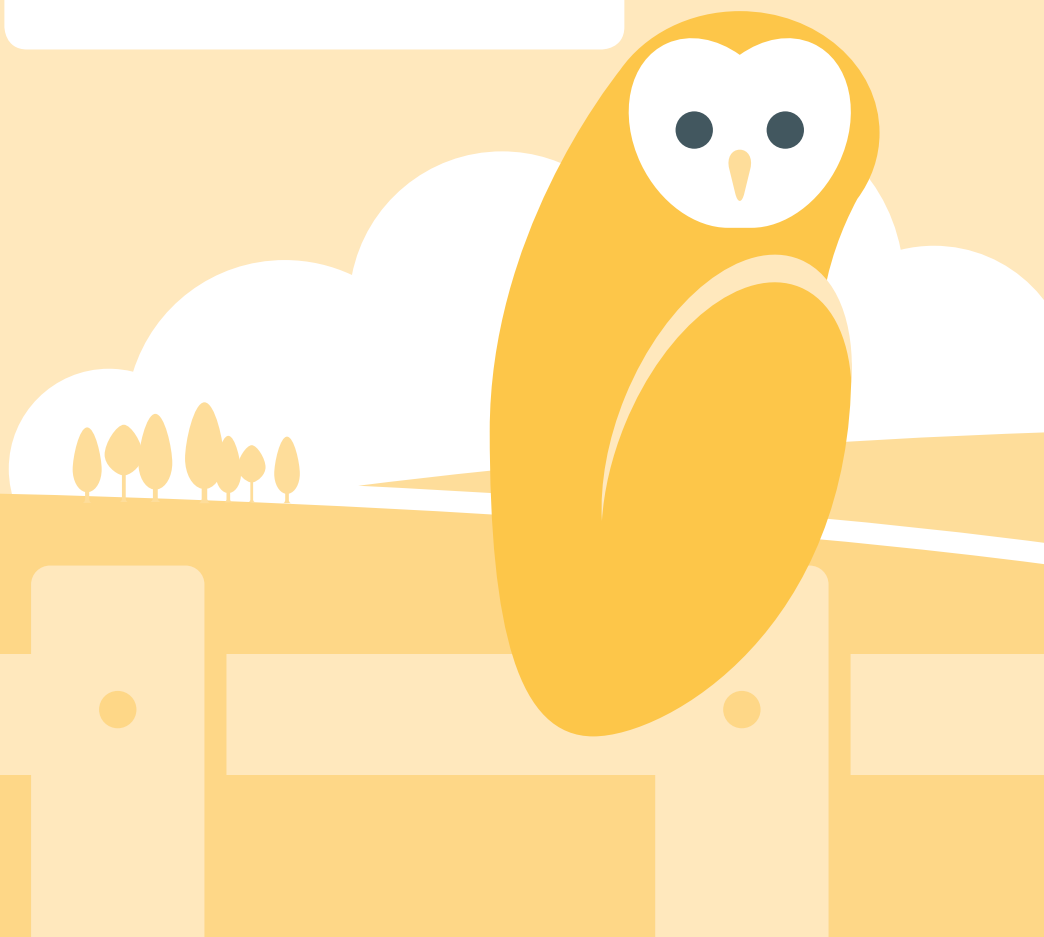


**Straightforward answers to...**

# **50 difficult questions**

on equality and good employment practice



The Equality and Human Rights Commission is an independent public body that promotes fairness and equality and ensures the laws on equality and discrimination are upheld. Our remit is to be here for everyone, including business.

This is one of a series of guides we are publishing on the issues smaller businesses tell us they need simple, straightforward advice on. We want our guidance to be relevant and useful to employers. Please get in touch with us about this guide and any other issues you would like us to cover in the future.

To request free copies of our previous publications in this series, or to make sure you receive our future guides, you can contact us directly using the telephone numbers at the back of this guide or through our website:

**[www.equalityhumanrights.com/hereforbusiness](http://www.equalityhumanrights.com/hereforbusiness)**

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### Our message to employers

We know that meeting the differing needs of employees is a careful balancing act for smaller business owners. In dealing with employment issues, you need to be fair to the individual concerned, keep your other employees happy and comply with the law – while at the same time making sure your business can prosper.

Doing the right thing by your employees should be about using common sense. But navigating the red tape of employment law and finding a solution to even everyday issues can be difficult and time-consuming, especially if you are a smaller business owner without in-house HR advice.

What we know, however, is that the overwhelming majority of employers want to treat their employees fairly and according to the spirit of the law. This guide answers 50 questions that represent many of the issues that smaller business owners face.

We have aimed to set out as simply as possible how you can protect yourself and your business from claims of discrimination, while running a business that treats everybody fairly.

Employment and equality law is meant to be there to protect the rights of employees while allowing businesses to thrive.

## Working hours and leave

### **1 My employees work in shifts. How do I organise the rota so that everyone is treated fairly?**

One of the best ways of making sure everyone is treated fairly is to give your team the responsibility for devising (or at least helping to devise) their own rota.

Tell your employees why you are asking them to help and explain how the rota system affects the business. Give them some idea about how you would like the system to work and what the business will gain from it.

You should have the final say on the rota but the chances are that your team will be able to agree among themselves a way of working that suits you and them. For example, some employees may prefer to work late shifts to fit in with their partner's working arrangements and childcare needs; some may prefer to work early shifts to free up the rest of the day for other interests, and others may wish to work fixed shifts.

Once the rota has been agreed, remember to check back with your team every so often to make sure it is still working for them and for the business.

This process will give your team some involvement with the business and their own way of working, and in return you'll earn their loyalty and commitment to making the scheme work.

