



EQUALITY & DIVERSITY

Legal Considerations: Best Practice Overview

EMPLOYMENT, PENSIONS AND BENEFITS GROUP: DLA PIPER



EVERYTHING MATTERS

The implications of *not* embracing equality and diversity can be serious – including legal challenges, reputational damage and financial penalties. However, this is an especially complex and sensitive area of corporate life, personal experience and the law.



Employees are increasingly protected from discrimination, whether intentional or inadvertent, and many organisations now treat diversity and equality as a basic part of corporate culture. Indeed, diversity has become an important element in most corporate social responsibility programmes, especially for large international companies. Equality issues are likely to remain prominent due to legislative changes, for example, the Equality Act in the UK.

Problems occur, however, when organisations either don't understand the legal requirements or fail to treat such issues with the care and commitment they require. Managing and embracing diversity and equality needs to become second nature

in order to ensure employers face minimum risk and can manage with confidence.

It is also important to remember that this isn't only about avoiding the negative implications either: treating equality and diversity seriously can have a beneficial effect. For example, most large employers already have policies and commitments that protect employees and the company, enabling it to be promoted as an 'employer of choice' – and helping attract and retain high calibre staff. In the UK, for example, private sector companies that can demonstrate an impressive equality record may be at a distinct advantage when bidding for public sector (and increasingly, private sector) contracts.

Dealing with the many issues involved (including overlapping legal demands, cultural issues and possibly an international dimension) requires a high degree of legal know-how and previous experience, plus sensitivity and knowledge of HR best practice. The capabilities of your legal services provider should combine:

- **Breadth** – knowledge, cross-border coverage, cost efficiency
- **Depth** – people, expertise, teamwork
- **Experience** – sensitivity, risk reduction, successful outcomes
- **Service** – client focused, responsive, proactive

The risk is that policy failings and other problems will lead to claims, litigation, financial loss and damage to corporate reputations and brands.



CHALLENGES

Organisations face many challenges in achieving equality and diversity, including:

DIVERSITY: INCREASING RISK

The economic climate is making it more difficult for organisations to justify employing diversity managers who can champion inclusiveness and equality from within. In any event it is essential that executives, front-line managers, HR and other professionals fully understand and then effectively communicate and implement key initiatives. The real danger is that if such issues are pushed down the list of priorities, the risk of problems and discrimination-related litigation increases significantly.

EQUALITY LAW IN DIFFICULT TIMES

Another issue linked to the economy is the extent to which governments will stay committed to equality legislation. However, the trend is clearly for continued recognition of issues around gender, race, disability, age and other protected groups with

increased levels of protection. For many companies, this can mean new commitments and additional costs: working to ‘do the right thing’ while ensuring such costs are not prohibitive, which again requires greater understanding and careful planning.

Whatever happens, organisations must be in a position to meet all requirements; indeed, many choose to develop their own policies proactively and ensure processes are in place ahead of legal requirements.

EQUAL PAY – A COMPLICATED AREA

This complex area has, until now, had little impact on the private sector, with attempts at legislation in some countries described as ‘not fit for purpose’. However, with bonuses now subject to greater scrutiny there is increased emphasis on base pay. According to statistics issued by the Equal Opportunities Commission in the UK in 2007, the gender pay gap stands at 17% for full time employees, and transparency is now being actively encouraged (and expected by job candidates).

This means businesses need to audit pay practices now and explore the best ways to address the equal pay issue. This can include job evaluation schemes and benchmarking before updating remuneration packages, a more progressive and proactive approach that avoids problems related to equal pay claims.

LITIGATION

All employers face the risk and most experience litigation at some point. While staff training can help provide a complete or partial defence in many situations, other claims must be handled, defended and resolved in the most effective and professional way. In such cases, it’s very important your legal services provider has deep experience in equality and diversity, including complex and highly sensitive cases and, if necessary, being able to support an international dimension. A logical first step is to use the full range of dispute resolution techniques allied with a carefully thought-out communications and media relations strategy.



SOME RECENT CASE EXAMPLES HANDLED BY DLA PIPER

DLA Piper has gained extensive experience working for national and international clients on equality and diversity issues – across many industry sectors and for companies of varying sizes.

LOCAL AUTHORITY

The defence of a local authority and an individually named senior manager against a claim of discrimination by association. The case brought into question social work practices as well as the plethora of law on less favourable treatment, victimisation and harassment in race discrimination law. We advised the authority on the management of numerous document requests, and the treatment of confidential client data, preparing witnesses for the lengthy hearing including what to expect at tribunal and providing full case advocacy. The case was successfully defended without any criticism of the authority.

RETAIL

Successfully defending a retailer subject to a claim for unfair dismissal after an employee was dismissed for sexual harassment of a fellow employee. The case resulted in the usual issues surrounding the investigation conducted by the employer and the

reasonableness of the dismissal, however DLA Piper was also required to support the employer on internal employee relations issues as the dismissal invoked conflicting opinions in store which led to disruption and employee conflicts. We advised on how to manage the ongoing tensions with minimum disruption to the business.

