

EU GENDER EQUALITY LAW DEFINITIONS OF KEY CONCEPTS

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CLOISTERS

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Direct discrimination

2006/54/EC, art.2

“where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation”



Direct discrimination

Less favourable treatment/disadvantage

On grounds of sex

Comparator (including pregnancy/maternity)

Causation

Reason/motive/inherently discriminatory criterion/stereotyping

Person

Is a victim necessary?

No justification – except genuine occupational requirement



Indirect discrimination

2006/54/EC, art.2

“where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless 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

Provision, criterion or practice (“PCP”)
Apparently neutral
Selection of pool
Particular disadvantage
Legitimate aim (cost/cost plus)
Appropriate and necessary means
Enderby indirect discrimination (equal pay)



Direct/indirect discrimination – other issues

Mutual exclusivity direct/indirect discrimination
Why does the direct/indirect classification matter?
Distinguishing direct/indirect discrimination– CHEZ RB C-83/14
Intersectional discrimination



Harassment

2006/54/EC, art.2

“where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment”



Harassment

Unwanted conduct
Related to sex of a person
Gender reassignment
Violates dignity
Intimidating etc environment
Purpose or effect
No comparator
No justification
Perception of victim



Sexual harassment

2006/54/EC, art.2

“where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment”



Sexual harassment

Of a sexual nature