

Why employers need a reflective response to employee beliefs

May 2024

Recent tribunal judgments on the freedom to express gender-critical views highlight the growing challenge for employers in safely navigating discrimination in the workplace in the face of increasingly complex social attitudes.

In one victory for gender-critical views, an employment tribunal said that being branded transphobic for holding gender-critical opinions and expressing them was an insult.

Jo Phoenix, a criminology professor at the Open University, had established a network to undertake gender-critical research but was blocked from speaking on the topic. [The tribunal ruled she had suffered victimisation, harassment and direct discrimination](#) due to the university's failure to protect her from ill-treatment arising from her gender-critical beliefs.

This decision followed hard on the heels of a discrimination ruling in favour of [Rachel Meade, a social worker in Westminster City Council](#), who posted feminist views about the gender debate on her private Facebook page. A transgender colleague, connected on Facebook, complained the views were transphobic, and Social Work England responded by initiating a fitness to practise investigation, which triggered Meade's suspension by her employer.

Criticising the action, the tribunal judgment said this was "indicative of a lack of rigour in the investigation, and an apparent willingness to accept a complaint from one side of the gender self-identification/gender critical debate without appropriate objective balance of the potential validity of different views in what is a highly polarised debate".

Religion or belief is one of nine protected characteristics covered by the [Equality Act 2010](#) (EQA). The others are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race and sex and sexual orientation. The EQA prohibits discrimination and harassment related to a protected characteristic.

Harassment is unlawful and occurs when someone subjects a worker to unwanted conduct related to a protected characteristic that violates their dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment. Examples include making offensive sexual comments or abusing someone for their race, religion or sexual orientation. Notably, harassment does not need to be targeted at any individual but can consist of a general culture that, for example, tolerates the telling of religious jokes.

It means all employers have a duty of care to protect their workers and may be liable for discrimination or harassment in the workplace if they have not taken reasonable steps to prevent it.

Employment partner [Karen Cole](#) of West End Law Firm, RIAA Barker Gillette, said:

"These tribunal cases highlight the growing need for employers to keep pace with both the law and changing attitudes across society.

Employers are undoubtedly finding it increasingly difficult to deal with complaints where an employee's beliefs conflict with those of their organisation, other staff or customers, and are searching for clear guidelines. It's not possible to clearly define the terms as each case is fact-sensitive. Having up-to-date equal opportunities policies is essential, but more important, is to ensure a reasonable and fair balance of everyone's rights and for employers to

undertake a full review and investigation where a complaint is made.

The most straightforward takeaway is to reflect carefully on any situation and recognise that when people voice beliefs, they may not fit neatly into a perceived right or wrong category, even though others may find them distasteful or distressing. The act of holding and manifesting a gender-critical belief, for example, is not in itself harassment. Professor Phoenix's view was valid and was not the same as transphobia."

Speak to [Karen Cole](#) today if you're concerned about an employee's gender-critical views.

Karen Cole
44 (0) 20 7299 6909
karen.cole@riaabg.com
www.riaabarkergillette.com



Note: This article is not legal advice; it provides information of general interest about current legal issues.

