Flexible Worker Guidance – Equality and Diversity

This document and the attached key points have been created to provide guidance for all NHS Professionals Flexible Workers regarding Equality and Diversity in the workplace.

It is NHS Professionals Limited policy to treat all flexible workers fairly and equally regardless of their gender, sexual orientation, marital status, race, colour, nationality, ethnic or national origin, religion, age or disability. In addition NHS Professionals Limited will ensure that no requirement or condition will be imposed without justification which could disadvantage individuals on any of the above grounds, or on the grounds of trade union membership.

As per the Flexible Worker Registration Document flexible workers are required to comply with the Equal Opportunities and/or Dignity at Work policies of the Trust(s) to whom you are assigned. In the event that you fail to comply with the relevant policies and/or commit an act of discrimination and/or harassment, during the period of any Assignment, on the basis of an individual’s gender (including gender reassignment), race, nationality, ethnic or national origin, disability, religion, beliefs, sexual orientation or age, you will be subject to disciplinary procedures and disciplinary action may be taken against you.

Definitions:

Equality is the current term for ‘Equal Opportunities’. It is based on the legal obligation to comply with anti-discrimination legislation. Equality protects people from being discriminated against on the grounds of group membership i.e. sex, race disability, sexual orientation, religion, belief, or age.

Diversity implies a wide range of conditions and characteristics. In terms of businesses and their workforces it is about valuing and reaping the benefits of a varied workforce that makes the best of people’s talents whatever their backgrounds. Diversity encompasses visible and non-visible individual differences. It can be seen in the makeup of your workforce in terms of gender, ethnic minorities, disabled people etc., about where those people are in terms of management positions, job opportunities, terms and conditions in the workplace.

Diversity is about respecting individual differences, and people’s differences can be many and varied.

Legal Framework
There are several pieces of legislation that are key to combating discrimination and promote equal opportunities within the work place as follows:

- Equal Pay Act 1970
- Sex Discrimination Act 1975 (As amended)
- Sex Discrimination (Gender Reassignment) Regulations 1999
- Race Relation Act 1976 (As amended)
- Disability Discrimination Act 1995 (As amended)
- Employment Act 2002
- Human Rights Act 1998
- Employment Rights Act 1996
- Employment Equality (Religion or Belief) Regulations 2003
- Employment Equality (Sexual Orientation) Regulations 2003
- Employment Equality (Age) Regulations 2003
NHS Professionals Limited undertakes to comply with the requirements of key legislation.

**Identifying Discrimination**

Discrimination can occur either directly or indirectly and is unlawful on the grounds of sex, marital status, gender reassignment, race, religion or belief, sexual orientation, disability and part-time workers.

Discrimination can be the result of prejudice, misconception and stereotyping. Whether this behaviour is intentional or unintentional does not excuse it. It is the perception of the person discriminated against that is important.

**Direct Discrimination**

This occurs when a person or group is treated less favourably than others are or would be, treated in the same or similar circumstances; for example, refusing to employ someone because of their colour, race, marital status, or disability.

**Indirect Discrimination**

This occurs where a condition or practice is imposed in employment which cannot be justified for example, providing a training course where full-time workers had priority of places before part-time workers.

**Victimisation**

This occurs when a person is treated less favourably because they have raised an issue under the provisions of the legislation, for example, under the Race Relations Act. Victimisation is unlawful in these circumstances.

**Operating within legal frameworks**

All NHS Professionals directors, managers, corporate employees and flexible workers must comply with the UK legal framework on unlawful discrimination, as summarised below:

**Civil Partnership**

The Civil Partnership Act 2004 came into force on 5 December 2005 and enables same-sex couples to obtain legal recognition of their relationship. Couples who form a civil partnership have a new legal status, that of 'civil partner'.

**Sex Discrimination**

The Sex Discrimination Act 1975 (SDA) prohibits discrimination on grounds of sex or marital status in the areas of employment, education and the provision of goods and services.

Direct discrimination is where a women or a man is treated less favourably than a person of the opposite sex in comparable circumstances is or would be, treated, because of their sex. Types of sex discrimination include: not offering a job on the grounds of an individual's sex, sexual harassment, and treating a women less favourably because she is pregnant.

