

Bargaining for equality and diversity: a trade union priority

Promoting equality in our workplaces, in our union and across society is a priority for UNISON.

This guide assists UNISON branches and reps negotiate effective workplace equality and diversity policies.

For us, equality means:

- recognising that while no two people are the same, everyone has an equal right to dignity and respect
- celebrating our multicultural and diverse society
- meeting people's actual needs, not their assumed needs
- recognising that this may not mean treating everyone the same
- understanding that groups of people facing prejudice are stronger when they organise together
- actively developing a skilled and diverse workforce.

People have the right to be treated with dignity and respect at work, to do their job to the best of their ability, free from discrimination and harassment. A starting point for this is a workplace equality and diversity policy backed up by an action plan.

This guide covers:

- using equality to organise page 1
- the benefits to employers page 2
- the law page 2
- negotiating tips page 5
- bargaining checklist page 6
- monitoring and action plan checklists page 8
- where to go for further information page 10
- model policy page 12

Using equality to organise

Negotiating an improved equality policy gives branches the chance to recruit and organise under-represented groups of workers. It can involve potential activists and show that UNISON is at the forefront of equality in the workplace and beyond. You can develop your branch by:

- negotiating better conditions of service for your members
- improving employment relations by working with the employer to eliminate discrimination in policy and practice
- recruit new members

- develop branch organisation by recruiting new equality and self-organised group activists and groups, linking into regional equality groups
- networking with local community equality and advice groups, which again builds recruitment.

Further information on equality organising is listed on page 11

The benefits for employers

There are also benefits for employers:

- assists with complying with the law, avoiding discrimination and fulfilling the Public Sector Equality Duty, where it applies
- ensures the workforce represents the community served and understands their needs
- attracts and keeps the very best staff
- gives the edge over other employers in a competitive labour market
- improves staff morale and productivity
- avoids under-using and under-valuing able staff
- manages all staff better
- helps develop good practice
- makes sound business and financial sense.

The law on equality

The Equality Act

The Equality Act 2010 (England, Scotland and Wales) makes it unlawful to discriminate against people at work because of a **protected characteristic**. The protected characteristics are

- age
- disability (a disabled person being defined as someone who has a mental or physical impairment that has a substantial and long-term adverse effect on the person's ability to carry out normal day-to-day activities)
- gender reassignment (covering all people considering or undergoing or who have undergone gender reassignment whether or not they have medical treatment)
- marriage or civil partnership
- pregnancy and maternity
- race (including colour, nationality, and ethnic or national origins)
- religion or belief
- sex
- sexual orientation.

It is also unlawful to discriminate because a person is a member or non-member of a trade union or because they are a part-time worker or on a fixed-term contract.

Direct discrimination is when you treat someone less favourably than others because of someone's protected characteristic. This is whether or not the employee actually possesses that protected characteristic (perceptive discrimination). A person can be directly discriminated against because of their association with someone else who has a protected characteristic. Examples are not employing someone because they are Black (direct discrimination), incorrectly assumed to be gay (perceptive discrimination) or because they are a carer for a disabled person (discrimination by association).

Only direct age discrimination is capable of justification. It may be justified if the employer can show that the less favourable treatment is a proportionate (in other words appropriate and necessary) means of achieving a legitimate aim. An example provided by the Equality and Human Rights Commission is a building company not employing under-18s on its more hazardous building sites. The aim behind this policy is to protect young people from health and safety risks associated with their lack of experience and less developed physical strength. This aim is supported by accident statistics for younger workers on building sites and is likely to be a legitimate one. Imposing an age threshold of 18 would probably be a proportionate means of achieving the aim if this is supported by the evidence. Had the threshold been set at 25, the proportionality test would not necessarily have been met.

Perceptive discrimination and discrimination by association do not cover the characteristic of marriage and civil partnership. However it may be possible to link the discriminatory behaviour to other protected characteristics (for example, sex or sexual orientation).

Indirect discrimination is when an employer has a condition, rule, policy or practice that applies to everyone but which particularly disadvantages people with a protected characteristic and which cannot be justified. In other words, it can't be shown to be a 'proportionate means of achieving a legitimate aim'. For example, requiring all employees to work 12-hour shifts may appear to treat everyone equally. However, it may disadvantage employees with family or caring responsibilities. As caring responsibilities continue to be predominantly carried out by women, this disadvantage could amount to indirect sex discrimination if it cannot be justified.