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- 2 One of my employees has asked to take four weeks' consecutive leave as she is getting married. As a small business, I've made it known that I don't allow people to take such a large amount of time off all in one block. Would it be fair on the rest of my team to make an exception for this one employee?**

You should consider each request on a case-by-case basis, rather than having a blanket ban. During a quiet time, it might suit your business to allow the request providing there is adequate cover. Explain to your employees that the underlying rationale is determined by the needs of the business, which could mean during a busy period it may not be possible to grant a request.

- 3 A lot of my staff want to go on holiday in August but I can only allow a few of them to be away at any one time. Can I prioritise granting leave to those with children?**

You should consider all holiday requests on a first-come-first-served basis. You should tell your employees that at busy times of the year not everyone will be able to take the leave they want, and encourage them to plan ahead where possible. This may be easier for staff with children as school holiday dates are published at the beginning of the school year and they can plan their annual leave in advance.

#### **4 Do I have to give employees time off for religious holidays?**

Strictly speaking there is no general ‘right’ to time off for religious holidays, but you should be sensitive to the religious requirements of your staff.

For example, although you do not need to offer them extra time off above their usual leave entitlement, you should be sympathetic to any requests to use their leave to coincide with religious festivals.

You could also offer unpaid leave if this is a viable option, or allow your employees to swap shifts to attend religious festivals.

If you have a legitimate business reason for refusing, you should explain this to your employee. If you do not have a good business reason, you could be open to a religious discrimination claim.

#### **5 At the moment we have urgent work that means we need people to work on Sundays. Some of my employees say they need to attend church on Sundays – am I allowed to make them come to work?**

This depends on your employees’ contract of employment. If the contract doesn’t require your employees to work on Sundays, or allow you to require them on Sundays, then the answer is no.

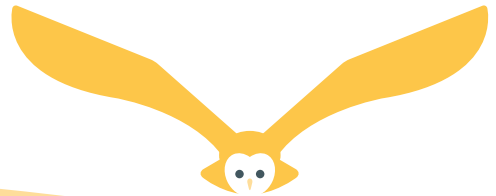
## 50 difficult questions

If you demand that your employees come into work when there could be another way around the problem, you could face a religious discrimination claim. Whatever decision you make, be open and transparent, and show your employees that you have done your best to accommodate their situation.

Before you decide, you should explore the following options:

- See if the work could be done on a different day of the week.
- Explain the situation to your employees. They may agree to work for a limited number of hours on Sunday before or after attending church, or they might agree to working on Sundays for a set number of weeks.
- Negotiate with other employees – could any other members of staff cover on Sundays?

In some circumstances, shop and betting workers have special rights protecting them from dismissal and detriment if they decide not to work on a Sunday. If your employees decide to do this, they should give you three months' written notice (although in some circumstances it is just one month). If you are in any doubt, you should contact Acas (see Directory).



**6 Business is slow and I need to reduce the number of hours my employees work. How do I choose whose hours to reduce?**

However you go about choosing whose hours to cut, it's important to be open and honest with your employees so they understand why you need to reduce their hours and how it will affect them.

Firstly, talk to your staff. Teams will often willingly share out a reduction in hours if it means that people can keep their jobs in difficult times.

Ask for volunteers. Some employees may be willing to have their hours reduced or take a pay cut instead of redundancy or the business closing. This is an approach many businesses have taken in the downturn.

Try to give your employees an idea of how long it will be before things return to normal.

## **Pay and terms of employment**

**7 I employ both permanent and temporary workers. Is it fair to offer overtime to the permanent workers before the temporary ones?**

Although you may feel more loyalty to your permanent workers, it is good practice to treat everyone in the same way.

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If your employees are generally keen to work overtime, ask for volunteers and share the overtime as equally as you can between all those who come forward.

If any of your employees are on a fixed-term contract, the law expects you to treat them the same as your permanent employees who do the same job. Agency workers can be treated differently but this will change once the Agency Workers Directive comes into force (likely to be around 5 December 2011).

### **8 Are my casual workers entitled to the same benefits as my permanent staff?**

All workers are protected against discrimination. However, only people legally classed as employees (those who work for you under the terms of a written, oral or implied contract) are entitled to benefits such as:

- statutory maternity leave
- statutory paternity leave
- parental leave
- statutory adoption leave
- time off for dependents
- the right to request flexible working, and
- time off for antenatal care.

But bear in mind that the legal definition of ‘employee’ is complicated. If you’re not sure of the status of someone who works for you, you should seek advice from someone with knowledge of employment law.

**9 Do I need to show how much I pay each employee to show that all employees are paid equally?**

No, but you could be discriminating against some of your employees if they are paid less than others for doing the same job in your business.

If you have a relatively large number of employees, you can conduct an equal pay audit to identify any pay gaps. Our website has a 5-step toolkit to help you do this:

**[www.equalityhumanrights.com/equalpay](http://www.equalityhumanrights.com/equalpay)**

If you run a smaller business where the numbers of, say, ethnic minority, female or disabled employees are very small, you could ‘spot check’ their salaries against their white, male or non-disabled colleagues doing similar jobs.

You don’t need to publicly show how much you pay each employee, but if you find any pay gaps you should resolve these unless there are sound non-discriminatory business reasons for the gap.

**10 One of my employees has asked if we can have trade union recognition. I’m not sure about this – how do I go about arranging it and what’s in it for me?**

Trade union recognition and collective bargaining can be complex and is sometimes compulsory. If your business has fewer than 21 employees you are exempt from statutory trade union recognition.

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The simplest way to accept a trade union as the authorised representative of your employees is to agree to a trade union request to be granted trade union recognition.

Having trade union recognition can benefit your business by:

- simplifying the negotiation of terms and conditions by having a single point of contact with employees, and
- making workers feel more involved in the way the business is run.

