

BARGAINING FOR LESBIAN, GAY AND BISEXUAL WORKERS' RIGHTS

This factsheet contains information about the rights of lesbian, gay and bisexual people at work and sets out a bargaining agenda for branches. There is a negotiating checklist on the last page. A factsheet on bargaining for transgender workers rights is also available on our website.

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.

Fifty two per cent of members responding to a recent UNISON survey had experienced harassment or other discrimination because of their sexual orientation. This included

- not being appointed to jobs
- verbal and physical abuse and threats from co-workers, managers or service users
- unfair work allocation or over-supervision
- prejudiced and discriminatory attitudes about their suitability to work with children and other vulnerable groups
- false allegations
- not being considered for training or promotion
- non-recognition of families and denial of benefits available to other workers.

Nearly one in ten of the members experiencing this discrimination decided that the only way to stop it was to leave their job. Persistent harassment commonly leads to poor work performance and attendance, which in turn may lead to dismissal, with the root cause - homophobia - never being acknowledged. Many lesbian, gay and bisexual workers seek to avoid discrimination by concealing their sexual orientation. But such concealment comes at great personal cost.

Since December 2003, it has been unlawful to discriminate against people on grounds of sexual orientation in employment and training. The rights are set out in the Employment Equality (Sexual Orientation) Regulations 2003. The regulations represent an enormous step forward in tackling workplace discrimination. But if we have learnt one thing from 30 years of sex and race discrimination laws, it is that laws on their own change very little. It is up to us to negotiate policies and practices that will make a real difference to the working lives of our lesbian, gay and bisexual members.

UNISON POLICY

UNISON believes that lesbian, gay and bisexual people have the right to equal treatment, protection from discrimination and full support from the union.

Lesbian, gay and bisexual members have the right not to be discriminated against by UNISON policies, practices, members or officers. Allegations of discrimination will be taken very seriously.

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

DEFINITIONS

Sexual orientation - defined in the regulations as orientation towards persons 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 perception of their own gender does not conform to the sex they were assigned at birth

Transsexual person - legal/medical term for a person who lives or wishes to live permanently in the opposite gender to the sex they were assigned at birth

Direct discrimination - less favourable treatment

Indirect discrimination - a provision or practice that everyone has to conform to, but which some groups (eg lesbians) cannot meet so easily

Victimisation - in the law, 'victimisation' is a specific term to mean discrimination against a person because they have made a complaint or been a witness in another person's complaint

EMPLOYMENT EQUALITY (SEXUAL ORIENTATION) REGULATIONS 2003

The Employment Equality (Sexual Orientation) Regulations 2003 protect against discrimination on grounds of sexual orientation in employment and vocational training. They cover all sizes and types of employer and all types of worker, including agency, contract and temporary workers. They are similar in many respects to existing race and sex discrimination laws and cover both direct and indirect discrimination.

Regulations Summary

The employer cannot, on grounds of sexual orientation:

- refuse to employ someone, or dismiss someone
- 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); this covers any benefits offered to a worker's same sex partner if such benefits are available to unmarried opposite sex partners
- give an unfair reference when someone leaves
- victimise someone because they have made a complaint of discrimination or given evidence or information in someone else's complaint.

The employer must act to protect workers against bullying or harassment because of sexual orientation. The perception of the person suffering the harassment is important in defining this.

The employer is liable for discriminatory actions by anyone 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.

The regulations also outlaw discrimination by trade unions and other trade associations, professional bodies, qualification bodies, employment agencies, providers of vocational training, and protect students in all institutions of further and higher education.

These regulations do not protect transgender workers from discrimination (unless the discrimination is on grounds of their sexual orientation). Transgender workers are protected by the Sex Discrimination (Gender Reassignment) Regulations 1999, which amend the 1976 Sex Discrimination Act. New protections are also included in the Gender Recognition Act 2004. There is a separate UNISON Factsheet on bargaining for transgender workers' rights.

