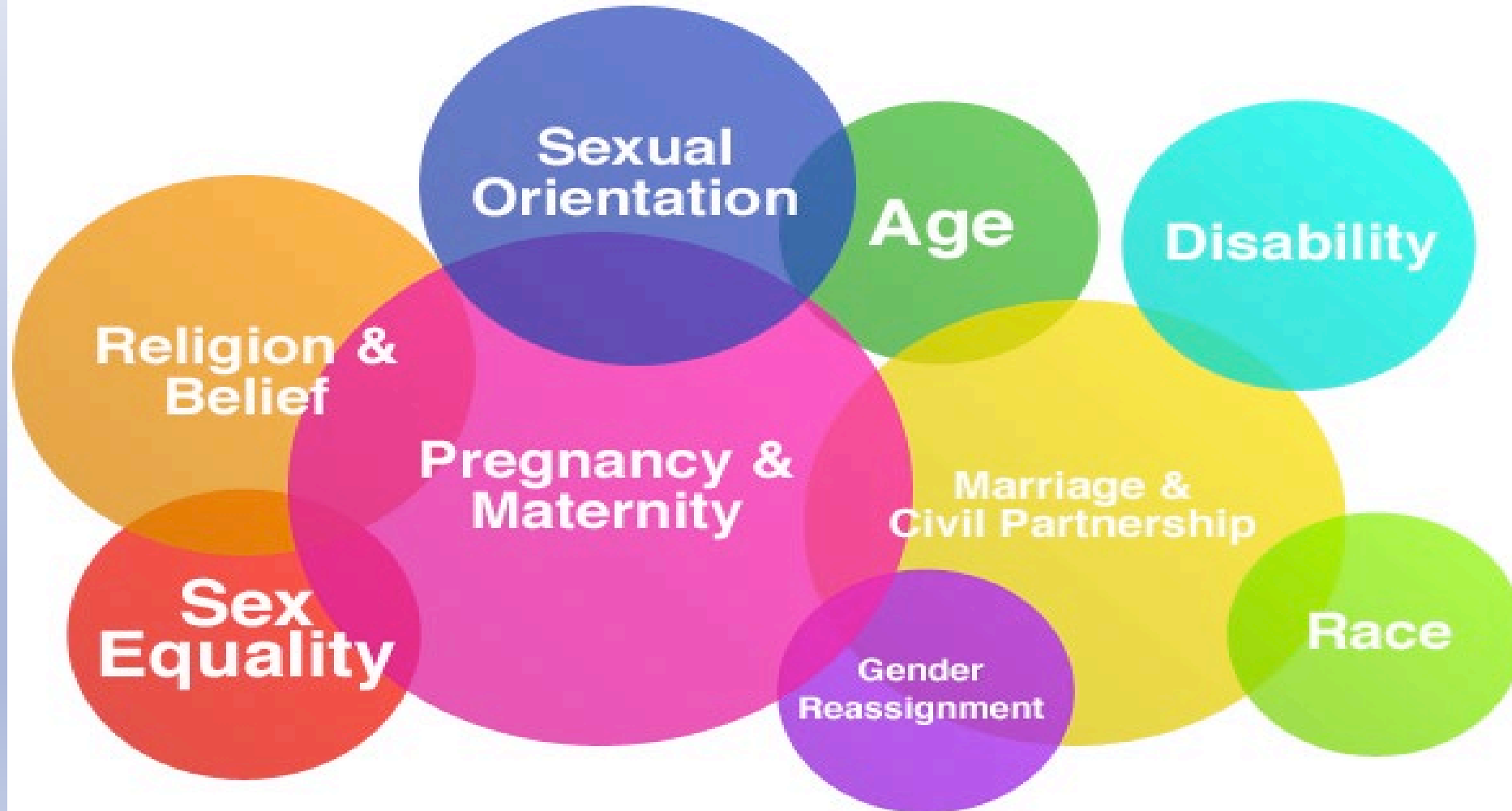
[This Photo](#) by Unknown Author is licensed under [CC BY-SA](#)

Discrimination Scope



- Set out in Equality Act 2010 & explanatory notes
- See also: EHRC statutory code of practice:
[employercode.pdf \(equalityhumanrights.com\)](https://www.equalityhumanrights.com/en/employment-equality/equality-human-rights-statutory-code-practice-employers)
- Wide scope – applies to all!
- No minimum continuity of employment required
- Who is responsible?