## Recruitment and promotion

**11 I only employ a couple of people who are from ethnic minorities but my customer base is quite diverse. When I next recruit, what can I do to make sure that my workforce is more balanced?**

You should always choose the candidate with the most merit, based on objective criteria such as their skills, experience and qualifications. If you don't, you could be accused of discrimination from unsuccessful candidates.

There are, however, a number of steps within the law that you can take to increase the number of applications you get from ethnic minority candidates. You could consider the following:

- Advertising your vacancies in media aimed at people from ethnic minorities as well as in a broad range of other media.
- Talking informally to your employees to help you understand why your business is not attracting ethnic minority workers and what you can do to improve the situation.

- Building links with local ethnic minority communities, such as sponsoring events to raise the profile of your business or building relationships with local community and faith groups.

**12 I have two employees at the same level, one of whom has a disability, and I want to promote one of them. How I do promote the employee without a disability, who I feel is better suited to the job, without it looking as though I am discriminating against the one who has the disability?**

Make sure your appointments are fair and transparent, ideally by advertising the position within your business. Write a 'person specification' for the job and then assess each candidate against this. You should appoint the most suitable person for the promotion.

Make sure the person specification does not disadvantage anyone because of their disability.

Where you can, make 'reasonable adjustments' to the job to overcome any barriers. Remember that you can get financial support under a number of government schemes such as Access to Work (see Directory) to help you make reasonable adjustments for your disabled employees.

By making sure that a disabled employee has any necessary reasonable adjustments to enable them to do the role as well as any other employee, it should be clear that you have not discriminated if you choose to promote another employee.

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### **13 There are very few women in senior positions in my business. When I next make a senior appointment can I positively discriminate and promote a woman to redress the balance?**

No. If you appoint a woman on the basis of her gender, you would discriminate against any male candidates.

However, you are right to be concerned if there are few senior women in your business and it makes good business sense to try to address the problem. You could try the following:

- Preparing your employees for roles in senior management by offering training in areas such as leadership and decision-making to encourage them to be more confident about applying for more senior roles. A mentoring scheme could be a particularly good way of achieving this.
- Making a conscious effort to attract more women to your senior management vacancies. You could add a statement to job adverts welcoming applications from women along the lines of: ‘Applications from women would be particularly welcome as they are currently under-represented in our workforce’.
- Making sure your business is a better place for women to work by having clear policies in place on flexible working, pregnancy and maternity leave, childcare, and equal pay.

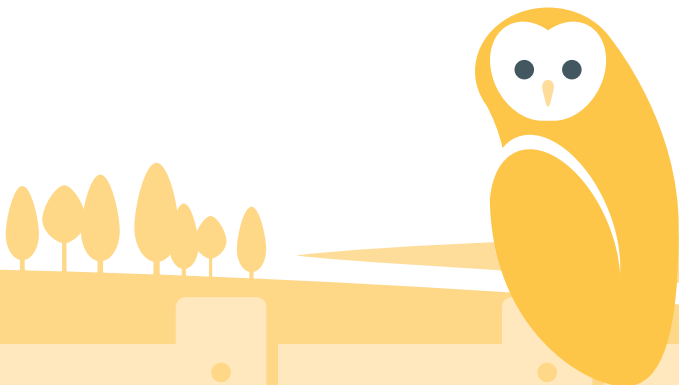
**14 I have two employees up for promotion who look the same on paper. However, one is a recently married younger woman and I assume she will want to start a family soon. How can I give the other person the job without looking like I'm discriminating?**

You can't. Basing your decision on your assumptions about a candidate's personal circumstances in this way would be automatically classed as sex discrimination.

You should advertise the promotion internally and appoint the best candidate for the job. To avoid a discrimination claim, you should use objective criteria to assess each candidate's skills, qualifications and experience.

If your female employee decides to start a family it doesn't need to be a problem for either her or your business. Successfully managing an employee who becomes pregnant is an essential part of being a good employer and can lead to better morale and a more productive workforce. For further advice, visit:

**[www.equalityhumanrights.com/pregnancytoolkit](http://www.equalityhumanrights.com/pregnancytoolkit)**



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**15 I have an all-female team and a man has just applied to work here. He is very well qualified for the job and I would love to employ him – but I'm not sure he'd be made to feel as welcome as a woman would. I wouldn't want him to be unhappy and I also don't want to create an additional risk of a discrimination claim. What should I do?**

You need to make sure that you recruit the best person for the job. Don't make assumptions about how a new member of staff will be welcomed into your team simply because they are different to your other employees. Many employees value working in a diverse team and would welcome someone who can contribute in different ways to existing staff. You could be open to a sex discrimination claim from the male applicant if you don't offer him the job because of his gender.

If you suspect there may be prejudice from your employees against an individual, you should address this. One way to tackle the situation could be to provide equality training for all your staff to help them understand the benefits of a diverse workplace.

**16 A senior position in my business has become vacant and I'm looking to promote someone internally. There are two very eligible candidates who both have a good deal of experience. One, however, is in their 60s and is likely to retire in the next few years while the other is in their early 50s. Can I promote the younger employee as I think they will remain in the position for longer?**

Your appointments should be fair and transparent, ideally by advertising the position within your business. Write a 'person specification' for the job and then assess each candidate against this. You should appoint the most suitable person for the promotion.

If you promote the younger candidate because of their age you risk an age discrimination case from the older candidate. You have no guarantee the younger candidate will remain in position longer simply because of their age: they may leave for another job opportunity or take early retirement.

