DEFINITION OF KEY CONCEPTS
DIRECT/INDIRECT/HARASSMENT/
SEXUAL HARASSMENT

EU GENDER EQUALITY LAW
ERA 12 & 13 APRIL 2018
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EQUAL TREATMENT DIRECTIVE 2006

- ARTICLE 1: PURPOSE IS TO ENSURE THE IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT OF MEN AND WOMEN IN MATTERS OF EMPLOYMENT
- ACCESS TO EMPLOYMENT
- WORKING CONDITIONS INCLUDING PAY
DIRECT DISCRIMINATION: ARTICLE 2

• WHERE ONE PERSON IS TREATED LESS FAVOURABLY ON GROUNDS OF SEX THAN ANOTHER IS, OR HAS BEEN OR WOULD BE TREATED IN A COMPARABLE SITUATION

INDIRECT DISCRIMINATION: ARTICLE 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
HARASSMENT: ARTICLE 2

• UNWANTED CONDUCT RELATED TO THE SEX OF A PERSON OCCURS WITH THE PURPOSE OF EFFECT OF VIOLATING THE DIGNITY OF A PERSON, AND OF CREATING AN INTIMIDATING, HOSTILE, DEGRADING, HUMILIATING OR OFFENSIVE ENVIRONMENT

SEXUAL HARASSMENT: ARTICLE 2

• 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
ON GROUNDS OF SEX/DIRECT

• FIRST CATEGORY
• DISCRIMINATORY ON THE FACE OF IT
• DISCRIMINATION ON THE GROUNDS OF A CHARACTERISTIC VERY CLOSELY RELATED TO SEX - WORKSHOP
• POSITIVE DISCRIMINATION.....IS DISCRIMINATION

ON THE GROUNDS OF SEX/DIRECT

• SECOND CATEGORY
• THE TREATMENT IS NOT OBJECTIVELY DISCRIMINATORY
• NEED TO KNOW SOMETHING ABOUT THE EMPLOYER'S REASONS FOR ACTIONS – IS THE TREATMENT BECAUSE OF THE PROTECTED CHARACTERISTIC
• BURDEN OF PROOF ASSISTS
• SUFFICES FOR THE PROTECTED CHARACTERISTIC TO BE THE SUBSTANTIAL REASON EVEN THOUGH IT IS NOT THE SOLE OR INTENDED REASON
• WORKSHOP EXAMPLES
COMPARATOR

- REAL OR HYPOTHETICAL
- STAND THE CLAIMANT SIDE BY SIDE WITH HER COMPARATOR
- NO MATERIAL DIFFERENCE
DISCRIMINATION BY ASSOCIATION

- ‘ON THE GROUNDS OF’ USUALLY COVERS THE PROTECTED CHARACTERISTIC (SEX) OF THE CLAIMANT
- ‘ON THE GROUNDS OF’ IS WIDE ENOUGH TO COVER THE SEX OF SOMEONE WHO IS NOT THE CLAIMANT
- LESS FAVOURABLE TREATMENT ON THE GROUNDS OF SEX – NOT THE CLAIMANT’S SEX
- EXAMPLE

INDIRECT DISCRIMINATION

- PROVISION CRITERION OF PRACTICE (PCP)
- PUTS PERSONS OF ONE SEX AT A PARTICULAR DISADVANTAGE
- IS THERE A LEGITIMATE AIM FOR THE PCP?
- IF SO IS THE AIMS OF ACHIEVING THAT AIM APPROPRIATE AND NECESSARY
BILKA-KAUFHAUS-V-WEBER VON HARTZ

TO JUSTIFY AN AIM WHICH HAS A DISCRIMINATORY EFFECT AN EMPLOYER MUST SHOW THAT THE MEANS CHOSEN FOR ACHIEVING THAT AIM
• CORRESPOND TO A REAL NEED ON THE PART OF THE EMPLOYER
• ARE APPROPRIATE WITH A VIEW TO ACHIEVING THAT AIM
• ARE NECESSARY TO THAT END

• IS THERE NO LESS DISCRIMINATORY WAY OF ACHIEVING THE AIM?

HARASSMENT

• CONDUCT - PURPOSE OR EFFECT – RELATES TO (NOT ON GROUND OF)
• VIOLATING DIGNITY
• INTIMIDATING
• HOSTILE
• DEGRADING
• HUMILIATION
• OFFENSIVE
HARASSMENT OF A SEXUAL NATURE

- DISTINGUISH FROM .....RELATED TO SEX
- PHYSICAL TOUCHING
- SEXUAL COMMENTS
- SEXUAL INNUENDO
- REJECTION OF SEXUAL ADVANCE – FOLLOWED BY LESS FAVOURABLE TREATMENT
2016 RESEARCH IN THE UK SHOWS

• 52% OF WOMEN SAID SEXUAL HARASSMENT WAS A PROBLEM AT WORK
• 30% EXPERIENCED UNWELCOME JOKES
• 25% EXPERIENCED UNWANTED TOUCHING
• 9 OF OUT 10 CASES THE PERPETRATOR WAS MALE
• 17% OF WOMEN REPORTED THE PROBLEM WITH THEIR LINE MANAGER
• 79% OF WOMEN SAID THEY DID NOT REPORT THIS TO THEIR EMPLOYER
• DIFFICULTIES OF REPORTING THIS TO A COURT

#MeToo

• 2017
• SOCIAL MEDIA
• WOMEN AND MEN SHARING THEIR STORIES OF SEXUAL HARASSMENT
• RAISED PROFILE OF SCALE OF SEXUAL HARASSMENT
• IMPACT ON CASES BEING BROUGHT TO COURT?
WORKSHOP
14.15

• FACTUAL SCENARIOS
• DISCUSS IN SMALL GROUPS
• FEEDBACK
• TYPES OF DIRECT DISCRIMINATION
• COMPARATORS
• WHAT IS INDIRECT DISCRIMINATION
• HARASSMENT
• SEXUAL HARASSMENT