

29 Jun 2021

Race and employment

Explore the UK legal position and main issues employers face when dealing with race discrimination in the workplace

Introduction

Race discrimination, illegal in the UK since 1976, arises when someone is unfairly disadvantaged for reasons related to their race which, in the Equality Act 2010, includes colour, nationality and ethnic or national origins. Caste may also be specifically included in future. To change attitudes, organisations should promote an open culture of respect and dignity for all employees, and value difference.

This factsheet gives an overview of the different types of discrimination, with examples of how they apply to race discrimination. It highlights the need for employers to act and suggests good employment practices to ensure everyone has fair access and opportunity to progress in work, regardless of racial or ethnic background.

Explore [our viewpoint on race inclusion in the workplace](#) in more detail, along with actions for government and recommendations for employers.

What is race discrimination?

In the UK Equality Act 2010, race includes colour, nationality and ethnic or national origins. A racial group can be made up of one or more distinct racial groups, for example Black, White, Chinese, Romanian, black Briton, British Asian, Romany Gypsies and Irish Travellers.

According to some case law, caste is also included, but in its [response to a consultation](#), the government decided against further legislation, relying instead on case law to provide the necessary protection against unlawful discrimination because of caste.

We've recently carried out one of the most detailed studies on race equality in the UK, published as a series of [Race inclusion reports](#). They provide comprehensive data on the

experiences of ethnic minorities in the workplace compared to the white British population. They also highlight the need for organisation-wide engagement on race equality in workplaces and improved data collection, and the higher levels of career progression dissatisfaction among ethnic minority employees.

The need for action on race inequality in the workplace

High-profile government-initiated work has stimulated action on racial diversity. The 2020 update of progress from the Parker review committee into the [ethnic diversity of UK boards](#) showed slow progress. There's still a long way to go until FTSE boards reflect the ethnic diversity of the UK population or of their stakeholders. In 2017 an [independent review on race in the workplace](#) quoted government figures that show the significant economic contribution that could come from taking action: 'The potential benefit to the UK economy from full representation of Black and Minority Ethnic (BME) individuals across the labour market through improved participation and progression is estimated to be £24 billion per annum, which represents 1.3% of GDP in the year to June 2016'.

The issue is not just at the top of organisations. [Research by Demos](#) for the Joseph Rowntree Foundation affirms that 'people from ethnic minority groups are often at a disadvantage in the labour market. They are more likely to be unemployed than white British people, are over-represented in poorly paid and unstable jobs, and are less able to secure opportunities for job progression or employment which matches their skills and abilities.'

In 2018 a government consultation invited employers to share their views on a mandatory approach to ethnicity pay reporting. [We responded comprehensively](#) to the consultation.

In March 2021 the government released the eagerly anticipated [report of the Commission for Race and Ethnic Disparities](#), chaired by Tony Sewell. The report was universally criticised for failing to acknowledge the impact of 'institutional racism' on all aspects of peoples' lives, from housing, education, healthcare and employment. [We've condemned](#) it's failure to recognise institutional and structural racism.

Listen to our podcast - [Why is it so hard to talk about BAME?](#)

The impact of coronavirus on different ethnic groups

The COVID-19 pandemic has had a disproportionate impact on ethnic minority communities with higher incidence of more severe symptoms than the general

population and higher rates of death. The lack of data on the differential impact and greater propensity for harm to ethnic minorities, meant that not only were adequate safety measures not applied by employers, but that healthcare provision for this group was also not prioritised. The economic impact has also been more severe on ethnic minority workers as shown in a [Resolution Foundation report](#). Experts now advise that employers take adequate steps to [safeguard ethnic minority employees](#).

There's more on what employers should be doing in our [Responding to the coronavirus hub](#).

The UK legal position

In Great Britain, discrimination on the grounds of race, first introduced by the Race Relations Act 1976, is now contained within the Equality Act 2010.

The Equality and Human Rights Commission (EHRC) has published guidance on [race discrimination](#) and the [Equality Act](#) including a [Code of practice on employment](#). Whilst not legally binding, the codes give important guidance on good practice and failing to follow them may be taken into account by tribunals or courts. CIPD members can find out more in our [Race discrimination law Q&As](#).

Our [Brexit hub](#) has more on what the implications of leaving the EU might be for UK employment law.

Types of discrimination

Within the Equality Act 2010 there are a number of different types of discrimination. These apply to the protected characteristics, which includes race.