## Health and disability

**17 One of my employees tends to make their medical and dental appointments during working hours. Another employee has complained about this as they themselves always make their appointments in their own time. How should I manage this issue?**

You are not required by law to allow your employees to go to medical appointments in work time, but many employers do allow employees to take time off if appointments are at the beginning or end of the working day to minimise disruption. Due to working hours and the opening times of doctors' surgeries/hospitals/dental surgeries it may not always be possible for staff to arrange appointments in their own time. You may wish to accommodate employees' appointments by giving them the time off or asking them to make up the time they have taken.

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There are two main exceptions to this: pregnant women and disabled employees. By law you must allow women to take time off to attend antenatal appointments. Equally you must make reasonable adjustments for employees with a disability, and allowing time off for medical appointments is considered to be a 'reasonable adjustment'. You might want to consider writing a brief policy about time off which outlines who is entitled to time off and for what reason.

**18 An employee has been coming into work but is obviously ill with cold/flu symptoms. I am worried that this could affect other members of staff but the employee refuses to see a doctor. How can I best encourage them to seek medical treatment?**

A good start would be to talk to your employee about it. You should explain your concerns and ask if there is anything you can do to help. Your employee may have concerns about taking time off because of their workload, so you should discuss cover to allow them time to see a doctor.

Avoid making it look like you are forcing your employee to seek medical treatment. Even with the best of intentions on your part, this could be considered harassment, particularly if your employee's health symptoms are the result of a disability.

As an employer, you have a duty of care to your other employees to provide a safe place of work. If, for example, you have an employee displaying symptoms of flu, this could pose a significant risk to some employees, such as pregnant women.

In this case, though the situation needs careful handling, you may need to take firmer action. You may need to tell your employee to take the day off to seek medical attention. Depending on their contract, this may be on full pay or sick pay.

If you suspect your employee has a significant contagious illness and they refuse to see a doctor, you might need to suspend them on full pay and tell them to see a GP.

If your employee continues to refuse to seek medical attention, you could treat the matter as a disciplinary offence (failing to follow a reasonable management instruction).

**19 I do not currently employ anyone with a disability. Do I still need to make my workplace comply with disability accessibility laws, for example by installing a lift?**

Not unless your workplace is open to any members of the public.

If, however, you are planning on refurbishing your premises, it would be good practice to try to make your premises as accessible as you can. Installing a lift is one option, but other smaller changes you can make include fitting an intercom by your reception door for people with mobility impairments and providing hearing loops for people who are deaf or hard of hearing. Simple changes like these will help make sure your office is accessible to any disabled employees you take on in the future or if any of your existing employees become disabled. It may also encourage more disabled people to apply to work for you.

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**20 I have a deaf employee who does not want to be treated as a disabled person. Although they do their work well, there are things I could do to make it easier for them to do their work. How can I make sure they get this additional support whilst treating them equally?**

You have a duty by law to make ‘reasonable adjustments’ so your disabled employees are not disadvantaged compared with non-disabled employees. Most disabled people become disabled during their working life. The law says that you must do all you reasonably can to do establish whether your employee has a disability and if you can make any reasonable adjustments for them. If you think there are adjustments you can make that would make it easier for your employee to do their job, you can suggest these in a sensitive and private way.

You might have already done everything you can to make it easier for your deaf employee to do their job. If they have said they don’t want any further adjustments made for them, you don’t need to force the issue. Instead, give them regular opportunities to talk to you, and make it clear they can and should approach you if their circumstances change and they need any adjustments or have any concerns.

Don’t forget the Access to Work scheme may pay towards the cost of any equipment your employees might need, adapting your premises to meet their requirements, or for a support worker to allow them to do their job. For more information about the scheme, contact Directgov (see Directory).

Not only is it good practice to make changes for your current employees, any changes you make will also benefit future employees too.

**21 One of my employees has a physical disability and I check in with them far more than my other employees. I am trying to be supportive but could this be regarded as discrimination?**

The key here is to use your discretion and common sense. As long as your behaviour is constructive and is welcomed by the employee, you should carry on as you are.

If, however, your actions are unnecessary and are seen by your employee as an unwelcome interference, it could be considered disability-related harassment.

If you have regular appraisal meetings with your employees, you could use these to ask your disabled employee whether they have everything they need to work effectively. In doing so, you may find that you don't need to check up on them any more than you would with your other employees.

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**22 One of my employees has chosen to leave the business and has asked me for a reference. They are a good worker but have asked me for several special entitlements because they have a disability. Can I mention this in their reference?**

No. If you mention such requests in a negative way, you could face a claim of disability discrimination. This is because the Disability Discrimination Act continues to protect individuals from discrimination, even once the employment relationship has ended.

Disabled people should be able to ask for reasonable adjustments so they can carry out their work as easily as possible.

**23 One of my staff has poor personal hygiene, something which the others in the team and some of my customers have begun to comment on. How can I broach the subject with her fairly and sensitively?**

While you don't have to deal with this, it would make sense to tackle the issue if it is causing a significant problem in your workplace. If an employee has poor personal hygiene you should broach the subject with care.

Bear in mind that your employee may be unaware of the issue. You should raise the issue gently and in a private area of your workplace. Although the conversation may be embarrassing, you should show empathy and be supportive, allowing your employee some time to take in what they are being told.

If the employee has a direct manager who is less senior than you as the owner of the business, it might be easier on the employee if they speak to them directly.

## Redundancy

**24 I have to make some redundancies but a few of my staff are single parents and I know that this would be particularly hard on them and their families. Can I take into account the home situation of employees when making redundancies?**

Even with the best of intentions, such an approach would be unfair on your other employees and potentially open you up to legal difficulties. It's best to use objective selection criteria which make sure the remaining workforce has the balance of skills and experience needed for your future requirements.