Detriment arising from disability is when an employer treats an employee unfavourably because of something arising in consequence of the employee's disability, and it cannot be justified in relation to the job. For example, dismissing someone because of their poor attendance record when their absence was as a consequence of a disability, and without the employer being able to show that the dismissal was a proportionate means of achieving a legitimate aim.

Where an employer's provision, criterion or practice puts a disabled person at a substantial disadvantage in comparison with a non-disabled person, the employer has a **duty to make reasonable adjustments**. In other words, this means taking reasonable steps to avoid the disadvantage, such as making changes to physical features, providing aids or flexible working arrangements.

Harassment can be recognised as a free standing form of discrimination. Different types of harassment are set out in the Equality Act:

- related to relevant protected characteristics (age, disability, gender reassignment, race, religion or belief, sex, sexual orientation)
- sexual harassment (when a person engages in unwanted conduct that is of a sexual nature, whether verbal, non-verbal or physical)
- less favourable treatment of a worker because they submit to, or reject, sexual harassment or harassment related to sex or gender reassignment.

Employees can complain of harassing behaviour that they find offensive even if it is not directed at them.

Bullying could be a form of harassment. It is only possible to make a direct complaint to an employment tribunal if the bullying is related to a protected characteristic.

Victimisation: If an employee makes a complaint, raises a grievance or supports a complaint or grievance by giving evidence or information or is believed to be supporting the complaint or grievance under the Equality Act, the employee is also protected from victimisation under the legislation. The employee should not be subjected to a detriment, such as being denied a promotion or other benefits because of their involvement.

Equal pay: The right to equal pay for equal work between men and women is also found in the Equality Act. Employers must give men and women equal treatment in the terms and conditions of their employment contract if they are employed to do:

- ‘like work’ - work that is the same or broadly similar
- work rated as equivalent under a job evaluation study
- work found to be of equal value in terms of effort, skill or decision making.

Fifty years since the Equal Pay Act was first introduced, pay inequality still blights women’s lives. To address this, gender pay gap reporting regulations came into force across most of the UK in 2017. But these can result in little more than a host of statistics sitting idly on employers’ web pages if we do not act. Details of where to find UNISON’s ‘Bridge the Gap bargaining guide’ are included on page 10. UNISON is also developing work on tackling disability and race pay inequality.

The Public Sector Equality Duty also came into force with the Equality Act 2010, and replacing the previous race, disability and gender equality duties.

The general equality duty means that public sector employers must give ‘due regard’ to the need to:

1. eliminate unlawful discrimination, harassment and victimisation
2. advance equality of opportunity between people who share a protected characteristic and those who do not, which involves:
 - removing or minimising disadvantages suffered by people due to their protected characteristics
 - taking steps to meet the needs of people from protected groups where these are different from the needs of other people
 - encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low
3. foster good relations between people who share a protected characteristic and those who do not.

The specific duties for England (and non-devolved public authorities in Scotland and Wales) require public authorities to publish:

- one or more specific and measurable equality objectives that it thinks it needs to achieve, at least every four years
- information to demonstrate their compliance with the equality duty, at least annually, including relating to the employees (unless they have fewer than 150 staff).

More information on using the public sector equality duty:
unison.org.uk/get-help/knowledge/discrimination/equality-duties/

Other relevant legislation

There are many other laws which impact on equality at work including those on rights for working parents, part-time, fixed term and agency workers, minimum wage, rehabilitation of offenders and trade union law. Details of where to find all UNISON's bargaining guides are on page 10.

Negotiating a policy on equality and diversity

There is a model equality and diversity policy for your use at the end of this document.

Having a clear policy, backed up by an action plan helps identify and eliminate discrimination and promote equality at work.

As well as the dedicated equality policy, all workplace policies should clearly reflect the employer's commitment to equality and diversity. Particularly review policies on maternity leave, flexible working practices, parental and dependants leave, annual leave, discipline, grievance and induction, training and development, promotion, supervision and appraisal, recruitment as well as contractual terms and conditions, and pay structures to check on their impact on equality groups.

