

Definitions of **discrimination**, **sexual harassment** and **racial harassment** (from the Employment Relations Act 2000).

#### 104 Discrimination

- (1) For the purposes of section 103(1)(c), an employee is **discriminated against in that employee's employment** if the employee's employer or a representative of that employer, by reason directly or indirectly of any of the prohibited grounds of discrimination specified in section 105, or by reason directly or indirectly of that employee's refusal to do work under section 28A of the Health and Safety in Employment Act 1992, or involvement in the activities of a union in terms of section 107,—
  - (a) refuses or omits to offer or afford to that employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available for other employees of the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances; or
  - (b) dismisses that employee or subjects that employee to any detriment, in circumstances in which other employees employed by that employer on work of that description are not or would not be dismissed or subjected to such detriment; or
  - (c) retires that employee, or requires or causes that employee to retire or resign.
- (2) For the purposes of this section, **detriment** includes anything that has a detrimental effect on the employee's employment, job performance, or job satisfaction.
- (3) This section is subject to the exceptions set out in section 106.

#### 105 Prohibited grounds of discrimination for purposes of section 104

- (1) The prohibited grounds of discrimination referred to in section 104 are the prohibited grounds of discrimination set out in section 21(1) of the Human Rights Act 1993, namely—
  - (a) sex:
  - (b) marital status:
  - (c) religious belief:
  - (d) ethical belief:
  - (e) colour:
  - (f) race:
  - (g) ethnic or national origins:
  - (h) disability:
  - (i) age:
  - (j) political opinion:
  - (k) employment status:
  - (l) family status:
  - (m) sexual orientation.
- (2) The items listed in subsection (1) have the meanings (if any) given to them by section 21(1) of the Human Rights Act 1993.

#### 108 Sexual harassment

- (1) For the purposes of sections 103(1)(d) and 123(d), an employee is **sexually harassed in that employee's employment** if that employee's employer or a representative of that employer—
  - (a) directly or indirectly makes a request of that employee for sexual intercourse, sexual contact, or other form of sexual activity that contains—
    - (i) an implied or overt promise of preferential treatment in that employee's employment; or
    - (ii) an implied or overt threat of detrimental treatment in that employee's employment; or
    - (iii) an implied or overt threat about the present or future employment status of that employee;
  - or
  - (b) by—
    - (i) the use of language (whether written or spoken) of a sexual nature; or
    - (ii) the use of visual material of a sexual nature; or
    - (iii) physical behaviour of a sexual nature,—

directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee (whether or not that is conveyed to the employer or representative) and that, either by its nature or through repetition, has a detrimental effect on that employee's employment, job performance, or job satisfaction.

- (2) For the purposes of sections 103(1)(d) and 123(d), an employee is also **sexually harassed in that employee's employment** (whether by a co-employee or by a client or customer of the employer), if the circumstances described in section 117 have occurred.

#### **109 Racial harassment**

For the purposes of sections 103(1)(e) and 123(d), an employee is **racially harassed in the employee's employment** if the employee's employer or a representative of that employer uses language

(whether written or spoken), or visual material, or physical behaviour that directly or indirectly –

- (a) expresses hostility against, or brings into contempt or ridicule, the employee on the ground of the race, colour, or ethnic or national origins of the employee; and
- (b) is hurtful or offensive to the employee (whether or not that is conveyed to the employer or representative); and
- (c) has, either by its nature or through repetition, a detrimental effect on the employee's employment, job performance, or job satisfaction.

2 May 2013