Discrimination Protected Characteristics



Discrimination

Protected Characteristics



Sex

- Man or woman (biologically)



Sexual orientation

- Same sex
- Opposite sex
- Either sex



Pregnancy and maternity

- Protected period



Race

- Colour
- Nationality
- Ethnic or national origins



Religion and Belief

- Any religion



Marital status

- Married or in a civil partnership



Gender reassignment

- Proposing to undergo, is undergoing or has undergone reassignment



Age

- A person of a particular age group



Disability

- Physical or mental impairment
- Long term
- 'Substantial' effect on your ability to do normal daily activities.

Discrimination

Types of Discrimination



Equality Act 2010

Most protected characteristics

Disability only

Direct
(including
association
and
perception)

Indirect

Harassment

Victimisation

Discrimination
arising from
disability

Failure to
make
reasonable
adjustments

Discrimination

Types of Discrimination



Direct

...because of a protected characteristic. A treats B less favourably than A treats or would treat others...

Example: an employer fails to offer an employee a pay rise because she is female (male colleagues receive the pay rise)

Direct Discrimination Association & Perception



Association

- Treated less favourably because of the protected characteristic of **another person**

Perception

- Treated less favourably because the employee is **perceived** to have a protected characteristic

Discrimination

Types of Discrimination



Indirect

...if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

Example: requirement that an individual works Saturdays could be indirectly discriminatory against Jewish people (Sabbath)

Objective justification (burden on employer)

Harassment

...unwanted conduct related to a protected characteristic which has the purpose or effect of either:
Violating B's dignity, or
Creating an intimidating, hostile, degrading, humiliating or offensive environment

Can include – slurs, “banter”, jokes, social media, emails, pictures etc

Example: A manager makes remarks about a local Gypsy and Traveller site stating ...the ‘gypos’ were causing problems ... staff from a Traveller background...finds the behaviour degrading and offensive. (EHRC)

Victimisation

Victimisation occurs where a person (A) subjects another person (B) to a detriment because either:

B has done a **protected act**.

A believes that B has done, or may do, a **protected act**.

Making a claim or complaint of discrimination

Helping someone else to make a claim (e.g. evidence)

Making an allegation that someone has breached the Act.

Doing anything else in connection with the Act.

Example: A manager dismisses an individual for giving evidence at an Employment Tribunal for a colleague bringing a claim under the Act

Discrimination

Types of Discrimination



Discrimination arising from disability

Treated less favourably due to something arising out of the disability as opposed to the disability itself

Cannot show that treatment - proportionate means of achieving a legitimate aim

Example:
Dismissing an employee for disability-related absences

Did the employer know/
reasonably be expected to know person was disabled?

Failure to make reasonable adjustments

1. Provision,
criterion or
practice

2. Physical
feature

3. But for an
auxiliary aid

...puts a
disabled person
at a substantial
disadvantage in
comparison
with persons
who are not
disabled

Employer knows
the employee is
disabled – actual
or constructive

Balance:
business needs
& resources v
impact on
disabled person

Discrimination Remedies



- **Recommendation**
- **Declaration**
- **Compensation:**
 - Uncapped
 - Burden on claimant
 - Injury to feelings (Vento guidelines/ bands – non financial losses):
 - Financial loss

Employment Tribunals



Employment Tribunal procedure

Want to find out about Employment
Tribunal procedure and what to expect
at your hearing?

