

How to defend discrimination claims

If an employee harasses or discriminates against another employee in the course of their employment, the employer will be liable for those acts. The employer has a defence to such a claim if it can show that it "took such steps as were reasonably practicable to prevent the employee" from taking the discriminatory action.

Employers have found it difficult in the past to successfully argue this defence. However, there has been a recent case in which the Employment Appeal Tribunal has upheld a decision that the employer, in this case the Ministry of Defence (MOD), had indeed taken such reasonably practicable steps to prevent sexual comments being made by a manager to his junior and, therefore, defeated a discrimination claim.

It was held that the MOD had done

everything reasonably practicable to prevent the harassment taking place in that it had:

- put in place a clear internal policy which would have prevented the harassment if the manager had not disregarded it;
- taken steps to implement that policy and not just pay 'lip service' to it; and
- investigated the complaint quickly.

This case shows the importance and value of a good equal opportunities policy. The policy should set out the appropriate standards of behaviour in the workplace and the consequences if employees do not meet them. Further, this policy cannot sit gathering dust on the shelf. An employer must ensure all employees are fully aware of the policy, monitor its application and provide training to

familiarise employees with their responsibilities under it, as well as assisting them in understanding the potential discrimination/harassment problems that they may encounter in the workplace.



If you have any concerns on anything raised in this article please contact Caroline Leaver of Solnick LLP on 020 8996 4717 or c.leaver@solnick.com and she will be happy to advise you.