

Who is this for? LSC staff | LSC provider partners | The general reader

SEXUAL ORIENTATION: NEW & UPDATED LEGISLATION

The legislative duty to consider and collect evidence about the discrimination and disadvantage experienced by people because of their sexual orientation is relatively new and was updated in 2007.

Perception of sexual orientation

The legislation also covers perception of sexual orientation. There are situations where a person may experience discrimination because they are thought to be lesbian, gay, heterosexual or bisexual.

Issues

Collecting monitoring data about – and discussing - sexual orientation are two issues of concern to many organisations and their staff, which are highlighted in this paper.

Monitoring: Whose sexual orientation do organisations need to ask about?

Everyone's! This means: gay people (lesbians and gay men), heterosexuals and bisexuals alike. The definition of sexual orientation used in the legislation is specific: it is not about sexual practices and/or preferences.

Collecting the information required to comply with this legislation is likely to create a degree of discomfort amongst both those asking and those being asked the questions. It is, therefore, important to recognise and prepare for such 'discomfort' and thus ensure that this equality strand is given the weight the legislation demands.

Some things to do...

- Ensure your staff, learners, partners and stakeholders understand that the sexual orientation regulations apply to everyone.
- Provide regular updates on language, terminology and the acronyms used in the legislation, policies and research reports (e.g. LGB is often used as a shorthand term to describe lesbian, gay and bisexual people).
- Create spaces to discuss recent thinking, such as the view that sexual orientation exists along a spectrum: a spectrum that incorporates exclusive homosexuality, exclusive heterosexuality and bisexuality.
- Prepare staff for monitoring responsibilities and the issues that this raises. For example: few people are comfortable about disclosing their sexual orientation, many people wonder how the information is going to be used, and some fear that this personal information will not remain confidential and may compromise them – particularly in small and medium sized organisations.

Who has to take action?

The law applies to everyone: all employers, all workers (including contract workers and trainees), as well as all businesses*. The legislation covers:

- Recruitment
- Terms and conditions
- Promotions
- Transfers
- Employment-related training
- Dismissals
- Discrimination and harassment after the employment relationship has ended (for example: refusing to write a reference for a former employee on the basis of their sexual orientation)
- Provision of goods and services.*

Some things to do...

- Reflect on the prevailing culture in your organisation. Check out whether the 'unwitting' behaviour of some staff, which may seem benign, could be perceived as discriminatory by others.
- Use your sexual orientation monitoring data to review the location of staff in the hierarchy of the organisation. This snapshot analysis will provide some indication of how fair your organisation is and where you may need to target your efforts.
- Ensure you have systems in place to protect staff from harassment by customers and people working in partner organisations.
- Analyse grievance and disciplinary data by sexual orientation to check that there are no disproportionate rates or patterns.

RELEVANT LEGISLATION

*Employment Equality (Sexual Orientation) Regulations, 2003. Updated by The Equality Act (Sexual Orientation) Regulations 2007.

EXCEPTIONS TO THE LEGISLATION

1. Genuine Occupational Requirement

In very limited circumstances, direct discrimination on the basis of sexual orientation may be lawful i.e. where it is essential that a person of a specific sexual orientation be employed.

2. The Religious Exemption

In very limited circumstances direct discrimination, on the basis of sexual orientation, may be lawful if the nature of the duties to be performed is for the purpose of organised religion. However, this exemption only applies to employment which is for the purposes of 'organised religion', not employment in religious organisations per se.

This project is funded by The Learning and Skills Council.

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brap | 9th Floor, Edgbaston House | 3 Duchess Place
Hagley Road | Birmingham | B16 8NH

t 0121 456 7400 **f** 0121 456 7419

e brap@brap.org.uk **www.brap.org.uk**

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