KEY CONCEPTS IN DISCRIMINATION

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Employment Judge

Key Concepts in Discrimination

• Direct effect
• Indirect effect
• Harassment
• Victimisation

Article 2
“Concept of discrimination
For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1”.

+ harassment (Article 2(3))
+ victimisation (Article 11).

Direct Discrimination

Article 2(2)
“2. For the purposes of paragraph 1:

direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;”
Direct Discrimination

Comparable situation

Snr Lopez

Snr Sanchez

Direct Discrimination

Treated less favourably
Direct Discrimination

On any of the grounds

- Hypothetical Comparator
- Association
- Hypothetical victim?
Indirect Discrimination

- Article 2(2)
- "2. For the purposes of paragraph 1:
  - (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:
  - (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary,"
Indirect Discrimination

**Particular disadvantage**

Maria

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Indirect Discrimination

**Compared with other persons**

Si!
Indirect Discrimination

Objectively justified

Harassment

- Article 2(3)
- “3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.”
Harassment

Unwanted conduct

Harassment

Related to any of the grounds
Harassment

*Purpose or effect* of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment

Victimisation

Article 11

“Victimisation

*Member States shall introduce into their national legal systems such measures as are necessary to protect employees against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.”
Victimisation

*Dismissal or other adverse treatment*

Exceptions

• Justification for Age Discrimination
• Occupational Qualifications
• Positive Action
The End

Thank You
Muchas Gracias