

Equality and Human Rights Commission Equality Act starter kit

# Dismissal and the Equality Act

An exercise

## Exercise: Dismissal

A large organisation has had some problems recently and its equality policies have been inconsistently applied. Managers have been told to make sure that staff are 'kept up to the mark' for attendance and discipline and to take disciplinary action as necessary, including dismissing anyone who has reached their limit of oral and written warnings for misconduct. When a new manager arrives, there are four employees in their department who are in this position:

- Terry is a 50 year old white British man. He has sometimes shouted at fellow workers and even at the previous manager, for which he was disciplined. He says his loss of temper is because of the pain he experiences from a long-term disability (a back condition).
- Shireen is a 30 year old British Asian woman who has consistently ignored the dress code and been disciplined for this. She says that as a devout Muslim, she cannot wear her shirt tucked into her trousers because this would be immodest.
- Sarah is a 24 year old openly gay white British woman who has missed several deadlines for finishing work. She has said she just could not fit everything in.
- Richard is a 37 year old black British man. Before the new manager arrived, he had helped a colleague with a complaint that the colleague was being sexually harassed by a different manager. D has been disciplined for unrelated matters.

***Question:*** Looking at this just in terms of equality law (rather than any wider management issues), is it unlawful to dismiss any of these employees? If so, which?

## **Answer**

A: There is a possibility that dismissing Terry would be unlawful discrimination arising from a disability – the reason for his dismissal would be the behaviour which is caused by his disability. However, it might be possible for his dismissal to be justified by the employer, in which case it would not be unlawful. Key to this is whether it would be reasonable to make any adjustments to Terry's working environment to reduce the pain and discomfort he is experiencing.

B: The rule in the dress code that says that shirts must be tucked into trousers is harder for Muslim women to meet because one manifestation of their faith is to wear clothing that conceals a woman's figure. Disciplining someone for this is likely to be indirect discrimination because of religion or belief, unless the employer can justify the rule as a balanced way of reaching a worthwhile aim (proportionate means to a legitimate end). Dismissing Shireen when the reason for her having reached this point is potentially discriminatory might be compounding the discrimination.

C: On the face of it, Sarah's sexual orientation has nothing to do with her failure to do her job properly. So there is no equality law reason to avoid dismissing her.

D: If Richard was disciplined or dismissed for helping his colleague with an equality-related complaint that would be victimisation. However, he has been disciplined for unrelated matters. If the employer can demonstrate that there was no connection between the disciplinary action and his help to a colleague, then there is no equality law reason to avoid dismissing him.