
TUC Briefing for union negotiators
Employer good practice for LGBT+ workers
Equality and Strategy Department, April 2016

LGBT+ workers: good practice criteria for employers

Introduction: why do we need this advice?

As LGBT people become much more widely accepted in society following fifteen years in which legal inequality has been (for the most part) replaced by equal rights confirmed in the Equality Act 2010 and the Equal Marriage (Same sex couples) Act 2013, many employers now seek to establish their reputation by affirming their commitment to becoming “LGBT-friendly”. This is warmly welcomed by LGBT communities and by trade unions, however research continues to show that LGBT workers continue to face prejudice and discrimination at work, usually in the form of bullying and harassment, where the most comprehensive study ever carried out investigated UK workplaces and found that lesbian, gay and bisexual workers were two and a half times more likely to be harassed because of their (actual or perceived) sexuality (Hoel, Lewis and Einarsdóttir, *The ups and downs of LGBs’ workplace experience*, Manchester Business School 2014). The position of trans people is no better.

Since this survey was carried out at a time when the employers concerned were asserting that they are “LGBT-friendly”, it is apparent that rhetoric and reality are not always the same thing. For that reason, the TUC is encouraging unions to press employers to adopt a more rigorous approach and oversight of their practices to help ensure that excellent equality policies are carried through into excellent practice throughout the workplace.

Relationship with other employer programmes

It may be necessary to explain why the employer should not simply enter (or continue with) the Stonewall “top 100” workplace equality index. The response is that the WEI is not sufficiently comprehensive to satisfy us that enough is being done by the employer. For example, the WEI does not include trans workers and will not do so until 2018. There is additionally in the Stonewall criteria no credit awarded for negotiating policies with trade unions.

Our criteria

1. Comprehensive and good equality policies

An effective equality policy will cover all areas of the employer's operations and all areas of equality. The keys to success are clear leadership from the top of the organisation reflected in a genuine commitment to training of managers and monitoring of progress.

Explanatory note:

Good practice should apply in all areas – advertising and recruitment, access to training, career progression, grievance and disciplinary procedures, equal access to workplace benefits, equal application of discretionary workplace policies. There is advice available from the TUC and other organisations on how to draw up policy in each of these areas that should achieve equality for LGBT workers and job applicants. Trade union involvement can help considerably in developing (and subsequently monitoring) employer policies on equality for LGBT and other workers.

Monitoring the workforce and monitoring the effectiveness of equality policies are not the same thing and the union should establish with the employer the best approach to dealing with these points. Monitoring the composition of the workforce is now well established as good practice but may require the employer to make it clear to all employees why monitoring is being carried out. People are traditionally reluctant to disclose personal information even when they know why the employer wants it. Total anonymity and total confidentiality are essential. Monitoring the worker's experience of any problems in the workplace, again with a guarantee of total anonymity, can reveal that there are problem areas. Unions might consider other ways to check on the effectiveness of employer policies.

2. Employment and pensions

In the private and voluntary sectors it may be particularly important to check that any company pension scheme offers equal pension survivor benefits to same sex partners and to widowers.

Explanatory note:

Both widowers and same sex partners face discrimination in the size of a survivor pension originating in historically discriminatory limits on backdating the calculation of length of service. This can make a very large difference to the pension received by the survivor of a pension scheme member. A majority of private sector schemes have voluntarily changed their rules to ensure their policies do not discriminate. Where this is not the case, the arguments for equalisation are powerful, the costs are low and scheme trustees have usually agreed when asked. For more information see the TUC briefing at

www.tuc.org.uk/sites/default/files/equalssurvivorpensionsprivatesector.pdf. In public sector schemes the situation is different and in most cases change will have to await a change in the law as they are not open to direct negotiation with the employer.

3. Dealing effectively with bullying and harassment, and its consequences

Bullying and harassment have always been reported as the most common workplace issues faced by LGB and T workers.

Explanatory note:

Strong emphasis needs to be given to training of all managers in recognising and dealing effectively with workplace bullying and harassment on any ground, but LGB and T workers can (and often do) conceal their sexuality or gender identity from their colleagues for fear of persecution, and do not answer questions in monitoring exercises. Because of this, the reality that there is a hostile atmosphere can continue unchallenged. People who are not “out” are unlikely to join a staff LGBT network and as a result problem areas remain out of sight. Some staff network members will be managers and members who are of lower grades may be unwilling to report or challenge the prejudicial behaviour of other managers because of the power relationship between the people concerned.

4. Engaging with trade unions

It is good practice to negotiate equality (as all other workplace) policies with recognised independent trade unions.

Explanatory note:

Unions speak for their members through democratic channels. Staff networks are not an alternative, for two reasons. It is recognised that such networks can play a valuable supporting role for LGBT workers in many cases, but sometimes (because they may be led by staff at management level) they do not reflect the views of ordinary workers. This was among the findings of the *The Ups and Downs of LGBs' Workplace Experiences* survey which identified that some staff LGBT networks were dominated by white, male managers. It is also not possible for a staff network to undertake negotiations with the employer. Such networks therefore are not a substitute for proper trade union representation and negotiation with an employer on employment policies and individual issues.

5. Inclusivity

Employer good practice should apply to all equality groups (those with “protected characteristics” set out in the Equality Act 2010) but too often,

employers satisfy themselves with a blanket policy statement but should also address issues specific to each one.

Explanatory note:

Employer policies should address the specific issues facing each group as well as addressing the reality that many workers share more than one protected characteristic. Policies may require close attention to ensure that nuanced differences in the problems faced by people in each group are adequately reflected in the training provided for managers and others responsible for dealing with internal practices.

This approach applies particularly to trans workers. Too often there is a failure properly to distinguish between the different needs of LGB and T workers. While both groups face a common problem from harassment arising from ignorance and prejudice, the issues for trans people which in many cases will cover the process of changing gender and its consequences, time off for treatment, confidentiality, return to work after transition (if undertaken) and others call for quite different responses. Awareness of the issues, and of where to obtain proper advice (starting with the TUC guide "LGBT Equality at Work") will be essential. There being a manager capable of overseeing the process will make it much easier for all involved.

6. Application of the "Equality Duty"

Employers serious about making their equality policies as effective as possible should agree to adopt the steps spelt out in the public sector equality duty of the Equality Act 2010 in their originally intended form.

Explanatory note:

The Equality Act includes a "public sector equality duty" that requires public sector organisations to go further in actively promoting equality. Its original requirements to include carry out regular monitoring, to assess the equality impacts of proposed policies, and to actively engage with (consult) equality groups have not been enacted but employers who are serious about achieving best practice standards should voluntarily adopt these steps as an effective way of ensuring that their policies and practices reflect positive outcomes for equality groups (and avoid unintentional negative consequences).

Although the legal obligation applies only to public sector organisations there is nothing to prevent other employers from adopting the approach originally set out in the PSED and trade unions should encourage them to do so in order to satisfy this criterion. The government decided not to enact these elements of the duty on the grounds that they were bureaucratic "red tape" and a "burden on business." The trade union argument is that they can be the most effective strategy for achieving positive outcomes and they only become a useless burden

if they do become a "tick box" exercise. Union pressure can help ensure that the former not the latter applies.