Exceptions

The 'marriage' exemption means that if a benefit is paid only to married partners (and not opposite sex unmarried partners) it is still lawful to refuse it to same sex partners. Although the regulations *allow* such discrimination - they do not *require* it. We must negotiate for all benefits to be provided equally for unmarried - including same sex - partners as for married partners. Once the new Civil Partnership Scheme is up and running, registered same sex partners must be treated as married partners.

A post may be restricted to people of a certain sexual orientation if this is 'a genuine and determining requirement of the post and it is proportionate to apply the requirement in the particular case'. There are very few jobs where being of a particular sexual orientation is essential to doing that job. Such a Genuine Occupational Requirement (GOR) must be identified at the beginning of the recruitment process and clearly stated in recruitment materials. GORs 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 a GOR is valid.

The regulations allow action to prevent or compensate for disadvantage for example by offering training or encouraging people to take up opportunities. Such positive action is essential to building true equality, rather than just removing the most blatant forms of discrimination.

KEY NEGOTIATING AREAS

Equal opportunities policy and Equalities Statement

Make sure there is a robust and comprehensive equal opportunities policy which is 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 covered.

Check national or employer agreements. These must be followed up locally, but can be a useful starting point.

Every other policy should include an equal opportunities clause, stating that the policy will be implemented without discrimination and with regard to promoting equality.

As it can take time to work through policies, a first step can be to get agreement on an overarching statement. This is not a substitute for making sure all policies are LGB friendly, but until this can happen, other policies 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 as well.

A **model statement on sexual orientation and gender identity** is on our website at www.unison.org.uk/out.

- AIMS** Negotiate a comprehensive equal opportunities policy which specifically refers to sexual orientation, and which is incorporated into the contract of employment.
Agree an equalities statement on sexual orientation and gender identity
- Ensure all other policies include a cross-reference to the equal opportunities policy/equalities statement.

Harassment and bullying

Harassment is probably the most common form of discrimination experienced by lesbian, gay and bisexual workers. Most employers now have harassment policies but many do not refer to harassment on grounds of sexual orientation. There is still a perception that some groups are 'fair game'. All too often, lesbian, gay and bisexual workers who complain 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.

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

- **confidential complaints procedure** - many lesbian, gay and bisexual workers do not complain about having to listen to homophobic abuse, because they are not out at work. The fact that the abuse is not aimed directly at them makes it no less intimidating and degrading. It is essential that the confidential complaints procedure enables people to make a complaint without fear of reprisal or of outing themselves to anyone apart from the designated person/people, who should not have to be their line manager.
- **equal treatment of workers of different sexual orientations** - managers sometimes advise (or even instruct) front line workers who are lesbian, gay or bisexual to avoid homophobia from service users or the public by concealing their sexual orientation. This is only acceptable if it is applied to workers of every sexual orientation. If lesbian, gay and bisexual people are not allowed to talk about a same sex partner, it is not OK for straight colleagues to talk about their spouses. This is obviously *not* the outcome we are seeking.

The requirement to conceal one's sexual orientation depends on workers and service users only ever meeting in the context of work. It may happen that - by chance - service users see workers outside work. For instance, they may have children in the same school, or use the same local facilities. It is certainly not reasonable to expect workers to hide a same sex partner in their private life, so policies *must* deal with tackling harassment by service users or the public.

What the regulations say about harassment

Harassment is specifically defined as unlawful in the Sexual Orientation Regulations.

- 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 - it may be that there is no known victim (for instance no lesbian, gay or bisexual worker who is out at work) but that the harassment creates a hostile environment
- the perception of the person experiencing harassment must be taken into particular account, albeit alongside other factors, when deciding if harassment has taken place.

AIMS Make sure the harassment policy includes specific reference to homophobic harassment and includes:

- a confidential complaints procedure which workers can access without outing themselves
- steps to tackle harassment by managers, co-workers and service users.

