

Transgender

and your rights under the Gender Recognition Act 2004

Overview

Transsexual people who are aged at least 18 now have full legal recognition in their acquired gender. The Gender Recognition Act enables transsexuals to apply for 'gender recognition', which gives them the right to marry in their acquired gender and get a new birth certificate stating their new sex.



Procedure

To qualify for full legal recognition in your acquired gender, you must apply to a Gender Recognition Panel, showing you:

- Have or have had gender dysphoria; or
- Have had gender reassignment surgery; and in each case
- Have lived in the acquired gender for two years before making the application; and
- Intend to live permanently in your acquired gender

If your application is successful, you will receive a Gender Recognition Certificate (GRC) and all the rights and responsibilities of your new gender, including access to state and occupational pensions and employment rights. You do not have to, or intend to, undergo surgery to get a gender recognition certificate.

Gender Reassignment Discrimination

Gender reassignment is a protected characteristic covered by the Equality Act 2010 ("The Act"). A person has protection if they are proposing to undergo, are undergoing or have undergone a process of reassigning their sex. There is no requirement for medical supervision to be covered by the Act; it focuses on a personal process not a medical process.

It is unlawful under the Act to discriminate against an individual who is protected under the gender reassignment provisions.

Direct Discrimination

Direct discrimination occurs where, because of gender reassignment, an individual is treated by their employer less favourably than the employer treats or would treat others. Direct discrimination cannot be justified unless an employer can rely on limited exemptions.

It is also unlawful to treat an individual less favourably because they associate with someone proposing to undergo or who has undergone gender reassignment. In addition it is unlawful to treat a worker less favourably because it is perceived the worker is proposing to undergo/ is undergoing or has undergone gender reassignment.

There are also protections relating to absences from work for gender reassignment purposes.

Indirect Discrimination

Indirect discrimination occurs where an employer applies a provision, criterion or practice that applies across the board but which puts transsexuals at a particular disadvantage when compared with other persons. You must be put to that disadvantage. The conduct will then be unlawful unless it can be objectively justified by the force.

Victimisation and harassment

The Act also protects you from harassment and victimisation because you are going, or have gone, through the process of gender reassignment or intend to do so.

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Victimisation is when you are treated less favourably than someone else because you have complained or been involved in a complaint about discrimination. Harassment is when you are made to feel humiliated or intimidated by someone else's behaviour that is related to gender reassignment or is sexual harassment, being unwanted conduct of a sexual nature. In limited circumstances the force can also be liable for harassment by third parties such as customers and clients.

Disability Discrimination

You are protected under the Disability Discrimination Act if you have been diagnosed as suffering from gender dysphoria or a similar disorder which is permanent, or likely to last for more than 12 months.

This might include being dismissed because of long term absence on medical grounds while undergoing gender reassignment.

For more information please see our factsheet on "Disability Discrimination".

Lawful Discrimination

There are some very limited circumstances where your force can discriminate for instance, if they can show a genuine occupational qualification for the job to be done by someone who is not a transsexual person. The requirement must be crucial to the post and not a sham or pretext. It must be a proportionate means of achieving a legitimate aim.

There are also other exemptions concerning national security and limited positive action steps.

Time Limits

A claim of discrimination needs to be lodged at the Employment Tribunal within three months less one day of the date of the act of discrimination complained about. This time limit applies even if you are already going through the force's internal grievance procedure.

An act of discrimination which extends over a period of time is treated as having been 'done' at the end of that period. An act may extend over a period of time if it takes the form of some policy, rule or practice.

It can sometimes be possible to argue that a continuing campaign of harassment, or a continuing regime of discriminatory conduct, amounts to one act extending over a period of time.

A Tribunal does have the power to consider a claim that is brought out of time, if in all the circumstances of the case it considers it is just and equitable to do so.

Remedies

If a complainant is successful in their complaint of unlawful discrimination, the Tribunal may grant whichever of the following remedies it considers "just and equitable":

- A declaration on the rights of the parties
- A recommendation that the Respondent takes a particular course of action
- Compensation (plus interest)

Compensation may include awards for injury to feelings, aggravated damages, loss of congenial employment, and any actual and/or future financial loss, for example loss of earnings and pension losses.

There is no limit on the amount of compensation that can be awarded, but a complainant will only be compensated for the losses which they can show were directly caused by the unlawful discrimination as found by the Tribunal.

Mandatory ACAS Early Conciliation

If you are thinking about making an employment tribunal claim, you will first need to notify details of your claim to ACAS, who will then offer early conciliation to try to resolve the dispute. The conciliation period can be up to one month. If the claim does not settle, ACAS will issue a certificate confirming that the mandatory conciliation process has concluded.

There are changes to time periods within which to lodge claims to allow for the period during which a claim is with ACAS. The period within which a claim is with ACAS will not count for calculation of time limits; and if the time limit would usually expire during that period, or within the month after the certificate is issued, then you will have up to one month following receipt of the conciliation certificate in which to lodge a claim.

The process makes the calculation of time limits in employment tribunal cases more complicated. Claimants are advised to be aware of limitation issues and seek legal advice promptly. For further information on the ACAS early conciliation process visit: www.acas.org.uk

Employment Tribunal Fees

You have to pay a fee when you file your claim in the employment tribunal. Fees are payable when you issue your claim and prior to a final hearing. A fee remission scheme is in place- see the employment tribunal website at www.employmenttribunals.service.gov.uk for further details. The booklet on the website "EX160A Court and Tribunal fees – do I have to pay them?" Provides details for claiming a remission of fees.

If you need further assistance, in the first instance please contact your local Joint Branch Board.

W: www.slatergordon.co.uk/policelaw

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