Direct and Indirect Discrimination

What is Direct Discrimination?

Direct discrimination is pretty straightforward in most cases.

It happens when a person is treated unfairly on the basis of one of the 16 attributes, such as race and in one of the areas, such as work, covered by the Act. The attribute must be the substantial or main reason for the unfair treatment.

What is Indirect Discrimination?

Indirect discrimination is often less obvious than direct discrimination.

Sometimes a policy, rule or practice seems fair because it applies to everyone equally, but a closer look shows that some people are being treated unfairly. This is because some people or groups of people are unable or less able to comply with the rule or are disadvantaged because of it. If this policy, rule or practice is not reasonable, it may be indirect discrimination.

What is reasonable?

Whether a term is reasonable depends on all of the relevant circumstances of the case including:

- Consequences for people who can’t comply
- The cost of alternatives
- The financial situation of the person imposing the policy or practice

It is not necessary that the person imposing, or proposing to impose the term, is aware of indirect discrimination.

WORK EXAMPLES

Direct Discrimination

You are asked at a job interview if you have children. When you tell the interviewer that you have four children, he makes a remark about you needing time off work if they’re sick and says you won’t be suitable for the position.

(p parental status, family responsibilities)

You answer a job advertisement for a receptionist. You’re told over the phone that because you are a man, you’d be wasting your time. (sex)

You are a young Aboriginal man. When you apply for a labouring job, the boss said he ‘won’t employ blacks because they’re always going walkabout’. (race)

WORK EXAMPLES

Indirect Discrimination

An employer has a policy of not letting any staff work part-time.

(People with children or family responsibilities may be unable to comply with this policy and be disadvantaged)

A requirement for a job is that all applicants have ten years experience in the field.

(A young person could be well qualified but is ineligible for the job)

An employer says that a counter sales assistant can’t sit down at all whilst at work.

(This may discriminate against an employee who is unable to stand for long periods because of an impairment eg. back injury)