INTRODUCTION

Key concepts

- Direct discrimination
- Indirect discrimination
- Harassment
- Including reference to Directives and case law
HISTORICAL BACKGROUND

Treaty of Rome: 1957: free movement of workers and equal pay for men and women


Equal Treatment Directive (76/207) working conditions, access to employment, training and promotion and dismissal

HISTORICAL BACKGROUND

Treaty of Amsterdam: Art. 13: EU may take appropriate action to combat discrimination based on sex, racial or ethnic origins, religion or belief, disability, age or sexual orientation: now article 19 Treaty Functioning EU

Article 21 of the Charter of Fundamental Rights of the European Union: any discrimination on grounds of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or other opinion, membership of a national minority, property, birth, birth, disability, age or sexual orientation shall be prohibited.
DIRECTIVES

- Directive 2000/43 June 2000 equal treatment between persons irrespective of racial or ethnic origins
- Directive 2000/78 November 2000 general framework for equal treatment in employment and occupation: religion or belief, disability, age, sexual orientation
- Recast Gender Directive equal treatment of men and women employment and occupation
- Directive 2010/41 July 2010: equal treatment men and women engaged in self-employed capacity

Overview


- Article 2: Concept of discrimination

  “For the purposes of this Directive, the principle of equal treatment shall mean there is no direct or indirect discrimination whatsoever on any of the grounds listed in Article 1”
Overview

Discrimination may consist of:

- The application of different rules to comparable situations
- The application of the same rule to different situations

*Brown v Rentokil* C-394/96

DIRECT DISCRIMINATION

- Article 2(1)(a) Recast Directive:–
  
  “where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation”.

Less favourable treatment, comparable situation and on a protected grounds such as sex, race, disability, etc
DIRECT DISCRIMINATION

- *Dekker C-177/88*: direct discrimination less favourable treatment of women on grounds of sex: pregnancy

- *Thibault C-136/95*

- *Firma Feryn C-54/07*: less favourable treatment statements which dissuade candidates of particular ethnic origin applying for position

It can be seen that discrimination can arise with or without intent and by way of association.

- *Coleman C-303/06*: less favourable treatment by reason of association with another person who is covered by a Directive constitutes less favourable treatment and is direct discrimination
DIRECT DISCRIMINATION

- Intention or another motive is irrelevant: *Fermyn*
- Need to be aware of unconscious bias or discrimination
- Unlike indirect discrimination, direct discrimination cannot be justified with exception of age discrimination, article 6(1): *Mangold*

DIRECT DISCRIMINATION: PERMITTED DISCRIMINATION


- Will be strictly construed

- *Wolf* (C-229/08) age cap on recruitment, similarly *Petersen*
INDIRECT DISCRIMINATION

Article 2(b) Recast Directive: neutral provision, particular disadvantage to those who are members of a group defined by particular characteristic such as gender and this cannot be objectively justified.

Bilka Kaufaus C–170/84: less favourable treatment of part time workers: indirect discrimination on grounds of gender

INDIRECT DISCRIMINATION

Enderby C–127/92: rate of pay lower for one group almost exclusively women and the other group are men: indirect discrimination

Chez C–83/14: indirect discrimination by reason of association established

C–157/15 Achibata and C–188/15 Bougnaoui
INDIRECT DISCRIMINATION

- Objective justification
- Article 2 of Framework Directive permits a provision which is prima facie indirectly discrimination to be lawful and justified where it “is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary”
- Bilka Kaufhaus
- Rinner-Kuhn C–171/88

Harassment

Harassment and sexual harassment: Article 2(1)(c) and 2(1)(d) of Recast Directive

Unwanted conduct related to discriminatory ground with the purpose or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment

Sexual harassment any form of unwanted, physical, verbal, non-verbal or physical conduct of a sexual nature occurs
Harassment

_Coleman C303/06_

Harassment covers a situation where an employee is the victim of unwanted conduct amounting to harassment which is related to the disability of her child.