

# Equality in Employment Policy and Guidelines



EAST RIDING  
OF YORKSHIRE COUNCIL

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## Equality in Employment Policy

### 1. Scope

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East Riding of Yorkshire Council is committed to providing equality of opportunity in employment and to avoiding unlawful discrimination. This policy is intended to assist employees and managers to put this commitment into practice.

### 2. Background

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It is unlawful to discriminate directly or indirectly in recruitment or employment on the basis of 'protected characteristics' as detailed in the Equality Act 2010. The protected characteristics are:

- Age
- Disability
- Gender reassignment
- Marriage and Civil Partnerships
- Pregnancy and Maternity
- Race (including colour, nationality, ethnic or national origins)
- Religion or Belief
- Sex (Gender)
- Sexual Orientation

It is unlawful for an employer to fail to make reasonable adjustments to its **requirements**, working practices or the physical features of the workplace where these put a job applicant or employee with a disability at a **substantial** disadvantage.

### 3. Definitions for the Purposes of this Policy

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#### Direct Discrimination

Direct discrimination occurs when a person or group is treated less favourably than another because of a protected characteristic.

Associative discrimination is a form of

direct discrimination. This occurs when a person or group is treated less favourably than another because they associate with another person who possesses one of the protected characteristics.

Perceptive discrimination is a form of direct discrimination. This occurs when a person or group is treated less favourably than another because others think they possess one of the protected characteristics.

#### Indirect Discrimination

Indirect discrimination occurs when a condition or requirement is imposed which, although applied equally to all individuals or groups, is such that:

- (a) the proportion of persons of the same group who can comply with it is significantly smaller than the proportion of persons not of that group who can comply with it;
- (b) the Council cannot show it is justifiable based upon the needs of the job;
- (c) it is to the detriment of the individuals concerned because they cannot reasonably comply with it.

#### Discrimination by Victimisation

This occurs when a person is treated less favourably than another because that person had, for example, asserted his or her rights under legislation or had helped another person assert those rights or intended to do so.

#### Sex Discrimination

When a person is treated less favourably than others because of their sex or marital status.

## **Race Discrimination**

When a person is discriminated on racial grounds which includes race, colour, ethnicity or national origin or nationality.

## **Institutional Racism**

The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It may be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority and ethnic groups.

## **Disability Discrimination**

A disability under the Equality Act is defined as a physical or mental impairment which has a substantial and long term adverse effect on an individual's ability to carry out normal day to day activities. A number of impairments such as cancer, HIV and multiple sclerosis are automatically considered disabilities and other progressive conditions will be considered a disability as soon as the symptoms of that condition have an effect.

Disability discrimination occurs when:

- (a) a disabled person is treated less favourably than someone else and:
  - (i) the treatment is given for a reason relating to the person's disability and that reason does not apply to the other person, and
  - (ii) this treatment cannot be justified;
- (b) an employer fails to make reasonable adjustments in relation to the disabled person;
- (c) a disabled person is treated less

favourably than a person who does not have a disability where the circumstances, including abilities, are the same.

## **Sex (Gender)**

Sex (gender) is determined by your biological make-up, which defines if you are physically male or female.

## **Social Gender**

Gender is defined by which sex you "feel you are" which is a result of how the brain is structured.

## **Transgender**

A person who is a transgender is born with the body of the opposite sex.

## **Transsexual**

A person who is a transsexual is a person who is transgender but has undergone a sex change so that their gender and sex match.

## **Gender Re-assignment**

- (a) Gender re-assignment is a process which is undertaken for the purposes of re-assigning a person's sex by changing physiological or other characteristics of sex and includes any part of such a process.
- (b) Discrimination on gender re-assignment grounds is defined if a person is treated any less favourably than others would be treated, and does so on the grounds that the person intends to undergo, is undergoing, or has undergone gender re-assignment process (or part of a process).

Note: A person who is a transgender or is a transsexual may be heterosexual, lesbian, gay or bisexual. That is his or her sexual orientation.

## **Transvestite**

A transvestite is a person who dresses in the cultural style of the opposite gender, but can still be heterosexual, homosexual, or bisexual.

## **Religion or Belief Discrimination**

The regulations define religion or belief as 'any religion, religious belief or similar philosophical belief'. It does not cover any philosophical belief or political belief unless similar to a religious belief. A religion or belief will either be:

- collective worship;
- a clear belief system, and
- a profound belief affecting way of life or view of the world.