WHOLESALE

Undertaking diversity training for a wholesaler starting with the board of directors (who came from different cultural backgrounds) and then cascading the training to divisional managers, store general managers and assistant managers and HR Business Partners. Thereafter the importance of diversity was strengthened in employee induction programmes, thus ensuring that the company has a greater chance of relying on the statutory defence to any potential discrimination allegation.

FINANCE

Successfully defending a major bank, in a claim for millions of pounds, against allegations of whistle blowing, victimisation and discrimination, arising out of a sex discrimination complaint. This involved detailed case management, reference to external witnesses, managing documentation stretching over 15 years and defending the case at tribunal.

INTERNATIONAL

Managing workshops to a wide selection of US employers with relevant information on diversity and discrimination issues relevant in the European and international jurisdictions in which they operated. This included providing comparative information on the discrimination and diversity regimes in France, Spain, Germany, and the United Arab Emirates.

Advising a US client on the implications/practical ways of gathering sensitive employee data in several European jurisdictions in order to comply with equality monitoring obligations in the US. This included jurisdictions where such monitoring was not commonplace.

Assisting leading investment bank to defend a complaint brought by a senior executive in the Equal Opportunities Commission in Hong Kong for sex, pregnancy and disability discrimination.

Providing in-house training to a number of international employers in Hong Kong on the new Race Discrimination Ordinance. This included running an interactive case study session with over 80 lawyers and human resource managers in a leading aviation company.

ENSURING BEST PRACTICE – REDUCING THE RISK

Whatever your requirements in this area, it is vital to have rapid access to sound technical knowledge and proven capabilities. While not exhaustive, the best practice roadmap illustrates some of the key elements to help avoid equality and diversity problems and maximise opportunities from the outset:

Advice and Consultancy

In a changing economic and political climate, discussions should cover, for example, the business landscape and employee issues, impact assessments, potential problems and opportunities for progressive change

Equality and Diversity Audits

An in-depth assessment across multiple locations of policies, systems and approaches, including past experiences, employee perceptions and future requirements

Benchmarking

Accurate data collection, comparisons and benchmarking of data and remuneration packages across different companies, geographies, departments, functions, teams

Policy Development

A pragmatic approach working with in-house teams to deliver practical policy solutions so organisations can align business initiatives with a commitment to deliver policy and guide managers

Diversity and Equality Training

Bespoke programmes for different levels, requirements and locations to drive understanding and organisation-wide compliance, including ‘train the trainers’ schemes; all training should be highly focused and benefits-led

Internal Communications/Media Relations

Supporting employee understanding and engagement, explaining key policy developments and changes; crisis management and working to minimise reputational damage

Organisations that value diversity, encourage respect for individuals and promote equality of opportunity using a methodical approach are far better placed to recruit and retain high quality talent, essential in a time of economic uncertainty – and are also better placed to successfully defend claims if they arise.

LITIGATION

Litigation is sometimes unavoidable, so organisations need fast access to a trusted resource for support and representation in individual and group action disputes covering, for example, discrimination, harassment or equal pay

WHY DLA PIPER?

Employee protection arises from legislation, case law, collective bargaining agreements, and individual contracts of employment. You need a legal services provider who can help you create a legally compliant, equal and diverse workforce as well as helping you harness the benefits of being a proactive and fair employer.

DLA Piper has supported clients with all their Equality and Diversity legal needs. Our particular strengths include:

- Proven skills: from helping to promote inclusion through new equality and diversity policies and programmes to managing all aspects of litigation if required
- The breadth of people and resources to advise and act in all areas required including race, disability, sex, sexual orientation, religion, belief and age discrimination issues including equal pay claims and challenges relating to part-time and contract staff
- A combination of in-depth legal knowledge with HR and commercial know-how, to ensure focus on all key issues and reduce risk at every stage
- Complete transparency in terms of resources required and estimated costs for every aspect of work required and covering all locations or jurisdictions involved
- Informed consultative skills followed by hands-on execution and consistent management reporting, all delivered through a dedicated client team
- A single point of contact and accountability for all areas and specialisms required; global reach backed by local legal knowledge and cultural insights

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ABOUT DLA PIPER

DLA Piper's Employment, Pensions and Benefits group is a market leading global practice with a strong reputation for delivering solutions-based advice and supporting clients in the day-to-day management of their people legal issues and risk. It includes over 250 specialist lawyers

working globally on a strategic and operational level on both contentious and non-contentious matters across the private and public sectors. The group advises on all areas of employment, trade union and employee relations, discrimination and diversity management, pensions, employee benefits and reward legal issues.

For details of all our services and to obtain a copy of our training directory, visit www.dlapiper.com.

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DLA Piper is an international legal practice, the members of which are separate and distinct legal entities.

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