Family friendly and work/life balance policies

Perhaps partly because so many lesbian, gay and bisexual workers keep their family life private, 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.

The most recent statutory rights to maternity support, parental and dependent care leave all take a social view of parenthood and family rather than being based on biological or legally recognised relationships. This should help in getting employers to recognise same sex families. 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'.

Many local special leave agreements are highly discretionary. This can cause enormous problems for people in same sex relationships who have homophobic 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 applying for special leave for people who – for good reason - do not want to go to their line manager. This might be a named person in the personnel department. In most cases, no-one else needs to know the specific reason why special leave has been granted. Assurances of confidentiality can be a lifeline to lesbian, gay and bisexual workers, but also benefit any worker needing leave to cope with personal circumstances they cannot talk to colleagues about.

Workers are sometimes expected to provide 'evidence' of relationships before being granted special leave. It is doubtful whether such evidence is really necessary to avoid abuse of the system. If procedures do allow managers to require evidence, make sure there is guidance on the type of evidence 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 will always provide cover at Christmas or work the most anti-social shifts. If lesbian, gay and bisexual people are perceived as having no family life, this can have a particularly negative impact on them.

Point out to the employers that the cost of making sure policies and terms and conditions apply to lesbian, gay and bisexual workers is minimal but will make a very big difference to the workers affected. Indeed, there is a clear business case in terms of improved attendance and retention.

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 without having to jeopardise their confidentiality, 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.

Other Policies

Information is included in our longer guide 'Negotiating Equality for Lesbian, Gay and Bisexual Workers' stock number 1744, also available on our website.

Other policies to target include:

- recruitment and selection
- pensions and other benefits
- sickness and absence
- disciplinary and grievance
- career development
- job evaluation
- service delivery.

Publicity, implementation 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.

Practice must be in line with policies. If there is an element of local managers' discretion in implementation, members must be aware of their rights and know how to make a complaint if necessary. Our survey showed that nearly 40% of our lesbian and gay members are not out (open about being lesbian or gay) to their managers. 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 of the outcomes of these complaints.

AIMS 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.

Workforce monitoring

Since workers have won legal protection from discrimination on grounds of their sexuality, there has been debate on whether employers should monitor their workers on this ground. Similar arguments apply to gender identity. UNISON and the TUC advise a very cautious approach, spelling out the conditions that need to be met if sexual orientation monitoring is to be useful. We have worked with the TUC to develop guidance for branches which is on the TUC website at www.tuc.org.uk/equality.

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. Even the government estimates that 6% of the adult population is lesbian, gay or bisexual. They are not all prison warders and hairdressers. Many work in the 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.

CHECKLIST OF NEGOTIATING POINTS

- make sure the equal opportunities policy explicitly includes sexual orientation
- negotiate an equalities statement on sexual orientation (and gender identity)
- make sure all other policies include an equalities clause - again, including sexual orientation
- pay particular attention to the harassment policy, ensuring it includes a confidential route for making complaints
- ensure 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
- reach agreement that policies will be widely publicised and their effectiveness regularly monitored and reviewed
- seek to ensure local managers' discretion on how policies are implemented is kept to a minimum
- involve your branch LGBT group or LGBT members in negotiations
- negotiate time off for trade union LGBT activities.

WORKING TOGETHER

If you negotiate a good agreement please send a copy to the Bargaining Support Group
1 Mabledon Place London WC1H 9AJ or e-mail bsg@unison.co.uk so we can share best practice.

FURTHER INFORMATION

Information, practical advice and examples of good agreements are available on the UNISON Bargaining Zone – www.unison.org.uk/bargaining.

Visit the lesbian and gay section of the UNISON website for up to date advice, information and events – www.unison.org.uk/out.

For help when you need it call UNISON*direct*, UNISON's information and advice phone line service for members on 0845 355 0845 (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. Please either write to or email us at the address below.

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