For more information about making redundancies fairly and within the law, contact us for a copy of our Short guide to managing the downturn and preparing for recovery, or download a copy from our website at:

[www.equalityhumanrights.com/hereforbusiness](http://www.equalityhumanrights.com/hereforbusiness)

## Maternity and paternity leave

**25 Am I allowed to contact someone with work while they're on maternity leave?**

In general, it's always a good idea to keep in touch with your employees on maternity leave and encourage them to stay in contact with you. You should keep them informed of issues

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which may affect them. For example, you should keep them informed of any relevant promotion opportunities or job vacancies that arise during their maternity leave.

It can also help you both to prepare for your employee's return to work. Your conversations should be regular but not excessive or intrusive – it's a good idea to agree scheduled catch-ups with your employee before she goes on leave.

Your employees on maternity (or adoptive) leave can work for up to 10 days without any effect on their statutory maternity pay (SMP). These are known as Keeping in Touch days (KIT days) and can be used for training, attending team meetings/away days, conferences or other activities to help them keep in touch with the workplace.

Neither you nor your employee can demand that she takes any KIT days, so you need to work this out together before she goes on leave. An employee that takes KIT days is entitled to SMP as well as extra pay for KIT days; you should agree this rate together. If she takes more than 10 KIT days, her SMP will be reduced, so you may wish to take this into account when agreeing a pay rate for extra work.

When making these agreements, remember that if you pressure your female employees to work during their maternity leave it could be seen as discrimination, so make sure both of you are happy with the arrangements. Don't forget the first two weeks (four weeks if you run a factory) after birth are known as Compulsory Maternity Leave. This means your employee can't return to work (including working from home) until this period is over.

**26 One of my employees is on maternity leave. Can I ask her to return to work on a part-time basis even though she previously worked full-time?**

No. By law a woman returning to work after her first 26 weeks of maternity leave – known as Ordinary Maternity Leave – is entitled to come back to the same job she was doing beforehand.

If one of your employees takes further maternity leave – known as Additional Maternity Leave – she is entitled to return to the same job unless this is not reasonably practicable for you (for example because the job no longer exists). However, you would need by law to offer her a job that is appropriate for her to do and on terms and conditions that are no worse than her previous job.

**27 What is paternity leave?**

Since April 2003 there has been legislation that means if one of your employees' partners (including same-sex relationships) has had a baby or has adopted a child, they're entitled to take up to two consecutive weeks off work.

Paternity leave can be taken up to 56 days after the birth or adoption of your employee's child. While on leave, you must pay them a statutory rate or 90 per cent of their average weekly salary (whichever is lower). You can reclaim some or all of these payments from the government as you can for maternity pay. Contact HM Revenue and Customs for more advice on how to do this (see Directory). The amount payable can be found at: [www.direct.gov.uk](http://www.direct.gov.uk)

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### **28 What do I need to do to know about the law on paternity leave?**

While your employee is on paternity leave, they are still entitled to the same conditions of employment they normally have at work. This means you should ‘keep them in the loop’ and tell them about any promotion or training opportunities, and any perks such as a car or gym membership while they are away.

Some employers now offer enhanced paternity leave and pay to attract and retain good employees. If you want to do this you could:

- offer longer paternity leave than just two weeks
- pay your employees at their full salary/wage during their paternity leave instead of statutory pay rates, and
- offer the scheme to all parents who work for you irrespective of the ‘length of service’ qualifying period (instead of the 26 weeks an employee needs to have worked for you to qualify for paternity leave by law).

### **29 What is ‘time off for dependants’?**

As a small business owner you may have already allowed some of your employees time off for emergencies because of someone who depends on them. What you might not know is this is a statutory right.

All your employees have the right to a reasonable amount of unpaid time off work to deal with an emergency involving a dependant.

Dependants include spouses, partners, children, parents or people who live with your employee (not lodgers). They can also include people such as elderly neighbours who may rely on your employee for their care.

Your employees can take time off when a dependant:

- becomes ill, or is injured or assaulted, or
- goes into labour.

They can also take leave when they need to:

- make longer-term care arrangements for a dependant who is ill or injured
- arrange or attend a dependant's funeral
- deal with an unexpected problem in care arrangements, for example if a childminder is unexpectedly unavailable, and
- deal with an incident involving your employee's child during school hours.

Your employee's right is to reasonable time off and will vary depending on the circumstances. It should simply allow them to deal with the immediate problem and put any other necessary care arrangements in place. For more information, contact Business Link (see Directory).

## Things people say and do

### **30 Can I put a ban on office relationships? They distract people and can cause trouble.**

Office relationships can and do happen, and a common-sense approach is probably best.

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While you could put a ban on them, for example through a clause in employment contracts, some employment lawyers might consider this as falling foul of the law and potentially restrictive and intrusive.

Instead, you could develop a code of conduct for office relationships. This could include:

- behaving decently at work, and
- agreeing to work professionally if the relationship ends.

Your code should also address a situation in which a manager becomes involved with a member of staff they are directly responsible for as this could affect appraisals and pay reviews. Regular reviews and dialogue with employees and an open culture will help to create a happy working environment.

### **31 A couple of my employees are discussing a colleague's sexuality behind their back. Is this discriminatory?**

Speculating about a colleague's sexuality can constitute harassment under the Employment Equality (sexual orientation) Regulations 2003. If one of your employees is harassed by colleagues, or even their manager, about their sexuality, your employee can make a complaint and take their case to an employment tribunal if you don't deal with it properly.

You should make it clear to your employees that it is unacceptable and unlawful for them to victimise another member of the team on the grounds of their sexual orientation.

Remember, harassment is subjective and what might appear legitimate or light-hearted to some people may well be unsettling and intrusive to others.

**32 One of my employees frequently uses racist language in the office. While this is not targeted at anyone in particular, should I speak to them about their language?**

It is your responsibility by law to make sure your employees are not subject to racist language that they may believe offensive or inappropriate (even if the language is not targeted directly at anyone).