Indirect sex discrimination occurs where a provision, criterion or practice is applied equally to women and men but that provision, criterion or practice:
- can not be shown by the employer to be justifiable irrespective of the sex of the person to whom it is applied; and
- is to the detriment of the women (or man) in question

Indirect discrimination may arise for example in connection with: shift patterns, restrictions on hours of work, refusal to allow job sharing and physical restrictions in job descriptions.

The SDA has been amended by the Employment Equality (Sex discrimination) Regulations 2005 which came into force on the 1 October 2005.

The main amendments, with which NHS Professionals will comply, include:

- a new definition of indirect sex discrimination (as above).
- New provisions prohibiting harassment of a sexual nature or on the grounds of sex, defined as where, on the ground of a victims sex, he or she suffers unwanted conduct that has the purpose or effect of violating dignity or creating an intimidating, hostile, degrading, humiliating, or offensive environment for him/her.
- A provision specifically stating that less favourable treatment of women on grounds of pregnancy or maternity leave is unlawful sex discrimination.

Equal pay: sex discrimination in pay and terms and conditions

The Equal Pay Act 1970 provides for an equality clause to be implied into contracts of employment with the effect that no person in the same employment can be treated less favourably (on the grounds of sex) with regard to pay and other contractual terms of employment. The Act covers ‘like work’ (the same or similar job), work rated as equivalent (where a job evaluation scheme is in place) and work of equal value (where two jobs are assessed as being equivalent.

Race Discrimination

The race Relations Act 1976 provides protection from race discrimination in employment, education and training.

Direct discrimination is when someone is treated less favourably than another in similar circumstances on grounds of his/her colour, race, nationality or ethnic origin. Examples are racist abuse and harassment. Indirect discrimination occurs when people from a racial group are less likely to be able to comply with a requirement or condition, which applies to everyone, but which cannot be justified on other than racial grounds. Examples are discriminatory requirements in job descriptions or person specification.

The Race Relations (Amendment) Act 2000 prohibits race discrimination in all public functions. Public bodies, including health authorities, have a statutory general duty to promote race equality in all they do.

Disability Discrimination

The Disciplinary Discrimination Act 1995 (DDA) makes it unlawful to discriminate against a disabled person in terms of their employment, training, promotion opportunities, by dismissing them or by subjecting them to any other detriment. It is also unlawful to subject a disabled person to harassment, or victimisation because they have brought a complaint or other proceedings. The act also covers disability related activities.

The DDA defines a disabled person as follows:
A person has a disability for the purpose of the Act if he/she has a physical or mental impairment which has a substantial and long term adverse effect on his/her ability to carry out normal day to day activities. Long term means that it must last, or be likely to last, for more than 12 months.

Under the new Disability Discrimination Act 2005 this definition includes individuals with:

- HIV, cancer and multiple sclerosis
- A mental impairment, without the necessity to show that the impairment results from a 'clinically well-recognised' illness.

In addition, if a job applicant declares a disability; reasonable adjustments must be considered to enable a candidate who otherwise meets the person specification to be appointed. Further advice may be required from Occupational Health Department. Similar provisions apply where a staff member becomes disabled.

**Age Discrimination**

Age discrimination became unlawful on the 1\textsuperscript{st} October 2006, affecting most age related practices, as well as service related benefits, recruitment, and training and promotion policies.

The regulations are intended to protect workers and prospective workers of all ages. Age discrimination occurs when someone is unfairly disadvantaged for reasons related to their age which cannot be objectively justified. It can affect anybody regardless of how old they are and adversely affect employment opportunities, especially those of older people and younger people.

**Religion and Belief**

Under the Employment Equality (Religion or Belief) Regulations 2003, it is unlawful to discriminate on the grounds of religion or belief in employment. This applies to both direct and indirect discrimination.

Religion or belief is defined as any ‘religion, religious belief or similar philosophical belief’. As such it covers mainstream world religions (Islam, Hinduism, Christianity etc) and also a broad range of other religions e.g. pacifism and veganism.

**Sexual Orientation**

Under the Employment Equality (Sexual Orientation) Regulations 2003, it is unlawful to discriminate because of sexual orientation. This covers direct discrimination (that is treating someone less favourably because of their actual or perceived sexual orientation), and indirect discrimination (applying a criterion, provision or practice which disadvantages an individual because of their sexual orientation without justification).

It is also unlawful to subject an individual to harassment or bullying, or to victimise them because they have made a complaint or allegation of discrimination.