Direct discrimination

This applies to all protected characteristics. It's treating someone less favourably than another person because of a protected characteristic that they have. For example, it's refusing to employ an individual because they are black.

Indirect discrimination

Indirect discrimination occurs when:

1. a provision, criterion or practice is applied to all, **and:**
2. it puts a group with a protected characteristic at a disadvantage when compared

- with another group
- 3. an individual is put at a disadvantage
- 4. the employer cannot show it to be a proportionate means of achieving a legitimate aim.

For example, if a recruitment policy requires individuals to live within a certain geographical area or postcode which puts those of certain ethnic origins at a disadvantage in applying for the job when compared to others, and that puts an individual at a disadvantage, then it would be indirect discrimination unless the employer could show that the residence criteria was justified.

Associative discrimination

This is treating someone less favourably because they associate with an individual who has a protected characteristic. For example, treating someone less favourably because they spend their spare time socialising with people of a certain race, even though they are of a different race themselves.

Perceptive discrimination

This is treating someone less favourably because it's perceived that they have a protected characteristic, whether they do or not. For example, not recruiting someone because it's thought they are of certain nationality when in fact they are not.

Victimisation

Victimisation occurs when someone is treated less favourably because they've made or supported a complaint, or raised a grievance under the Equality Act 2010. It also applies if it's thought that they have made a complaint. A comparator isn't required for a claim of victimisation. Post-employment victimisation can occur - for example, refusing to give a reference to someone who had made a complaint under the Equality Act 2010 - although the Act has some grey areas concerning post-employment victimisation.

Harassment

Harassment is 'unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual'.

There's no longer any specific legislation making employers liable for harassment that comes from a third party (for example, a customer). However an employer can still be

liable as a result of numerous other legal duties, for example breach of contract, direct discrimination and under the Protection from Harassment Act 1997. This, and good practice, mean that employers should continue to take steps to protect employees from all forms of harassment.

Find out more in our [harassment and bullying factsheet](#).

Occupational Requirement

Very unusually, there may be an Occupational Requirement to employ a person of a particular race. If so, certain exceptions from the law are permitted covering selection, promotion and training. The employer must be able to show that there's a genuine need, taking account of the type of work.

Positive action

Employers can take positive action, for example to address under-representation or other forms of disadvantage within the workforce. The provisions are complex and must be handled very carefully. Different provisions apply concerning positive action relating to recruitment and promotion. See [guidance from the EHRC](#).

Good employment practices

People professionals have a key role in creating fair and inclusive workplaces. As part of coherent [inclusion, diversity](#) and [employee engagement](#) strategies, employers should undertake thorough reviews or equality analyses of policies and working practices to remove unfair discrimination and bias. However, we know that there's still a considerable way to go until this is a reality with regards to race.

Our [viewpoint on race inclusion in the workplace](#) gives recommendations for employers, with additional information below.

Inclusion policy

Although there's no legal requirement to have a written inclusion and diversity policy, it's a good idea to produce and actively use one. In some discrimination claims, employers may have a defence if they can show that they took all reasonable steps to prevent the discrimination occurring. Having a comprehensive current policy, and recent relevant training will help employers to distance themselves from liability for acts such as harassment by an individual perpetrator employed by them. A policy also demonstrates the organisation takes its legal and moral obligations towards being a diverse and

inclusive employer seriously. It can also encourage employees to treat others equally.

Creating a racially-diverse and inclusive workplace and engaging personal commitment

Our 2017 report [Addressing the barriers to BAME employee career progression to the top](#) was designed to help employers create racially-inclusive workplaces. It reviewed the previous five years' major research and policy papers, summarising what was known about the extent of ethnic inequality and barriers to in-work progression. It included results from our survey into career blockers and enablers experienced by workers from different ethnic groups. There are recommended actions for employers and policy makers, and case studies of three organisations actively driving change.