You should make it clear to all your employees that such language is not tolerated in the workplace and could lead to disciplinary action.

Consider developing a code of conduct that bans racist behaviour and identifies it as gross misconduct. By having a code of conduct that you can enforce, you can help protect yourself from allegations of racial harassment.

**33 One of my staff often calls me ‘love’. I find this uncomfortable. What can I do to get them to stop?**

For many people, terms of endearment, such as ‘dear’, ‘love’, ‘honey’, ‘sweetie’, and ‘darling’, are seen as inappropriate in professional relationships regardless of who is using them. Rather than asking your employee not to call you ‘love’, which could be considered discriminatory if you don’t object to other

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employees using this or similar terms, you should tell all your employees that you don't consider terms of endearment to be professional language for the workplace.

**34 There is an employee in our office who fusses over other members of staff. Some are fine with this, where others find it annoying and patronising – is it discriminatory to tell them to stop?**

No, but it would probably be more sensible to leave it up to your employees to sort this out. If they find their colleague's behaviour annoying and patronising they can ask them to stop.

**35 A well-meaning employee keeps inviting other staff to come to their church – is this appropriate?**

As long as your employees do not feel harassed by these invitations, there is no need to take any action. Imposing a ban is likely to create more bad feeling among your employees and cause more problems than it solves.

If an employee does feel harassed by the invitations, you should take it up with the individual concerned and explain why it isn't acceptable.

**36 One of my employees has been trying to encourage colleagues to vote for the political party they are involved with. Can I tell them to stop?**

Yes. As an employer you have the right to prevent your workplace from being used to canvass for any political party.

That said, you would need to make sure this rule covers all political parties and not just the one your employee has been canvassing for.

## Workplace culture

**37 One of my employees often turns up to work late because they care for their elderly mother.**

**As much as I sympathise with their situation, I worry that this encourages others to turn up late – would I be discriminating if I were to give them a formal warning?**

Employees caring for elderly relatives have the right, under the Work and Families Act 2006, to request flexible working. Flexible working can include a range of measures from changing start or finish times, to reducing or compressing hours worked. Although you have the right to say no to a request, you must demonstrate a sound business reason for saying no.

As your employee would in any case be eligible to request flexible working, you may wish to address it with them. Allowing them to start (and perhaps finish) work later could accommodate their caring responsibilities, while still allowing them to contribute fully as a member of your team. It would also formalise their working hours, take away the risk that others will be encouraged to turn up late and ensure that your other employees realise they are working as hard as anyone else.

## **50 difficult questions**

### **38 I hold the door open for my female employees because I think it is good manners but they sometimes take offence. Am I being sexist?**

For most people holding a door open is nothing more than common courtesy. However, if someone takes offence at this, it would be sensible not to do it.

To avoid any claims of sexism it might be a good idea (and good manners) to hold the door open for everyone, regardless of their gender.

### **39 At the moment, only the women in my office make the tea and coffee. Does this mean I'm discriminating?**

This very much depends on whether it is part of their job requirement. For some roles, such as personal assistants and office managers, it is a requirement of the job to arrange refreshments. If this is the case then you are not discriminating because if you were employing a man in the role he would also be required to make the tea and coffee.

If, however, this is not part of the job requirement and you or other members of staff only ask women to make tea and coffee, you would leave yourself open to challenge.

**40 In my business, all my black employees happen to have their desks in a separate office because they are all at the same level. Is this discriminatory?**

It is unlikely this would be considered discriminatory if there is a valid reason for the employees to be sitting together, such as they are all in the same team. To avoid the appearance of discrimination, however, you should make sure other staff at the same level sit together as well (unless there is a legitimate business reason for them not to).

**41 Several of my employees do not speak English as their first language and often talk to each other in their native language. This makes me, and other employees who cannot understand them, feel alienated. Can I make it a rule that my employees only speak in English when they are at work?**

Yes. It is reasonable to ask all your employees to speak a common language in the workplace as this is conducive to productivity, and will avoid misunderstandings in relation to legal, financial, and health and safety issues.

You should be able to present a sound business case so your employees don't feel as though they are being discriminated against. While it is reasonable to ask all employees to speak a common language while on the job, you shouldn't insist this happens during breaks as this could be discriminatory.

## 50 difficult questions

The exception to this rule is the Welsh language, as it is a protected language. More information on the requirements of the Welsh Language Act can be found on the Commission's website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

**42 A lot of guidance on equality issues talks about having written policies in place within a business. But I am put off doing this because I think it would be massively time consuming and I wouldn't know where to start. How complex do such policies need to be?**

Written equality policies don't need to be time consuming or complex. There are sample copies of equality policies, bullying and harassment policies and other useful equality tools freely available to download from Acas (see Directory). These policies can be quickly adapted to meet your business needs and then distributed to your employees by email, in employee handbooks or on intranet sites/staff notice boards. It is important your employees are aware of these policies, and what it means to them to make sure your whole business is fair.

### Dress codes and uniforms

**43 One of my employees is a sloppy dresser. Would it be fair for me to tell them to smarten up?**

Whether or not you have a written dress code, you can expect some minimum standards. It would be best to raise the matter informally before disciplining an employee who consistently turns up to work dressed unacceptably.

To avoid a situation such as this, you may wish to implement a dress code for both yourself and your employees to explain the standards that are expected in the workplace. A dress code can be as prescriptive or as informal as is appropriate for your business – its contents are very much a question of common sense. There are no legal principles that demand the inclusion of any one element. However, a well-crafted dress code will avoid leaving you open to claims of discrimination.

Your dress code should show a professional and favourable image of your business. If you place restrictions/requirements on one sex, then you should place comparable restrictions/requirements for the other sex, although they don't have to be identical. They should be proportionate though and go no further than to present a professional image of your business.