Come along to a FREE information presentation by students
from Swansea University, Cardiff University, & the University
of South Wales aimed at assisting parties who are
representing themselves*

These cover:

- Overview of the Tribunal Process from start to final hearing
- Practical stages from when claim is received up to hearing
 - How the case is managed
 - What to expect at a preliminary hearing
 - Compiling a bundle of documents
 - Preparing a witness statement
- Who sits where in the Tribunal room/remote hearings
 - What order will the parties speak in
 - What to expect from cross examination
 - What happens after the [hearing](#)



DATES 4.30pm to 5.30pm on

- 10 November 2021
- 08 December 2021
- 12 January 2022
- 09 February 2022
- 09 March 2022
- 06 April 2022
- 11 May 2022
- 08 June 2022
- 13 July 2022

There is no need to book – just join online!

To join the presentation, use the following
link (using chrome or [firefox](#) web browser):

<https://join.meet.video.justice.gov.uk/HMCTS/#/?conference=hmcts1226@meet.video.justice.gov.uk>

Employment Tribunal procedure

**A ydych chi eisiau gwybodaeth am
weithdrefnau'r Tribiwnlys Cyflogaeth a
beth i'w ddisgwyl yn eich gwrandawriad?**

**Dewch draw i gyflwyniad AM DDIM gan fyfyrwyr o Brifysgol
Abertawe, Prifysgol Caerdydd, a Phrifysgol De Cymru sydd â'r
nod o gynorthwyo partïon sy'n eu cynrychioli eu hunain ***

Mae'n cynnwys:

Trosolwg o broses y Tribiwnlys o'r gwrandawriad cychwynnol i'r gwrandawriad terfynol
Camau ymarferol o'r adeg y derbynir yr hawliad hyd at y gwrandawriad

Sut mae'r achos yn cael ei reoli

Beth i'w ddisgwyl mewn gwrandawriad rhagarweiniol

Llunio bwndel o ddogfennau

Paratoi datganiad tyst

Pwy sy'n eistedd ymhle yn ystafell y Tribiwnlys/gwrandawriadau o bell

Ym mha drefn y bydd y partïon yn siarad

Croesholi

Beth fydd yn digwydd ar ôl y gwrandawriad



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DYDDIADAU 4.30pm i 5.30pm ar

16 Tachwedd 2022

07 Rhagfyr 2022

11 Ionawr 2023

08 Chwefror 2023

08 Mawrth 2023

19 Ebrill 2023

10 Mai 2023

07 Mehefin 2023

05 Gorffennaf 2023

Nid oes angen ichi archebu lle – ymunwch ar-lein!

I ymuno â'r cyflwyniad, defnyddiwch y ddolen
ganlynol (defnyddiwch Chrome neu Firefox):

[https://join.meet.video.justice.gov.uk/HMCTS/#?
?conference=hmcts1226@meet.video.justice.gov.uk](https://join.meet.video.justice.gov.uk/HMCTS/#?conference=hmcts1226@meet.video.justice.gov.uk)

Employment Tribunal Procedure



- **Streetlaw** training
- Early conciliation via ACAS up to 6 weeks
- Claim form – ET1
- Defence – ET3 (28 days)
- Employment Tribunal sifts
- Preliminary hearings – case management orders
 - schedule of Loss and counter schedule
 - disclosure/lists of documents
 - bundle
 - witness statements

ACAS 2021-22 review

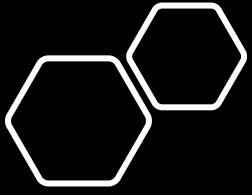


7,000 fewer
cases entered
the ET system

644,000
helpline
calls

36% of early
conciliation and
77% of ET cases
were positively
resolved by
Acas.

91,000 early
conciliation
notifications
received - only
31,000 lodged ET
claim, and only 7%
resulted in a
hearing



Thank you for
listening!

Questions?

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