Union reps have a vital role in promoting equality:

- by negotiating policies and procedures that advance equality and diversity
- challenging examples of discrimination, harassment and bullying in the workplace and dealing with all members' complaints effectively and promptly
- by acting as a role model in their treatment of others
- and in helping to create a workplace in which everyone can participate fully.

Branches have a vital role in promoting equality:

- by encouraging activists to attend UNISON training so that they can negotiate on equality
- by setting up self-organised (SOG) and young members groups to support the branch in negotiating and organising
- by submitting agreements to UNISON's Bargaining Support Group to build our bargaining database (please email copies to bsg@unison.co.uk).

All branches should have an equality co-ordinator and are encouraged to elect **workplace equality reps**. Together, they can

- raise awareness of equality issues in collective bargaining
- support members facing discrimination
- help ensure that equality and diversity policies are meaningful and implemented fully
- if a public body, hold the employer to account in fulfilling the Public Sector Equality Duty.

It is therefore important to negotiate recognition and facility time for equality reps, wherever possible.

Bargaining checklist: key equality issues

Members, workers and managers

- Are union reps, including workplace equality reps, recognised and given facility time? Are they appropriately trained?
- Are managers and boards trained in equality issues including fair recruitment and selection, performance assessment, dealing with harassment and bullying, reasonable adjustments for disabled staff?
- Are workers aware of policies and how to use them? Are they all trained in equality issues including within induction training?
- Does the composition of the workforce reflect the local population? If no local data available, for example on sexual orientation or gender identity, does it reflect national statistics?
- Is there a strategy to achieve diversity at all levels of the workforce?
- Is there a trade union agreement on the employment of temporary contract and agency staff?
- Are exit interviews held with all departing staff including temporary staff? Do they include equality questions? How is this information used?

Policies, procedures and planning

- Is there an equality and diversity policy in place? Does it cover all the protected characteristics in the Equality Act? Is it up to date with current legal requirements?
- Is the policy supported by an action plan, with built in review dates?
- Is the equality policy written in plain English and well-publicised?
- Has the public sector employer identified specific and measurable equality objectives that it will achieve as required by the Public Sector Equality Duty?
- Is there a recruitment and selection policy in place? Does it include monitoring of job applicants, use of a standard application form, provision of job descriptions and selection criteria? Are steps being taken to ensure job advertisements are reaching under-represented groups?
- Is there a training and development policy in place? How are opportunities advertised to staff and are they available to staff at all levels? Does it include monitoring of take-up of opportunities? Are steps taken to encourage greater take-up of training opportunities?
- Is there a career progress policy in place? Does it include monitoring of applicants to see if any particular groups are consistently being turned down for promotion? Do decisions follow standard recruitment procedures? How are opportunities advertised?
- Is there a performance management or assessment (supervision and appraisals) policy in place? Are the criteria used for measuring performance objective and measurable? Do they refer to specific tasks and achievements, based on work plans? Is there equality monitoring of outcomes?

- Are there family-friendly and flexible working policies in place? Do they reflect the full diversity of families, including same-sex couples and carers, parents through surrogacy, adoptive and foster parents? Are there flexible retirement options in place for older workers?
- Do maternity, paternity and co-parenting leave and shared parental leave and related policies provide at least the statutory minimum entitlements including paid time off for ante-natal leave, risk assessments for new, expectant and breastfeeding mothers, recording of pregnancy-related illness separately from sickness absence, ensuring that workers on maternity and shared parental leave are not overlooked for promotion, training, routine pay increases, contractual benefits, employer pension contributions and accrual of annual leave?
- Is there an anti-harassment and bullying (dignity at work) policy in place?
- Is there a disability leave policy in place?
- Is there an agreement on reasonable adjustments and reasonable adjustments passport?
- Is there a policy on gender transition at work?
- Is there a policy on working abroad, if relevant?
- Are policies and procedures properly resourced and included in business and strategic planning?

Pay

- Are regular equal pay audits undertaken by the employer? Do they share the results? What action is being taken to address any unjustified gender pay gaps?
- Is there an assessment of race and disability pay inequality? Are there steps to address inequality?
- Are all staff paid the minimum wage?
- How are opportunities for overtime made available to staff? Is overtime working and allocation of work for bonuses fairly distributed?
- Do negative performance assessments affect pay?

