

factsheet

LESBIAN, GAY AND BISEXUAL WORKERS RIGHTS

This factsheet contains information about the rights of lesbian, gay and bisexual workers and sets out a bargaining agenda for branches. It includes information on the law and a negotiating checklist, which is on page 8. In UNISON, lesbian, gay and bisexual members organise together with transgender members. There are many areas of common concern, but important areas of difference. There is a separate UNISON factsheet on *Transgender workers rights*.

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 our last 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 or biphobia - 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.

The Equality Act 2010 bans workplace discrimination on grounds of sexual orientation. The Civil Partnership Act 2004 means that same sex couples who have registered a civil partnership must be treated the same as married couples. But laws on their own don't stop discrimination. It is up to us to negotiate policies and practices that make a real difference to the working lives of our lesbian, gay and bisexual members and to challenge prejudice and discrimination.

UNISON POLICY

UNISON believes that lesbian, gay, bisexual and transgender people have the right to equal treatment, protection from discrimination and full support from the union. Allegations of discrimination will be taken very seriously. UNISON has developed an inclusive Equality Scheme to promote equality for all groups in everything we do.

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

UNISON recognises that lesbian, gay and bisexual workers are not a homogenous group. For example bisexual workers, women LGB workers, black LGB workers and disabled LGB workers all face particular issues which we address in our work.

DEFINITIONS

Sexual orientation - orientation towards people 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 sense of their own gender identity 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 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

EQUALITY ACT 2010

The Equality Act 2010 brings together and builds on previous anti-discrimination legislation, including the Employment Equality (Sexual Orientation) Regulations 2003. It protects against discrimination on grounds of sexual orientation in employment and vocational training. It covers all sizes and types of employer and all types of worker, including agency, contract and temporary workers. It covers both direct and indirect discrimination.

It protects all people, whatever their sexual orientation. For example, a straight person subjected to homophobic harassment has the same protection as a gay person. It makes no difference if the harasser knew they were straight or thought they were gay – the conduct is still unlawful. Workers are also protected from discrimination by association – for example because of an LGB family member.

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Summary of sexual orientation employment protection:

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
- 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.

It is also unlawful for employers to discriminate against an employee because they are in a civil partnership. Civil partners must have equal treatment with married partners. Other same sex partners must have equal treatment with unmarried opposite sex partners.

Harassment

The most common form of discrimination experienced by lesbian, gay and bisexual workers is harassment. Yet many employers' policies don't make specific reference to sexual orientation. There is still a perception that some groups are 'fair game'. Bisexual workers often face additional prejudice. All too often, lesbian, gay and bisexual workers complaining 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.

The Equality Act 2010 expressly outlaws harassment related to sexual orientation. 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 who is known or thought to be LGB. It is enough that homophobic or biphobic language, imagery, gestures, 'jokes' or actions violate the dignity of a person and create an intimidating, hostile, degrading, humiliating or offensive environment. The perception of the person experiencing harassment must be taken into particular account, alongside other factors, when deciding if harassment has taken place.

The Act also forbids sexual harassment – unwelcome sexual advances, touching, sexual assault, sexual jokes or materials of a sexual nature that violate a person's dignity and create an intimidating or offensive environment.

An employer is liable if an employee is harassed by a third party (such as client or member of the public) on at least two occasions, though not necessarily by the same person, if the employer is aware the harassment has taken place but failed to take reasonably practicable steps to prevent it happening again. It is useful to remind employers of this when negotiating harassment policies.

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Employers must take positive steps to support and protect *all* workers from harassment by co-workers, service users and members of the public. This should include well publicised policies, monitored to check their effectiveness, and training of managers and all staff. Branches should ensure the harassment policy includes specific reference to sexual orientation.

The Act also outlaw discrimination by trade unions and other trade associations, professional bodies, qualification bodies, employment agencies and providers of vocational training.

Exceptions

A post may be restricted to people of a certain sexual orientation where the job genuinely requires that the person employed is or is not of a particular sexual orientation, and applying this requirement is a 'proportionate means of achieving a legitimate aim'. There are very few jobs where being of a particular sexual orientation is essential to doing that job. Such an occupational requirement must be identified at the beginning of the recruitment process and clearly stated in recruitment materials. Occupational requirements 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 it is valid.

The Act allows employers who choose to, to take positive action to make their workforce better reflect the community they serve. This might be offering training to particular groups or encouraging people to take up opportunities.

KEY NEGOTIATING AREAS

Recruitment

Job advertisements should make clear the employers commitment to sexual orientation equality and wherever possible, jobs should be advertised in LGBT media.

Equality policy and equality scheme

Make sure there is a robust and comprehensive equality policy, 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 being taken seriously.

Where the employer is a public body, make sure sexual orientation equality is integrated into the equality scheme and equality impact assessment process and that LGB people are consulted and involved in drawing these up. From April 2011, public bodies will have a statutory duty to actively advance sexual orientation equality, foster good relations and eliminate discrimination.