**Gender Reassignment**

Direct discrimination is unlawful in relation to gender reassignment. This means that an individual must not be treated less favourable on the grounds that he or she:

- intends to undergo gender reassignment
- is undergoing gender reassignment, or
- has undergone gender reassignment

(Further specific guidance is available on gender reassignment and flexible workers)
What should I do if I feel I am being discriminated against?

Unlawful discrimination of any kind in the areas above will not be tolerated in NHS Professionals employment or other processes. This includes aiding another person to discriminate unlawfully on any of the above grounds.

If a flexible worker considers they have been unlawfully discriminated against during the recruitment process or the course of their employment, they may either raise this in writing with their Trust Liaison Coordinator, Nurse Lead, or Human Resources Department. An appropriate member of staff will undertake an investigation in accordance with NHS Professionals grievance procedure.

If appropriate, the matter may also be pursued by the complainant through other procedures:

- bullying and harassment
- whistle blowing
- complaints and incidents
- Race Equality Scheme complaints procedure

NHS Professional's flexible workers who witness or suffer incidents of unlawful discrimination in employment processes must similarly report these to Flexible Worker Human Resources who will act accordingly and carry out an investigation.

NHS Professionals expects individuals:

- to co-operate with measures introduced by NHS Professionals to ensure equality of opportunity, diversity and non discrimination.
- not to harass, abuse or intimidate colleagues or co-workers or participant on the grounds of race, colour, nationality, ethnic or national origin; sex; marital status or caring responsibility; sexual orientation; age; physical, sensory or learning disability; mental health; political or religious beliefs; class; HIV status; employment status; unrelated criminal convictions; union activities
- to feel sufficiently confident to inform Flexible Worker Human Resources if they suspect discrimination is taking place.

These guidelines have been written in accordance with:


Version history

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<th>Brief Summary of Change/s</th>
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<tr>
<td>0.1</td>
<td>October 2009</td>
<td>Document Creation</td>
<td>Liisa McMahon</td>
</tr>
<tr>
<td>0.2</td>
<td>October 2009</td>
<td>Amendments</td>
<td>Sarah Kubie</td>
</tr>
<tr>
<td>0.3</td>
<td>October 2009</td>
<td>Appendix</td>
<td>Sally Quinn</td>
</tr>
<tr>
<td>0.4</td>
<td>October 2009</td>
<td>Amendments</td>
<td>Liisa McMahon</td>
</tr>
<tr>
<td>0.5</td>
<td>June 2010</td>
<td>Update</td>
<td>Janet Martin</td>
</tr>
<tr>
<td>0.6</td>
<td>July 2010</td>
<td>Amendments</td>
<td>Victoria Webdale</td>
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Appendix

Equality and Diversity Key Points

How does this affect me as a flexible worker with NHS Professionals?

1. To ensure patients are treated fairly on the basis of need and not discriminated against on the basis of age, sex, race, religion, disability or sexual orientation.

2. To ensure patients are treated in a manner, which respects their religious beliefs, culture, gender, sexual orientation or ability.

3. To ensure patient’s cultural and religious needs will be valued and met where possible.

4. To ensure decisions on care that patients receive are determined only by their needs.

5. To ensure that principles of common courtesy are upheld by flexible workers (FWs), especially when faced with challenging questions or working under difficult circumstances.

6. To ensure patients and their carers are greeted appropriately and without undue delay when they first arrive.

7. To ensure the patient environment is welcoming and supports appropriate standards of privacy, confidentiality and dignity.

8. To ensure patient privacy is respected during all interactions.

9. To ensure that privacy and dignity are respected and maintained during visiting times and that both patients and their carers are receptive to the needs of other patients and carers within the ward environment.

10. To ensure that FWs demonstrate effective communication skills and that communication takes place in an appropriate environment.

11. To ensure that all discussions will be relevant to the patients care and will avoid personal comment or remarks.

12. To ensure patient’s communication needs are assessed and that patients and carers are provided with appropriate support when a needs has been identified.

13. To ensure language interpreter services are provided when required, including spoken and sign language.

14. To ensure a chaperone of the same sex or friend/relative is present.

15. To maintain privacy to undress and dress for intimate examinations or treatments.

16. To ensure individuality, privacy and dignity is respected at all times, in particular during personal care giving, entering single rooms, ward areas when curtains are closed, toilets or bathrooms, immediately before or following death.