Equality impact

- Does the public sector employer undertake equality analysis or equality impact assessments (EIAs)? Do they share the results?
- If the public sector equality duty does not apply, does the employer still consider the impact of any new policy or procedure or pay structure on different groups before implementation? How are the union and members from particular groups consulted?
- What action is taken to address any negative impact of workplace policies or procedures on a particular group? How is any indirect discrimination justified?
- What workforce monitoring is undertaken including of recruitment, leavers, grievance and disciplinary cases, promotion, training, pay levels, temporary and contract staff? Is it undertaken and reviewed regularly? Is the information shared and what action is being taken as a result?
- What information to demonstrate compliance with the Public Sector Equality Duty is published? Is it published at least annually? Is this information integrated with the public sector employer's equality objectives?

What the equality and diversity policy should include

A statement of commitment

The policy should state an employer's values on equality and diversity. It should clearly show the management, workers and potential recruits its commitment to promoting equality and reflecting the community in which it works. This statement must be endorsed by those at the top of the organisation if it is to be taken seriously. It should place an expectation on all staff to have responsibility for implementation. It should define the kind of behaviour the organisation considers discriminatory.

Duties of managers and supervisors

The policy should be clear on the duties of managers and supervisors including their responsibilities for eliminating and preventing discrimination, promoting equality and encouraging diversity. All workers should be aware of who is accountable for making sure the policy is implemented. Managers and supervisors should be specifically trained in the implementation of the equality and diversity policy. Managers should not have excessive discrimination in carrying out the policy.

Monitoring and review

It is essential to build in a mechanism to measure the effectiveness of policies and initiatives. The policy should state that its effectiveness will be monitored and reviewed regularly and details shared with the trade union. It is important that the employer consults with union reps on proposed monitoring arrangements and the type of information that will be shared.

Monitoring information can be collected in several ways, including questionnaires, surveys, consultation and feedback. The purpose is to identify patterns of inequality, investigate their underlying causes and remove unfairness or disadvantage.

Naming a senior manager as responsible for monitoring the policy's effectiveness shows that the employer takes equality and diversity seriously. Some information will be sensitive personal data and steps must be taken to preserve confidentiality in record keeping and reporting. The reasons and procedure for monitoring should be clear to all staff. Union reps must hold management to account in terms of how they intend to use the information to make improvements for staff.

Monitoring checklist

- What details are being collected, why and how will it be used?
- Are all workers made aware of the reasons for collecting the details?
- Does the employer recognise people's right to be open about their sexual orientation/transgender identity and their right to keep this confidential, and that this may have implications for monitoring?
- How will the monitoring data be stored and who will have access to it?
- How and what information will be published?
- What does the information reveal about the diversity of the workforce, reflecting the local population and at all levels within the organisation?

- Does monitoring extend to all employment processes such as promotion selection, transfers and training as well as grievance, disciplinary processes and termination of contract?
- If monitoring reveals disproportionate results for particular groups, what steps will be taken to identify the reasons for this? For example does the senior management team reflect the diversity of the workforce? Is training provided across grades?
- Have equality objectives and targets been set as a result of the monitoring?
- Are these objectives and targets realistic and measurable?
- How will the objectives and targets be monitored?

Developing an Action Plan

The policy should include an action plan clearly setting out how the policy will be implemented and how the plan will be monitored and reviewed. This is crucial to ensure that the policy is actually put into practice across the organisation.

It will cover the specifics of what is expected from management, employees and prospective employees in all aspects of their work.

It may set targets for increased diversity or better practice and positive action measures. However it will not include quotas that must be achieved by any means – these can be unlawful.

It will set specific dates for the monitoring and review processes, and for training and follow-up guidance.