In addition to the above it may be necessary to meet the definition of a religion by having a belief in a 'supreme' being, worship of that Supreme Being and a group or following of people who observe the beliefs, values, customs and traditions as set down by that Supreme Being.

Further clarification on the term 'belief' is evidenced in Article 9 of the Human Rights Act 1998, that it 'means more than just 'mere opinions or deeply held feelings, there must be a holding of spiritual or philosophical convictions which have an identifiable formal content'

Discrimination occurs when a person is treated less favourably than others on the grounds of their religion or belief and if a provision, criterion or practice disadvantages a person of a particular religion or belief. It also covers discrimination on the grounds of another's religion or belief, for example if an employee associates with someone of a particular religion or belief or refuses an employer's instruction to discriminate against a particular religion or belief.

## **Sexual Orientation Discrimination**

Sexual orientation refers to heterosexuals, lesbians, gay men and bisexuals. Discrimination occurs when a person is treated less favourably than others because of their actual or perceived sexuality. It also covers discrimination on the grounds of another's sexuality, for example if an employee associates with someone of a particular sexuality or refuses an employer's instruction to discriminate against a particular sexuality.

## **Genuine Occupational Requirement**

This is the term used to describe the few exceptions provided for under the Equality Act 2010. There are some justifiable reasons for restricting jobs to a single sex, race or religion. For example:

- Physiology - eg modelling and acting work.
- Decency - eg same sex attendants in single sex saunas.
- Personal Services - eg male carer for a male paraplegic
- Religion - eg teachers and clergy of a particular religion can be requested.

NB: There will be few posts where a Genuine Occupational Requirement will apply within the Council.

## **Ethnic Origin**

The shared culture, religion or language of a group of individuals.

## **4. Policy Statement**

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East Riding of Yorkshire Council recognises its social responsibilities in addition to the legal responsibilities of protected characteristics above, for ensuring that all reasonable steps are taken to actively promote equality and fair treatment in employment, to ensure that no employees or job applicants receive

less favourable treatment on the grounds of colour, race, nationality, ethnic origin, gender, disability, marital status, civil partnership status, pregnancy and maternity, age, religion or belief, sexual orientation, gender reassignment, HIV status, trade union involvement or political activities.

## **5. Statutory Obligations**

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### **Equalities**

In formulating new, or amending existing policies, practices, strategic plans, service plans and in employment and service development, the Council will take account of its responsibilities within the Equality Act 2010 and the Acts listed below.

### **General**

Human Rights Act 1998

Freedom of Information Act 2000

- (a) Sustainability
- (b) Crime and Disorder Act 1998 - Complying with Section 17
- (c) Human Rights
- (d) Enforcement (for enforcement related policies)
- (e) Community Plan
- (f) Community Cohesion

## **6. Policy Development including Consultation**

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This policy has been developed by Human Resources in consultation with Schools and, recognised Trade Unions to ensure compliance with legislation and in pursuance of the Councils objective of being a good employer.

## **7. Links with other Policies**

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- Recruitment Policy and Procedure (A1)
- Harassment/Bullying Policy Procedure and Guidelines (O2)

- Retraining and Redeployment Policy and Procedure (J2)
- Job Share Policy (E3a)
- Grievance Policy and Procedure (H1)
- Complaints Procedure
- Right to Request Flexible Working Guidelines (E3)
- Paternity Leave Policy and Procedure (F3)
- Adoption Pay and Leave Policy and Procedure (F2)
- Ordinary Parental Leave Policy (F4)
- Shared Parental Leave Policy (F5)
- Maternity Pay and Leave Policy and Procedure (F1)
- Attendance at Work Policy and Procedure (K2)
- Corporate Equality Policy 2012
- Disciplinary Policy and Procedure (G1)

## **8. Desirable Outcomes**

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The desirable outcome is that the Council complies with the Equality Act 2010 and that no unlawful discrimination takes place.

## **9. Policy Implementation**

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The policy will be implemented by Managers and Headteachers in consultation with Human Resources.

## **10. Financial Implications**

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There are no direct costs associated with implementing the policy. The indirect costs associated with establishing and maintaining procedures will be absorbed into operating costs.