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

Other policies should include an equality clause, including service delivery and procurement policies. A first step can be to get agreement on an overarching statement. Until all policies have been revised, they 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 equality policy which specifically refers to sexual orientation, incorporated into the contract of employment.

Make sure sexual orientation equality is included in equality schemes and equality impact assessment

Agree an equality statement on sexual orientation and gender identity

Ensure all policies include a cross-reference to the equal opportunities policy.

Harassment policies

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

- **confidentiality and being 'out' at work** – surveys show that around half of lesbian, gay or bisexual workers are not out (open about their sexual orientation) to their managers. Our ultimate goal may be a society where no-one feels the need to conceal their sexual orientation, but we are still far from that. The choice to come out is personal and depends on many factors. The fact that some LGB workers are out does not mean others in the same workplace will want to be. People should be able to come out to their manager or particular co-workers without it being spread throughout the work-team.
- **confidential complaints procedure** - many lesbian, gay and bisexual workers do not complain because they are not out at work. The fact that the abuse is not aimed directly at them makes it no less intimidating. A confidential complaints procedure must enable 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.
- **tackling harassment by service users** - managers sometimes advise (or even instruct) front-line workers who are lesbian, gay or bisexual to conceal their sexual orientation from service users or the public. This is only acceptable if it is applied to workers of every sexual orientation. It is no more acceptable to stop lesbian, gay and bisexual people talking about a same sex partner than to stop married colleagues referring to their spouses.

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

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- a confidential complaints procedure
- steps to tackle harassment by managers, co-workers, service users and the public.

Family friendly and work/life balance policies

Partly because so many lesbian, gay and bisexual workers keep their family life private to avoid prejudice, 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.

Statutory rights to maternity support, parental and dependent care leave now 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'. Any reference to marriage should also include civil partnership.

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 special or family leave for people who – for good reason - do not want to go to their line manager, such as a named person in human resources. In most cases, no-one else needs to know 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 for 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 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 applying policies and terms and conditions to lesbian, gay and bisexual workers is minimal but will make a very big difference to the workers affected. 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 confidentially, if this is what they want.

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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.

IT firewalls and filters

Many employers' IT firewalls and filters have very basic screening which blocks e-mails containing the words lesbian, gay or bisexual, automatically quarantining them as offensive, adult or unprofessional. This is not acceptable. There have even been cases of union activists hauled in under disciplinary procedures for receiving UNISON emails about LGBT workers equality. It can be hard for an individual to raise this so branches should make sure their employers do not block such e-mails.

Staff networks

A growing number of employers are setting up staff LGB or LGBT networks. Problems arise where they are a hand picked or self-selecting minority who are wrongly seen to represent all LGB workers and where they employer talks to them rather than consulting staff unions on LGB equality. Many UNISON LGBT activists have found that the best way to deal with such staff networks is to get involved with them, while demanding that the role of the unions continues to be recognised.

Publicity, implementation, training 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. LGB equality should be included in training for managers and for all staff.

Practice must be in line with policies. If local managers have discretion in implementation, members must be aware of their rights and know how to make a complaint if necessary. 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 the outcomes of these complaints. Remember that an absence of complaints does not mean there is no harassment. Indeed it can suggest a culture where such harassment is so everyday that people don't think to complain.

AIMS The commitment to lesbian, gay and bisexual equality should be publicised widely, including in contracts of employment, on internal and external websites, induction packs, newsletters, noticeboards, handbooks and annual reports.

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.

Staff training should include LGBT equality issues, from induction onwards.

Workforce monitoring

UNISON argues strongly that the implementation of all policies should be monitored, including the impact on sexual orientation equality. Whether or not employers should monitor the sexual orientation of individual workers is a separate question. UNISON advises a cautious approach. Certainly, it should never be a first step, but should only follow a programme of action on sexual orientation equality. Staff should be consulted, the use of the data clearly explained, confidentiality guaranteed and questions should be optional. There is detailed guidance in the factsheet 'Workforce monitoring for sexual orientation and gender identity' at www.unison.org.uk/out.

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. All branches are encouraged to send members to UNISON's national LGBT conference. There is more information on self-organisation in UNISON's guide 'Organising for Equality' stock number 1577.

CHECKLIST OF NEGOTIATING POINTS

- make sure the equality policy, any equality scheme and equality impact assessment process explicitly include 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, training put in place and policies' effectiveness regularly monitored and reviewed
- seek to ensure local managers' discretion on how policies are implemented is kept to a minimum
- make sure e-mails about LGBT equality are not screened out by crude fire-walls
- involve your branch LGBT group or LGBT members in negotiations

- negotiate time off for trade union LGBT activities.

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FURTHER INFORMATION

Visit UNISON's LGBT webpages for up to date advice, information and events – www.unison.org.uk/out Sign up for the monthly e-bulletin and hard copy mailings on LGBT issues. Find the contact for your regional LGBT group, who can put you in touch with your branch LGBT group or advise you on how to set up a group.

If you don't have internet access, or for help when you need it, call UNISONdirect 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 and examples of agreements that you have negotiated. Please write to or email us:

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