

## Types of discrimination

Gender reassignment discrimination includes:

- direct discrimination
- indirect discrimination
- harassment
- victimisation

It's important to understand the different types of gender reassignment discrimination. This is so you know what your rights and responsibilities are under discrimination law (Equality Act 2010).

For full definitions of each type of discrimination, read our advice on [discrimination and the Equality Act 2010](#).

### Direct discrimination

Direct gender reassignment discrimination is when someone is put at a disadvantage or treated less favourably because:

- they're transgender
- they are wrongly believed to be transgender – this is called 'discrimination by perception'
- they have a connection with someone who's transgender – this is called 'discrimination by association'

[Read the full definition of direct discrimination](#)

#### Example of direct discrimination

Alex is a sales rep and wants to continue working as usual while transitioning. Alex's employer thinks customers might be prejudiced and the business could lose money. They instruct Alex not to visit customers but to phone instead. This is likely to be direct discrimination.

#### Example of discrimination by perception

Ash goes to an interview. The employer is surprised by Ash's appearance and voice, which they think are 'too masculine'. The employer thinks Ash is a trans woman. Because of this the employer does not offer Ash the job. Ash is not a trans woman so this is discrimination by perception.

#### Example of discrimination by association

Jordan's partner is transgender and comes to Jordan's work social event. Afterwards, Jordan is picked on by colleagues and excluded from other social events. Jordan is not transgender but is being discriminated against because of their connection with a transgender person. This is discrimination by association.

### Indirect discrimination

A working practice, policy or rule might apply to everyone but put people with the protected characteristic of gender reassignment at a disadvantage. This is indirect gender reassignment discrimination.

[Read the full definition of indirect discrimination](#)

### Example of indirect discrimination

Raja is starting a new job. The employer asks for proof of identity. The employer's policy says they only accept a birth certificate.

Raja is a trans man. The birth certificate says 'female'. Raja would like to provide something else but the employer refuses. Raja does not want to be outed to the employer as transgender. Raja decides not to take the job.

This is likely to be indirect discrimination, because the employer's policy puts Raja at a disadvantage. The employer could use other ways to prove identity.

## Harassment

There are 2 types of harassment that can happen because of gender reassignment. These are:

- harassment related to gender reassignment
- less favourable treatment as a result of harassment

### Harassment related to gender reassignment

Harassment related to gender reassignment is when:

- someone experiences unwanted behaviour
- the unwanted behaviour is related to them having the protected characteristic of gender reassignment

To be harassment, the unwanted behaviour must have either:

- violated someone's dignity
- created an intimidating, hostile, degrading, humiliating or offensive environment

It can be harassment if the behaviour:

- has one of these effects even it was not intended
- intended to have one of these effects even if it did not have that effect

[Read the full definition of harassment](#)

### Example of harassment directed at a specific person

Andie is a trans woman and has asked to be referred to as 'she' or 'they'. Two people Andie works with keep referring to Andie as 'he'.

Andie tries to ignore this, thinking it's accidental. However, it becomes clear this is deliberate. Andie feels upset and humiliated.

This is likely to be harassment related to gender reassignment. Andie's employer could be legally liable for the harassment if they do not take steps to stop it. The employees who carried out the harassment could also be liable.

### Example of harassment not directed at a specific person

Leslie strongly believes a person cannot change their sex. Leslie wants people at work to share this belief and emails the team some links about it. In the emails, Leslie makes degrading comments about people who are transgender.

Sam works with Leslie. Sam is proposing to transition and has not told anyone yet. Sam feels intimidated by Leslie's behaviour. Although Leslie's actions are not directed at Sam, this is likely to be harassment related to gender reassignment.

Leslie is entitled to hold this belief but not to express it in a way that harasses others.

### **Less favourable treatment as a result of harassment**

This is when someone is treated less favourably because of how they responded to previous harassment related to gender reassignment.

[Find out more about less favourable treatment as a result of harassment](#)

### **When harassment can be a crime**

Harassment related to gender reassignment can sometimes be a crime.

For example if someone has experienced a hate incident like:

- physical or verbal abuse
- threats of physical violence
- online abuse
- damage to their property

[Find out more about hate crime at work](#)

### **Victimisation**

Victimisation is when someone is treated less favourably as a result of being involved with a discrimination complaint.

It does not matter if the complaint was made by them or someone else.

The law also protects someone from victimisation if someone else thinks they're involved with a complaint.

Ways someone can be victimised include being labelled a troublemaker, being left out, or not being allowed to do something.

[Read the full definition of victimisation](#)

### **Example of victimisation**

Pat works in HR for a large company. An employee who is transitioning has a problem with getting their name updated on staff systems. The employee raises a grievance and Pat supports it as a witness. Pat says the company's systems caused discrimination. Pat is strongly criticised by senior management for not being loyal to the company. This is likely to be victimisation.

### **When discrimination might not be against the law**

In certain circumstances, an employer might be able to make or justify a decision based on gender reassignment.

An employer can make a decision that directly discriminates if:

- it's positive action – to address a situation where employees with a protected characteristic are at a disadvantage or underrepresented
- there's an occupational requirement – when having or not having a protected characteristic is vital for a job

An employer can justify a decision that indirectly discriminates if there's 'objective justification'. The employer must be able to prove both of the following:

- there's a 'legitimate aim'
- the discrimination is 'proportionate, appropriate and necessary'

This is a complex area of law. Before making any decisions, find out more about:

- [positive action](#)
- [an occupational requirement in recruitment](#)
- [objective justification](#)

## Get more advice and support

If you have any questions about gender reassignment discrimination, you can [contact the Acas helpline](#).

You can also get support from:

- [LGBT Foundation](#)
- [Switchboard national support line](#)