Action Plan checklist:

- How has the employer built up a picture of the organisation's current practice on equality and diversity (such as undertaking an audit, consulting with staff, surveying the organisation's culture, identifying the main issues and priorities for action)?
- How is the equality and diversity policy put into operation in policy and planning, recruitment and selection, retaining and developing staff, retirement?
- How do policy statements translate into practical workplace arrangements?
- Is there a timetable for tackling issues and priorities for action?
- Who is in charge of implementing the policy and have resources been allocated to cover the cost?
- Is progress on the action plan regularly reviewed and the information shared with the staff unions?
- Are all workers aware of the policy and understand how it affects them?
- Does the policy cover all areas of possible unfair discrimination, under legislation and good practice?
- What are the arrangements for training staff on the Public Sector Equality Duty (if relevant)?
- Does the action plan address all the key bargaining equality issues (see page 6-7)

Trade Union involvement

It is important that workers are involved in the development of the policy. The role of union reps is crucial to this. Staff unions should be consulted and involved in the development of the policy. They will also investigate any complaints or concerns about discrimination. Reps should consult widely with their members about their treatment in the workplace and how fairly policies and procedures are implemented. Union reps should therefore have equivalent training to managers and sufficient time to carry out their duties. Giving them equal status to managers will promote partnerships and build confidence among staff.

Information and training

Following agreement, the policy should be widely publicised to both new and existing staff. It should be accessible to all staff via intranet, notice boards, etc. It should be brought to the attention of contractors, agency staff, visitors and clients and form part of any contract specification. Information about the policy should be included in induction and follow-up training. Providing regular training, updates and information is crucial to the success of the policy.

Further Information

UNISON

In-depth guides for effective negotiating and bargaining, including on:

- Working parents
- Carers leave and rights
- Bullying
- Harassment
- Facility time
- Disability leave
- Reasonable adjustments including reasonable adjustments passport
- Gender pay reporting
- Lesbian, gay and bisexual workers rights
- Trans workers rights
- LGBT+ workforce monitoring
- Menopause
- Mental health
- Older workers
- Sexual harassment

www.unison.org.uk/bargaining-guides

There are also model agreements at the same site.

For examples of equality agreements already negotiated with employers on equality issues, contact the Bargaining Support Group via bsg@unison.co.uk. Please also send in your new and improved agreements.

UNISON's Get Help section with information on employment rights and key issues affecting people in the workplace www.unison.org.uk/get-help

The UNISON online catalogue <https://shop.unison.site/shop/> also has a range of equality resources to download or order including:

- 'Race and sex discrimination: a Practical UNISON guide to identifying unlawful discrimination'
- Equality newsletters and recruitment materials
- Guides for reps on supporting members facing discrimination
- Equality leaflets and posters

For resources on organising for equality and UNISON's self-organised groups for Black members, disabled members, lesbian, gay, bisexual and transgender plus members, women members, and the equality groups for young and retired members go to www.unison.org.uk/about/what-we-do/fairness-equality

TUC (Trade Union Congress) is the voice of Britain at work. With 51 affiliated unions representing nearly 6 million working people from all walks of life, it campaigns for a fair deal at work and for social justice at home and abroad.

www.tuc.org.uk/workplace-guidance/equality-and-discrimination

Labour Research Department (LRD) has been providing information for trade unionists for 100 years.

www.lrd.org.uk

LRD's Payline service contains a database of equal opportunities policies agreed with employers across the economy. For access to this service, contact the Bargaining Support Group via bsg@unison.co.uk

The Equality and Human Rights Commission (EHRC) seeks to maintain and strengthen our country's long history of upholding people's rights, valuing diversity and challenging intolerance while identifying and tackling areas where there is still unfair discrimination or where human rights are not being respected.

www.equalityhumanrights.com

Acas (the Advisory, Conciliation and Arbitration Service) produces guides on a range of equality and diversity issues www.acas.org.uk

March 2020

Model Equality and Diversity Policy

The following model policy can be used to promote a working environment that values equality and diversity and is free from discrimination.

Statement of commitment

The parties to this agreement wholeheartedly support the principle of equality and diversity in employment. We are committed to creating a culture that respects and values each other's differences, that promotes dignity, equality and diversity, that encourages individuals to develop and maximise their true potential and that combats prejudice, discrimination and harassment. Our aim is that the workforce will be truly representative of all sections of society.

We recognise that many people in our society experience discrimination. Discrimination is acting unfairly against a group or individual through, for example, exclusion, verbal comment, stigmatising, harassment, victimisation, a failure to appreciate needs or the assumption of such needs without consultation.

Discrimination can be direct or indirect (where there is a condition, rule, policy or practice that applies to everyone but which particularly disadvantages people with a protected characteristic and cannot be justified).