## **11. Evaluation**

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This policy will be reviewed as part of a rolling programme of policy review. Human Resources will monitor the diversity composition of the workforce and the application of employment

procedures and this will be reported annually to The Cabinet.

## **Equality in Employment Guidelines**

These guidance notes are for all employees and those responsible for recruitment, training, promotion and the management of employees and must be read in conjunction with the Equality in Employment Policy.

### **1. Responsibility - Managers**

The Director of Corporate Resources has responsibility for ensuring that the Council has an effective Equality in Employment Policy and takes all reasonable steps to ensure that Managers and employees comply with the policy.

The success of the Equality in Employment Policy depends on the commitment and attitude of Managers at all levels, and their understanding of their responsibilities under this policy and employment legislation.

Training will be given to Managers to ensure they understand their responsibilities.

Managers must take all reasonable and practicable measures to ensure that they and their employees and all contractors are aware of their responsibilities under this policy and current employment legislation.

Grievances or Bullying/Harassment claims will be dealt with fairly and consistently.

Managers must not allow victimisation where individuals assert their rights under the law, or help others to assert their rights.

If practices and procedures are identified which may lead to discrimination, the Manager must review these in line with this policy.

The provisions of the Equality in Employment Policy apply to all employees. If breaches of this policy occur it will be necessary to consider action under the Council's Disciplinary Procedure.

Managers have a key role in maximising the potential of all employees for which they are responsible, through identification of training needs and provision of development activities.

Managers have particular responsibility to ensure a working environment free from any form of discrimination or inequality.

Managers have a duty to make reasonable adjustments to duties, workplace and working practices where an employee or potential employee identifies that they have a medical or physical impairment under the Equality Act.

Managers' responsibility also extends after the working relationship has come to an end in terms of providing a non-discriminatory reference.

Breaches of this policy will result in action being taken under the Disciplinary Policy.

### **2. Responsibility - Employees**

Employees must understand the intentions of the Equality in Employment Policy and accept their personal involvement in the practical application of this policy.

No employee should discriminate, directly or indirectly, harass or victimise against other employees of the Council, members of the public, or any outside parties with whom the Council conducts its business.

No employee should induce or attempt to induce other employees, unions or management to discriminate.

No employee should harass, abuse or intimidate other employees or clients on account of their age, disability, gender reassignment, marriage and civil

partnerships, pregnancy and maternity, race, religion or belief, sex, sexual orientation or any other unjustified grounds.

Employees should inform an appropriate Manager immediately if they feel that they have been discriminated against.

No employee should remain silent if they feels that they have been subject to, or witnesses any form of harassment. The employee should inform the appropriate Manager and alleged incidents will be pursued under the Council's Harassment/ Bullying Policy and Procedure or Disciplinary Policy as appropriate.

Employees must be aware that discriminatory action taken by them outside of work or when socialising with colleagues, may be a breach of this policy. Breaches of this policy will result in action being taken under the Disciplinary Policy.

### **3. Recruitment Advertising**

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Advertisements will not request physical requirements, educational/academic qualifications or managerial experience of candidates which are unreasonable and unjustifiable in relation to the duties to be undertaken.

All applicants will be informed through appropriate recruitment documentation that the Council is pursuing equality of opportunity in employment and advertisements will state that "this Council is pursuing equality of opportunity in employment" and where possible the acceptability of equivalents to formal qualifications will be stated.

Advertisements will be placed appropriately to attract a wide selection of the community and will normally be advertised in external publications, including the Council's recruitment website, if the vacancy is of longer than 12 weeks' duration.

Advertisements will encourage the broadest range of applicants. Job titles and job content will be presented without bias either of gender or race. Jobs will be described in such a way that no qualified or experienced person is deterred from applying. There should be nothing in either the words or illustration to indicate any role stereotyping.

If it is felt that a genuine occupational requirement exists, where discrimination would be lawful, the Director of Corporate Resources must be consulted prior to the placement of the advertisement.

### **4. Recruitment and Selection**

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At least one employee or Elected Member on an appointment panel will be trained in the Council's Recruitment Policy and Procedure at the earliest opportunity and certainly prior to their involvement in any recruitment and selection. This training will include training on the application of the Equality in Employment Policy. Directors will ensure that employees responsible for recruitment and selection are made fully aware of the requirements of both the Equality in Employment Policy and the Recruitment Policy and Procedure.

