

Using this leaflet

Because there are no specific laws to help, this leaflet runs through the most common problems likely to affect lesbian and gay workers and explains how other laws might help. It refers you to other TUC leaflets that will cover these rights in more depth. In particular you should have a copy of *Your job and the law*. If you have not been given a copy with this leaflet you can get one from the TUC's know your rights line 0870 600 4 882.

Of course in a series of short leaflets we cannot describe all the detail. Employment law can be complex and you should always take further advice. Your own rights will depend on your circumstances, and you cannot rely on a leaflet like this as detailed legal advice.

About your rights

There are two basic kinds of rights at work.

First there are those you are guaranteed through the law of the land, or statute, such as the minimum wage.

Second you may also have some kind of contract with your employer. If you are an employee, this will be a contract of employment. Normally you will be given this when you start work (though it may be called something else such as a letter of appointment or staff handbook). *Your job and the law* explains contracts and the legal difference between an employee and a worker (who has fewer rights).

Your contract provides you with specific rights that go with your job. It is likely to include details of issues such as holiday entitlements and disciplinary and grievance procedures. Your employer must honour your contract which can be enforced in court.

Contracts will differ in detail. This is why you will need to take expert advice if you think that your employer is in breach of your contract. But the courts work on the basis that every contract of employment contains some terms whether or not they are written down. Most important is the duty of care that employers owe employees. This means they must provide a safe and healthy workplace.



Sacked because of your sexuality?

It is relatively easy for employers to sack staff who have worked for them for less than a year. There are only limited grounds to argue unfair dismissal such as pregnancy or trade union activity.

However employers must still follow their own procedures properly. If they do not, you may have a case for what's called wrongful dismissal. In this case seek advice.

After you have worked for the same employer for a year, you gain protection against unfair dismissal. This means that you can only be sacked fairly for disciplinary reasons or because you cannot do your job properly – on grounds of competence. This means if you can show an employment tribunal that you have been sacked because you are lesbian or gay, rather than on grounds of capability or competence, then you may win your case.

See *Your job and the law* for more details.

Bullying and harassment

Many employers now have policies against bullying. It is unusual for these to cover homophobic bullying, but, as explained above, employers owe employees a duty of care. You may have a legal case if your employer does not respond to a complaint about bullying because if they do not do so then they may be in breach of this contractual duty.

There is a TUC rights leaflet *Bullied at work? – don't suffer in silence* with advice on dealing with bullying. You can get it from the TUC know your rights line 0870 600 4 882.



Taking a grievance

Most employers have grievance procedures that allow you to raise problems you are having either with your managers or co-workers in a formal way. If the employer arranges a meeting to discuss the grievance, then a new right enables you to take either a fellow worker or a trade union official with you into the meeting. This applies even if your employer does not recognise unions.

Many large employers (especially in the public sector) include sexual orientation in their equal opportunities policies. This can give you the right to challenge discriminatory treatment either informally or in a grievance procedure. Just because an employer has a good policy on paper, it does not mean that every manager is even aware of it, let alone practices it.

A TUC leaflet *You're not alone!* explains your rights in grievance (and disciplinary) cases.



Photograph: Piers Allardice - Gaze International

Pensions

A growing number of private sector pension schemes are now providing equal benefits for same sex and unmarried partners of pension scheme members. If yours does not, you may be able to pressure the scheme to change its rules in line with modern trends. But public sector schemes are still refusing to do so, and it will require a change in the law to force them to change their rules.

Time off for parents and carers

There are new rights to unpaid parental leave and emergency time off if you need to care for dependants.

Same sex partners can claim parental leave in respect of a partner's child if they have obtained a joint residence order.

The right to take emergency leave gives anyone the right to take 'reasonable' time off to help people who depend on you in some way for their care. The law is broadly drawn and 'the dependant' in this case can include your same sex partner, anyone who lives with you as part of your family or even a friend or neighbour.

However, you must let your employer know, as far as is possible, that you intend to take emergency leave; the leave is unpaid (although good employers will pay you); and the leave can only last as long as it takes to sort out the immediate problem.

The TUC leaflet *Time off for families* contains more information.



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Other rights at work

Unions have successfully negotiated for lesbian and gay workers to have equal treatment when it comes to workplace benefits such as health and insurance schemes and travel concessions for same sex partners. If your employer does not provide such benefits on an equal basis, ask your union to negotiate for equal treatment.

However, as the law currently stands, you do not have a legal right to such benefits.

Things will get better

New rights are on the way. The government has agreed a European proposal to improve protection against discrimination at work for all groups. This will mean lesbians and gays will gain their first ever legal rights at work by 2003 – something for which the TUC has long campaigned.

Good employers will not wait for the law to change to outlaw discrimination. Your union can press for changes now, if you work in a unionised workplace. Other employers may also accept the inevitable and start to change the way they treat sexual orientation.

Turn to the union

Unions do not just campaign to change the law. They have negotiated with many employers to get a fair deal for lesbian and gay workers. Most unions have policy to support lesbian and gay workers. Most problems at work can be resolved without recourse to the law.

Many unions have set up their own structures for their lesbian, gay and bisexual members, which can offer support and advice. Some have their own telephone helplines.

Information on trade union lesbian and gay groups is provided on the TUC website, www.tuc.org.uk/equality, or get a copy of *Lesbian and Gay Rights at Work: A TUC Charter for Equality* from TUC publications.

If you want to join a union, but do not know which one is right for your job, ring 0870 600 4 882

More help and advice

TUC know your rights line 0870 600 4 882

LAGER (Lesbian and Gay Employment Rights):
Unit 1G Leroy House, 436 Essex Road, London N1.
Tel: 020 7704 8066 (lesbians), 020 7704 6066 (gay men).

Lesbian and Gay Rights at Work: A TUC Charter for Equality,
TUC 1999, £2.50. Phone 020 7467 1294 for copies.

Your Rights at Work – a TUC Guide
published by Kogan Page £7.45 (rrp £8.99). Phone 020 7467 1294 for copies.

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Lesbian or Gay?

Your Rights at Work

There are no special laws that protect workers from discrimination because of their sexual orientation. However everyone at work has basic rights in law, and you may be able to use these even if discrimination is the root cause of the problem.

This leaflet explains how.