In terms of religious discrimination problems can occur if your dress code:

- bans the wearing of religious symbols
- bans the wearing of demure clothing such as the hijab, burka, nicquab, shalwar-kameez, and so on, and
- requires the wearing of clothing/symbols likely to be offensive to some religions.

If you allow enough flexibility to wear smart clothing that is consistent with religious requirements you are unlikely to have a problem.

## 50 difficult questions

### **44 I want my staff to wear a uniform which would make it compulsory for female employees to wear skirts. Is this discriminatory?**

You can stipulate to some extent the appearance of your employees, particularly those who have a customer-facing role. Trousers are now a conventional form of business dress for women and it is possible, if not likely, that an employment tribunal could find that an employer who refuses to let a female member of staff wear trousers is discriminating. It would therefore be sensible to allow your female employees to choose whether to wear skirts or trousers.

## Flexible working

### **45 Why should I introduce a flexible working scheme?**

Many businesses, large and small, already offer flexible working in one form or another. Flexible working offers your business greater potential for:

- Attracting better employees – many prospective employees are looking for a better balance between work and personal lives.
- Keeping your employees for longer – if the working environment you provide is a happy one, it is more likely your employees will want to carry on working for you.
- Saving money on overheads for office space if some of your employees work from home. Likewise, machinery and other equipment can be used more efficiently if your employees work in shifts.

- Being open for business and accessible to your customers for more hours per day.
- Better co-operation, efficiency and productivity from a team that knows you're sympathetic to their needs and actively committed to providing them with an acceptable work-life balance.

Some businesses offer flexible working on an ad hoc basis and others have a formal scheme. A formal scheme that you make known to your employees helps signify your intentions to be fair and consistent in offering flexible working to employees who want it and can make a business case for it.

#### **46 Do I have to offer flexible working to everyone?**

No. By law you are required to consider requests for flexible working from:

- parents with children up to and including the age of 16
- parents of disabled children under the age of 18, and
- carers of dependent adults.

This is known as the 'right to request'. However, many businesses find it makes more sense to consider all requests for flexible working, regardless of the employee's family or caring responsibilities.

If one of your female employees is returning from maternity leave, for example, she may feel unable to work full time. If she asks to reduce her hours and you can't do so your employee may have a potential claim of discrimination unless you can objectively justify that requirement.

## **50 difficult questions**

Talk to your employee about her commitments as she may be able to work flexibly to meet your business requirements. There may be an alternative work pattern that works for you both. If you turn down a request on business grounds, be clear about the reasons and prepared for the possible consequences. If you are dependent on the employee, consider who has the skills to replace her if she resigns. Try to find a compromise.

Nobody expects flexible working to suit every business and every situation. If you have a sound business reason for not allowing flexible working then you are allowed by law to turn down a request (even if the request has come from a parent or carer).

### **47 Logistically, I can only offer flexible working to a minority of my employees. Is this fair or legal?**

If you decide to offer flexible working to some employees and not others, you must be able to justify this with a sound business reason. You must consider each request separately and fairly. You should not discriminate between employees but granting one request does not mean that you will be bound to grant every request. It is also a good idea to keep a written record of all discussions on the issue in case your decision is challenged. You should be mindful that there are certain groups of people – parents with a child under 16 (or a disabled child under 18) and people helping to look after an adult relative who needs care – who, by law, have a right to ask you if they can work flexibly.

There may also be people who have a legal right to work flexibly where that is necessary to comply with a duty to make reasonable adjustments or to avoid indirect discrimination. This will be so only where flexible working is a reasonable adjustment or, in the case of indirect discrimination, where any refusal to grant flexible working would be unjustified.

There is a procedure that must be followed by all employers who receive a flexible working request from individuals eligible to make such a request and strict time limits to comply with. Further information is available at:

**[www.businesslink.gov.uk/flexibleworking](http://www.businesslink.gov.uk/flexibleworking)**  
and on the Acas website (see Directory).

#### **48 One of my employees is a single parent.**

**They are very hardworking and committed to their job, so sometimes I have been flexible with their hours when they have had family demands. Am I being unfair if I don't do the same for my other employees?**

Many employers have informal flexible arrangements such as this one and they can work well for both the employee and the business. In this case, flexibility allows you to get the best out of a good worker by making their work–life balance easier.

Where employees have short-notice absences, they normally 'repay' lost time by making up their hours. But if you are concerned that allowing your employee flexibility is unfair on the rest of your team, you should make it clear to the others that you are happy to consider all requests for flexible working.

## **50 difficult questions**

Provided that you consider each request on its own merits and you explain your reasons for any refusals carefully, you will be treating your staff fairly.

Informal flexible working arrangements can work well, but you may want to consider making longer-term fixed arrangements to ease disruption to your business and help your other employees work flexibly if they want to. Doing so may increase productivity among the rest of your team as it will make them feel valued and trusted.

### **49 How can I ensure my employees are working if they are not in the office?**

As with any employer–employee relationship, you need to establish an element of trust. It is, however, often the case that employees who have been offered the opportunity to work flexibly become more loyal to their employer and are willing to ‘go the extra mile’ in return.

There are several things you can do to make sure your employees work productively when they are not in the office:

- Measure progress in terms of outputs. Agree deadlines with your employee so that they know what they need to deliver and when, and ask them to report back to you regularly (for example weekly) with an update on their progress.
- Keep in regular contact with them; they may not be in the office but they should be available to you by phone or email.
- Encourage them to come into the office on a regular basis for important team meetings, training and even social events.