All forms of discrimination are unacceptable, regardless of whether there was any intention to discriminate or not.

Our aim is to ensure that no worker, either current or potential, is discriminated against either directly or indirectly on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race including ethnic origin, colour, nationality and national origin, religion or belief, sex, sexual orientation, family situation, caring responsibilities, socio-economic background, trade union activity or employment status, whether part-time, full-time, fixed-term or temporary (this is not an exhaustive list).

..... (the employer) is committed to a programme of action to make this Equality and Diversity Policy effective and will work with the trade unions to take positive action to redress past and present discrimination, both individual and institutional.

Selection for employment or promotion or any other benefit will be on the basis of merit and ability only. Selection for training will be on the basis of job requirement only.

Intimidation, harassment and bullying will not be tolerated and may lead to disciplinary action.

..... (the employer) will take seriously and investigate any complaints of discrimination or harassment, using the agreed procedures and respecting confidentiality.

Details of how harassment and bullying will be tackled are covered in a separate policy [state name of policy and where it is found, for example 'the Dignity at Work policy, found within the staff handbook'].

All workers will be made aware of (the employer's) Equality and Diversity policy and will be expected to comply with it. They have a duty to co-operate with (the employer) to ensure that this policy is effective in ensuring equal opportunities and in preventing discrimination.

Managers and supervisors have a responsibility to raise awareness of the issue, respond positively to any complaints and challenge and stop unacceptable behaviour in the workplace.

EQUALITY

This policy applies to all workers on and off the premises, including those working away from their main office or normal place of work.

This policy is supported by and developed with the trade unions representing the employees.

It will be communicated to workers using a variety of methods including training, information and publicity, team briefings, departmental meetings and in-house publications and [if a public sector employer] within information published annually to show compliance with the Public Sector Equality Duty.

Responsibilities

Every member of staff is responsible for their own compliance with this policy. Breaches of the Equality and Diversity Policy will be regarded as misconduct and could lead to disciplinary action against employees and termination of contracts for services of contractors or agency staff.

Workers who feel they have been discriminated against should raise the matter with their line manager. Initially the worker and manager should aim to resolve the matter informally. It may be that discriminatory action is unwitting and easily resolved once the problem is clear.

If the worker is dissatisfied with the outcome, the complaint is very serious, or their line manager is the cause of the complaint, the worker should raise the matter, in writing, as a formal grievance under (the employer's) Grievance Procedure. Employees may also use (the employer's) Bullying and Harassment [or Dignity at Work] Policy if appropriate.

Action Plan

..... (the employer's) action plan provides details of how it will deliver this policy and challenge discrimination in other policies. It will also provide details of monitoring and reviewing procedures, equality training, and activities to improve equality and diversity goals in the workplace.

The plan will

- set out dates and timescales
- provide details of what activities will be undertaken to improve equality and diversity in the workplace
- who will undertake them
- set out measures of success
- and include targets for action points as appropriate.

Trade Union involvement

Consultation will take place with the recognised trade union on the implementation, development, monitoring and review of this policy and action plan. Union reps will be given training equal to that of managers and supervisors and sufficient time to carry out their duties.

Review and monitoring

This policy and action plan will be reviewed jointly by unions and management, on a regular basis. The initial review of effectiveness will take place six months after this policy comes into effect. Thereafter, reviews will be carried out at intervals of not more than 12

months. Monitoring and review will be carried out in strictest confidence and may include questionnaires, surveys, consultation and feedback.

The purpose of this monitoring is to identify possible patterns of inequality, investigate their underlying causes and remove any unfairness or disadvantage.

..... (the employer) recognises people's right to be open about their sexual orientation/transgender identity and their right to keep this confidential. We recognise that this has implications for record keeping, for how some rights can be accessed and for how complaints of discrimination are reported and investigated.

Information and Training

..... (the employer) will ensure that all new workers, supervisors and managers will receive induction on the policy and action plan. Contractors and agency staff will be fully informed about the policy and it will form part of any contract specification. It will also be brought to the attention of visitors, clients etc.

Appropriate training and guidance will be provided to develop equality and diversity. Adequate resources will be made available to fulfil the aims of this policy. The policy will be widely promoted, and copies will be freely available and displayed in (the employer's) offices.