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MORE STRINGENT HARASSMENT AND SEX DISCRIMINATION RULES

From 1 October 2005 two major changes took place:

- **New Definition of Indirect Discrimination**

Indirect discrimination now occurs if a provision, criteria or practice is applied equally to men and women but which in reality puts women at a particular disadvantage when compared with men. The only defence would be to show it is a proportionate means of achieving a legitimate aim.

The change means it is not now necessary to use statistical calculations to show that more women will be disadvantaged. As such it makes it easier for women to establish indirect sex discrimination.

- **Harassment**

A new definition of harassment confirms that it now includes behaviour that is sexual in nature, as well as behaviour on the grounds of someone's sex. It is now beyond doubt that unwanted verbal, non-verbal or physical conduct of a sexual nature constitutes harassment if it creates an intimidating, hostile, humiliating, degrading or offensive environment.

It will be the perception of the recipient that is important and it will no longer be necessary for the individual to show that the harassment was on the grounds of sex. This is a wider definition to that applied pre October 2005 and makes it easier for women to sustain a claim of sex discrimination. It had proved difficult in the past for women complaining of harassment to establish that the treatment received was on account of their sex, as opposed to something else such as jealousy following a failed office romance.

It should be noted though that the conduct complained of needs to be unwanted.

Don't forget employers can be held liable for the actions of their employees even if they don't specifically sanction them.

Indeed if faced with a claim such discrimination employers will be expected to be able to show what active steps they took to prevent it happening in the first place; such as policies and training.

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