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# 3HR Legal Weekly

## Employment

### Is your business ready to support transgender employees?

Under the Equality Act 2010, it is unlawful to directly discriminate against employees on such grounds as: age; disability; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. These are termed as *protected characteristics*. It is also unlawful to indirectly discriminate by imposing a provision, criterion or practice that disadvantages employees only with a protected characteristic and which cannot be justified objectively. Gender reassignment is one such *protected characteristic*.

The issue of gender reassignment discrimination was raised in relation to toilet facilities in the case of *Bisson v Condor Ferries*. In that case, a transgender ferry passenger who was advised to use the disabled toilet succeeded in claiming direct discrimination. The company's toilets used signs with the words 'Ladies' and 'Gents', which were also held to indirectly discriminate against transgender customers. The ferry company admitted to a "non-intentional and non-malicious" act of discrimination, and the tribunal ordered it to use symbols instead of words on its toilet signs and to update its equality and diversity policy and employee assistance programme. This is a reminder that these provisions also extend to businesses supplying goods and services to transgender members of the public.

This case does not change the law in the UK as it is a 'first instance' Channel Islands tribunal decision heard in Jersey, which is self-governing, however it may suggest the future path for tribunals in the UK. This case does suggest that it will not generally be acceptable to ask transgender employees to use separate facilities (e.g. a disabled toilet), even with their agreement.

The claimant in this case preferred symbols instead of words for the male and female facilities, as it is considered that words are stronger markers of identity and have certain social assumptions. However, although the company changed its signage, its facilities remained separate and transgender customers were still faced with a choice between the two. Therefore, it is unclear whether the use of symbols actually removes any disadvantage.

Before you start ordering new signs, however, you should remember that effective communication with staff is the most important factor. The government suggests in its guidance that transgender employees should be free to select the facilities appropriate to the gender in which they present. For example, when transgender employees start to live in their acquired gender role on a full-time basis, they should be afforded the right to use the facilities appropriate to that role.

Transgender employees are entitled to expect the support of their employers and colleagues. Should there be any objection or inappropriate comments made by work colleagues to transgender employees, employers should address these immediately. To promote equality and reduce the risk of discrimination and harassment complaints, employers should consider equality training.

If you have any queries regarding equality or training, please contact the Employment and HR teams.

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