If you suspect someone is abusing their flexible working arrangement then you should deal with the problem immediately and fairly. Flexibility is not an excuse for poor self-discipline and you should expect the same high standards of an employee who is working flexibly as you would for anyone working a traditional 9am to 5pm pattern.

### **50 Can I only offer flexible working to the employees I trust not to take advantage of me?**

The law understands that different types of flexible working may not suit every individual or every job.

If you would like to offer flexible working but are concerned that someone may abuse the arrangement, you should consider offering a trial period first. You should make clear your expectation that they will work productively and efficiently.

You should consider each request for flexible working on its individual merit. If you cannot offer flexible working to your employee, you need to clearly explain the reasons for refusal.



## 50 difficult questions

### Directory

More detailed information about many of the issues covered in the guide is available on our website:

**[www.equalityhumanrights.com/hereforbusiness](http://www.equalityhumanrights.com/hereforbusiness)**

We have also listed a number of other organisations below which we think could be helpful to you.

## Advice for employers

### **Acas**

[www.acas.org.uk](http://www.acas.org.uk)

08457 474 747

Provides advice and guidance on a wide range of employment issues such as flexible working and equal pay.

### **Department for Business, Innovation and Skills (BIS)**

[www.bis.gov.uk](http://www.bis.gov.uk)

020 7215 5000

Provides guidance on employment rights and responsibilities.

### **Business Link**

[www.businesslink.gov.uk](http://www.businesslink.gov.uk)

08456 009 006

Offers practical advice on a range of issues including recruitment, pay and disciplinary procedures.

### **Central Arbitration Committee**

[www.cac.gov.uk](http://www.cac.gov.uk)

020 7904 2300

For employers seeking trade union recognition, the CAC website includes step-by-step guidance as well as application forms.

### **The Chartered Institute of Personnel and Development (CIPD)**

[www.cipd.co.uk](http://www.cipd.co.uk)

Provides introductory guidance on a range of employment issues including discrimination in the workplace, pay and flexible working.

### **Employers' Forum on Disability**

[www.efd.org.uk](http://www.efd.org.uk)

020 7403 3020

Provides advice on employing and conducting business with people with disabilities.

### **Her Majesty's Revenue and Customs (HMRC)**

[www.hmrc.gov.uk/employers](http://www.hmrc.gov.uk/employers)

08457 143 143

Provides information and advice for employers on issues such as statutory maternity and paternity leave, statutory pay, redundancy and sick leave. There is also a tool to calculate pay for sick, maternity and paternity leave.

## **Schemes that support employers in creating fairer workplaces**

### **Access to Work**

[www.direct.gov.uk/en/disabledpeople/employmentsupport/workscchemesandprogrammes](http://www.direct.gov.uk/en/disabledpeople/employmentsupport/workscchemesandprogrammes)

London, East England and South East England: 020 8426 3110

Wales, South West England, West Midlands and East Midlands:  
02920 423 291

Scotland, North West England, North East England and  
Yorkshire and Humberside: 0141 950 5327

Employers can access this scheme to obtain extra funds to help them buy the necessary equipment or make the required alterations to their premises so their disabled employee(s) can come to work and do their job(s) properly. There are also funds available to pay for support workers if required.

### **Local Employment Partnerships**

[www.jobcentreplus.gov.uk/JCP/Employers/lep](http://www.jobcentreplus.gov.uk/JCP/Employers/lep)

0845 600 8192

A scheme run by the Department for Work and Pensions and Jobcentre Plus which aims to help businesses reach and recruit potential employees from different backgrounds to create a more diverse workforce.

### **Train to Gain**

[www.traintogain.gov.uk](http://www.traintogain.gov.uk)

0845 600 9006

Advice and resources for businesses looking for support in training their staff.

## Where to direct employees

### **Acas**

[www.acas.org.uk](http://www.acas.org.uk)

08457 474 747

Provides advice and guidance on a wide range of employment issues such as flexible working and equal pay.

### **Directgov**

[www.direct.gov.uk](http://www.direct.gov.uk)

By browsing under 'employment', your employees will be able to access guidance on a wide range of issues.

### **NHS Carers Direct**

[www.nhs.uk/carersdirect](http://www.nhs.uk/carersdirect)

0808 802 0202

Gives information about carers' rights in employment and beyond, as well as the services available to them.

### **Pay and Work Rights Helpline**

[www.payandworkrights.direct.gov.uk](http://www.payandworkrights.direct.gov.uk)

0800 917 2368

This helpline provides advice on government-enforced employment rights.

### **Trades Union Congress**

[www.worksmart.org.uk](http://www.worksmart.org.uk)

Provides information for employees on a range of issues.

We believe the overwhelming majority of employers want to do their best by their employees – and we want to be useful and relevant in helping them do so.

To make sure you receive future guides in this series, or to suggest topics you would like us to cover, please get in touch.

You can email us at:

[hereforbusiness@equalityhumanrights.com](mailto:hereforbusiness@equalityhumanrights.com)

If you require this publication in an alternative format and/or language, please contact the relevant helpline. All publications are also available to download and order in a variety of formats from our website.



## Contact us

You can find out more or get in touch with us via our website at: [www.equalityhumanrights.com/hereforbusiness](http://www.equalityhumanrights.com/hereforbusiness) or by contacting one of our helplines.

If you require this publication in an alternative format and/or language please contact the relevant helpline to discuss your needs. All publications are also available to download and order in a variety of formats from our website.

### **Equality and Human Rights Commission helplines**

8am–6pm, Monday to Friday.

#### **England:**

Telephone 08456 046 610

Textphone 08456 046 620

Fax 08456 046 630

#### **Scotland:**

Telephone 08456 045 510

Textphone 08456 045 520

Fax 08456 045 530

#### **Wales:**

Telephone 08456 048 810

Textphone 08456 048 820

Fax 08456 048 830

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