Applicants should be given clear and accurate information about vacancies through advertisements, job outlines, employee specifications and recruitment interviews as appropriate.

The recruitment and selection process will be monitored and analysed, with workforce information being collated confidentially and separately to application forms.

Shortlisting and interview decisions will be made by more than one person.

When shortlisting, if it is known that application requirements, interview



arrangements, work requirements or premises are likely to put a disabled person at a disadvantage, reasonable adjustments will be made which would enable the disabled person to apply or be shortlisted.

All interviews will be thorough, conducted on an objective basis and will deal only with the applicant's suitability for the job and ability to fulfil the requirements of the post. All interview questions will be strictly relevant to the post. In no cases will questions be asked or assumptions made about a person's personal and domestic circumstances or plans. Where the requirements of the job may affect the candidate's personal life (eg working unsocial hours) this should be discussed objectively with all candidates.

The Equality Act (2010) requires employers to make reasonable adjustments and or modifications to tasks and work places to allow employment of those with a disability. Occupational Health can assist recruiting Managers to identify aids and adaptations, which will assist those with medical conditions or physical limitations to carry out their duties.

Medical declaration information collected at preferred candidate stage will be used to initially identify those with medical conditions and physical limitations which will require an assessment. Preferred candidates who state they need adjustments will be asked to complete a Health and Medical questionnaire to be returned to Occupational Health.

Recognition will be given to experience as a substitute for formal qualifications, where appropriate.

If selection tests are to be used to test the skills and aptitudes essential to the job, they must be set at a level which is appropriate to the job. They should be valid and reliable, free of bias and non-

discriminatory in content, administration and scoring.

All appointments must be made on merit without discrimination. In exceptional circumstances, discrimination is permitted in relation to employment where the sex of the post holder or his/her particular racial group is a genuine occupational qualification or, in the case of disability, a reasonable adjustment cannot be made to the duties, workplace or work arrangements. Human Resources will advise on such circumstances before posts are advertised.

Reasonable adjustments to the duties, workplace, provisions, criteria or practices, eg equipment, special employment aids and job restructuring, will be made to enable a person with a disability to be appointed.

Where an applicant indicates that they may need aids/adaptations, advice will be sought through the pre-employment clearance process form Occupational Health.

Applicants who are undergoing gender-reassignment may choose not to declare their status and they are not obliged to do so. Should an applicant voluntarily disclose, this should be kept confidential and information only imparted to those directly involved in the administration of a process, eg a Pensions Officer who may be responsible for that employee's records.

Particular care should be taken when seeking references of an applicant who may have been in a different gender role in previous employment. Confidentiality and respect for the individual's dignity should be applied.

The reasons for acceptance or rejection of all candidates must be recorded and the records kept for a minimum of six months.

Where a candidate requests reasons for his or her rejection or other relevant information regarding the recruitment and selection process, this information must, as far as is reasonably practicable, be made available to them.

## **5. Career Development/Training Opportunities**

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Qualifications and criteria for promotion must be justifiable and relevant for the post.

Opportunities for promotion, career progression, temporary secondment and development opportunities will normally be advertised and all suitably qualified and experienced employees will be considered. No employee should be discriminated against either directly or indirectly in his/her opportunities for promotion and career progression. Twice yearly Employee Development Reviews will take place with employees and discussions will indicate individual training and development requirements and opportunities.

All employees will be made aware of the training and development opportunities open to them by access to information about such opportunities.

Employees whose working patterns consist of either job share, part-time, term time only, shift working and any other flexible working patterns, will have the same opportunities for training as full-time employees.

The take up rate of training opportunities will be monitored and analysed.

## **6. Diversity Management Issues**

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### **Communication of Policy**

All employees must have access to the policy and the guidelines and guidance and instruction given to ensure that

discriminatory attitudes or practices are avoided in the workplace and in dealing with the public via e induction/insight.

All Council Human Resources policies and procedures and collective agreements will be reviewed on a rolling programme to ensure that they accord with the Council's Equality in Employment Policy. Directors will be responsible for policies, which are specific to their own directorate.