Recommendations include:

- Understand what's happening in your organisation, identifying the factors which are maintaining racial inequality. An [evidence-based approach](#) will help get to the root of issues in your particular context.
- Avoid making generalisations - the term BAME encompasses a wide range of backgrounds, cultures and traditions. We now recommend referring to 'ethnic minorities' instead.
- When examining the work experience of people with a particular ethnic background, be aware of the potential interplay between this identity and others. For example, does being a woman from an ethnic minority background mean you have more equal opportunities through progress on gender, but are still at a disadvantage at work because of being from a minority ethnic group?
- Critically appraise your [organisation culture](#). Inclusive cultures where a range of people from different ethnic backgrounds feel able to be themselves and give their ideas enables people to perform at their best at work. Without this, under-utilisation of talent will continue.
- Actively encourage employee voice to inform change. Ensure mechanisms are in place through which employees, including ethnic minority groups, can highlight issues about inequality and be heard.
- Address unconscious bias. There's practical guidance on avoiding bias in recruitment in our report [A head for hiring: the behavioural science of recruitment and selection](#).
- Assign senior level responsibilities for driving diversity issues, including a sponsor

for race inclusion and allocating appropriate resources.

Actions should focus on:

- Making standards of behaviour clear to everyone through regular and appropriate communication methods, promoting a culture of personal responsibility for treating people with respect and dignity and adopting a zero tolerance approach to race discrimination.
- Raising awareness about the importance of different views and ideas in connection with business performance.
- Providing suitable training to ensure people understand what equality and race and diversity are and how to respond to issues. Participative workshops, events and campaigns are useful - it's not sufficient to simply send an email saying that a policy is available.
- Thinking inclusively when devising policies and procedures to make sure they're practical and aim to cater appropriately for the needs and preferences of a racially diverse workforce.
- Monitoring and evaluating policies and practices regularly to refresh them and ensure they are in support of a diverse workplace, where everyone feels they belong, regardless of race or ethnic background.
- Emphasising the role of line managers in making sure policies and practices are implemented in a fair and transparent way across the workforce and in creating a safe and inclusive working environment.
- Tracking the impact of policies and practices with relevant facts and figures.

Reviewing employment practices

- Policies and processes that promote race inclusion and diversity can set expectations, but they need to be regularly reviewed and underpinned by principles that actively celebrate and encourage differences.
- Check recruitment processes aren't open to discrimination on the basis of race. Take care in drafting and placing advertisements to avoid discrimination and stereotyping through language and images. Be sensitive when arranging dates for interviews. Indicate if any genuine Occupational Requirements apply.
- Make sure appraisal and performance management processes aren't biased and check that career paths and promotion and training opportunities are inclusive for

all employees.

- Review policies and procedures related to, for example: flexible working practices, dress code/uniforms, flexible canteen menus, and terms and conditions, to ensure they don't discriminate on the basis of race.

Useful contacts and further reading

Contacts

[Acas - Discrimination, bullying and harassment](#)

[GOV.UK - Employers: preventing discrimination](#)

[Equality and Human Rights Commission - Race discrimination](#)

[Government Equalities Office](#)

[Employers Network on Equality and Inclusion](#)

[Race at Work Charter](#)

Books and reports

ACAS. (2018) *Race discrimination: key points for the workplace*. London: Acas.

EQUALITY AND HUMAN RIGHTS COMMISSION (2018) *Data deficit hampering progression of ethnic minority and disabled people at work*. Manchester: EHRC.

PYPER, D. (2014) *The Equality Act 2010: caste discrimination*. Commons Library Standard Note. London: House of Commons Library.

RUBENSTEIN, M. (2021) *Discrimination: a guide to the relevant case law*. 34th ed. London: Michael Rubenstein Publishing.

Journal articles

BURT, E. (2018) *One in four BAME employees witnessed racist bullying from managers in the last two years*. *People Management* (online). 31 October.

DANBOLD, F. (2021) *What the Sewell report misses about diversity in the workplace*. *People Management* (online). 12 April.

FULLER, G. (2018) Half of employees have witnessed racism at work, says survey. *People Management* (online). 2 March.

KENNEDY, E.J. (2020) Can data drive racial equity? *MIT Sloan Management Review*. 3 December. Reviewed in *In a Nutshell*, Issue 103.

McCARTNEY, C. (2018) Tackling racial disadvantages and discrimination in the workplace. *CIPD Voice*. Issue 15, 3 September.

ROPER, J. (2019) Falling on deaf ears. *Human Resources (HR)*. May. pp20-27.

CIPD members can use our online journals to find articles from over 300 journal titles relevant to HR.

Members and *People Management* subscribers can see articles on the *People Management* website.

This factsheet was last updated by Lisa Ayling, solicitor and employment law specialist, and Lutfur Ali.