

Equality & Diversity Training is not a Tick-in-the-Box Exercise

Nor should it be a 'Click-Through' Exercise

As previously reported, the Employment Appeals Tribunal (EAT) have recently made it clear that the utilisation of the 'Reasonable Steps Defence' will not be upheld where the Equality & Diversity Training is found to be of poor quality and/or where the frequency of the training results in the training becoming 'stale' in the minds of the employees. Furthermore, as well as explaining the negative effect of Discrimination, Harassment & Victimisation in the workplace, it should also include an explanation of the employer and employee responsibility within the law. Whilst the question of quality and frequency of training came to light during a case of Racial Harassment it should be remembered that, under the Equality Act 2010, there are nine protected characteristics.

A recent case that came before the Employment Tribunal (ET) involved harassment on the grounds of Sexual Orientation and failure to make reasonable adjustments on the grounds of the employee suffering from Dyslexia. In addition, the claimant was able to claim for constructive (discriminatory) dismissal and victimisation. The ET found that the Equality & Diversity Policy was inadequate; that no action had been taken by the employer against those who had undertaken the harassment and victimisation against the claimant; and that no Equality & Diversity Training had been provided to the staff concerned.

Another worrying facet of this case was that, on the first day of employment, the claimant's equal opportunities form showing his sexual orientation was left on a desk in a file accessible by other employees who would know about his sexual orientation – even though he wished to keep this quiet (in itself a breach of GDPR). Much of the action taken by the claimant could have been averted had this information been kept under 'lock and key'.

The result being that the employer was required to pay:

- Compensation for injury to feelings £20,800
- Aggravated Damages £10,000
- Interest in the sum of £ 5,907

In addition, the employer has had to pay a financial penalty of £18,353 (pursuant to Section 12A of the Employment Tribunals Act 1996). This is a

payment, made to the Secretary of State, in finding that the breach of the worker's rights has one or more aggravating features – a reminder that, in breaching the Equality Act, the employer could find themselves breaching a number of other Legislative Acts of Parliament; giving rise to additional costs. Talking of costs – it should be remembered that the employer will also have additionally incurred legal costs.

As you will see from these two cases Equality & Diversity is not a 'tick-in-the-box' exercise. Attention must be paid to the quality of policy and training, the frequency of the training and the action that is to be taken by those employees who breach the Equality Act. Nor is it likely to be a 'click through' exercise online.

We are seeing many Equality & Diversity courses being offered online and, with many employers looking to move to hybrid or remote working, it might be tempting to avail themselves of this training for their staff. However, employers need to be aware that the ET is likely to want to ensure that such training has met the needs of the Equality Act. Is it just a 'click through' training course? How attentive will staff be when undertaking online training (would they be distracted by work or other 'external' events)? Can the employer prove that the training has been effective in every respect? Would a face-to-face training session be easier to defend in an ET?

As a parting thought; we are also seeing a number of courses that are shown as being CPD accredited. There is nothing wrong with courses being accredited as being CPD but you need to be aware that it will be the Employment Judge (if sitting alone) or the ET Panel that will decide whether or not the quality of a course meets the requirement in acceptance of a 'Reasonable Steps Defence'.