### **Religion and Belief**

Where employees have particular cultural or religious needs which conflict with existing work practices or requirements, consideration will be given to flexible arrangements in an effort to accommodate them whenever this is possible. For example:

- **Time off for Religious Observance** - An employer must make every effort to allow an employee who makes such a request for time to pray, however, the regulations acknowledge that this may not always be practicable in every circumstance. Managers should look at what arrangements would be in place for other comparable circumstances, eg time off to be made up.
- **Time off for Religious Festivals** - Managers should try to accommodate such requests if they can but there is no obligation to do so if not practicable. Employees should take annual leave for such festivals, as there is no automatic right to additional leave.

For employees who do not wish to take time off for Christian festivals, the Regulations suggest that this be considered, depending on whether the workplace is open or if not and

whether working from home is an option.

- **Time off for Religious Observance relating to Bereavement** - Some religions have bereavement customs involving burials, which must take place as soon as possible after the death, or have mourning periods of up to 10-13 days, which exceed the paid leave authorised under the Council's Special Leave Policy. Managers should, where reasonably practicable accommodate the requirements of the employees' religion or belief when a bereavement occurs.

The Council's Dress Code determines that no employees will suffer detriment in terms of gender, gender reassignment, religion or belief, race or disability through the requirement to comply with corporate wear requirements. Such requests will be considered and accommodated, where it is practical to do so, and where health and safety considerations will not be breached.

The Council has a range of options for flexible working which can be requested under its Flexible Working Framework. Where changes to working practices or patterns are considered essential to service provision, the domestic circumstances of individuals will be taken into consideration, as far as is reasonably practicable, during consultations.

## **Disability**

Reasonable adjustments will be made to assist employees who develop a disability during employment to continue in their existing post, the consideration of aids/adaptations to the work place access, or changes to the duties, responsibilities, provisions, criteria or work practices of the post and rehabilitation, re-training and redeployment. Advice may be sought from

Occupational Health or the employee's primary care provider.

Where an employee has a disability, attendance for rehabilitation, assessment or treatment will be permitted.

## **Gender Reassignment**

Where an employee identifies themselves as trans, transsexual or transgender and may be planning to undergo, are undergoing or have undergone gender reassignment, Managers must ensure that the working environment is supportive of trans people, having regard for personal preferences, dignity and respect, particularly in relation to the type and manner in which information is communicated with colleagues.

If an employee is planning to undergo gender reassignment and informs their Manager of this, a discussion should take place as to how the employee wishes to handle the situation within the working environment and a process agreed. Issues may include:

- The expected timescale of any medical or surgical assessments and what time off or flexibility of working hours will be required.
- The implications of any planned absences in terms of the Council's Attendance Policy.
- The expected timescale for change of name, personal details and social gender including the employee's personal file.
- Whether the employee wishes to inform colleagues (who knew the employee before) themselves or would prefer someone else to do this.
- Use of single sex facilities giving consideration to the stage of

treatment reached of the gender reassignment process. Corporate Work Wear and flexibility which may be required to accommodate the transition from one gender to another.

Generally, all employment records for a trans person should not refer to a previous name; however, because of the legal status of trans people it may be necessary for some records to retain a reference to the person's legal gender, eg pension or insurance. These should be amended when a Gender Recognition Certificate is provided.

Access to records showing the change in name and any other details associated with the individual's status, such as absence records for medical treatment should be restricted to appropriate employees eg pay services, pensions for administrative processes. Covers on an individual's personal file should be changed in preference to crossing out and substituting a new name.

In informing employees who work with the employee undergoing gender reassignment, include the name that the employee wishes to be known by in their new gender role and also any decisions concerning single sex facilities which may impact upon other employees.

Breaches in confidentiality will be dealt with in the same manner as they would for any employee and could result in disciplinary action. Breaches of confidentiality once a trans person has received a Gender Recognition Certificate could result in a criminal prosecution.

There may be a need for some training and support for other employees working alongside an employee undergoing gender reassignment in order to understand and respond sensitively to the changes that person will be experiencing. All employees should be reminded of the

need for confidentiality and the person's right to privacy regarding their status.

## **7. Complaints**

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All complaints about alleged discrimination will be dealt with using the Council's Grievance Procedure or Harassment/Bullying Policy Procedure and Guidelines, which are open to all employees of the Council. The Equality Act 2010 protects the interests of those affected by unlawful discrimination and affords the right of complaint to an Employment Tribunal regardless of length of service.