Marriage and civil partnership discrimination: top ten myths

**Myth:** Marriage for opposite-sex couples, marriage for same-sex couples and civil partnership have little in common.

**Fact:** They have mostly the same employment rights.

**Myth:** A married person cannot be accused of discriminating against someone else who is married.

**Fact:** It is no defence for a person accused of discriminating against someone because they are married to claim the allegation makes no sense as they too are married. The same rule applies to civil partnership. Neither can they defend their actions because of their beliefs.

**Myth:** If one of the people in a marriage or civil partnership decides to change their gender, their marriage or civil partnership must come to an end.

**Fact:** In England, Wales and Scotland, people can in certain circumstances now change their legal gender without having to end their marriage or civil partnership (although sometimes a civil partnership may need to become a marriage). For this to happen, a key step is that any partner changing their gender will need a Gender Recognition Certificate.

**Myth:** If an employer treats an employee unfairly because it believes they are in a civil partnership – even though they are not – they could still claim civil partnership discrimination.

**Fact:** In fact, they could not, as direct discrimination by perception is not included in the protected characteristic of marriage and civil partnership in the Equality Act. However, it is a type of discrimination covered under the protected characteristic of sexual orientation, so an employee might be able to make a complaint that way.

**Myth:** Once a person has been married or in a civil partnership, it is unlawful to treated them unfairly because they are married or in a civil partnership, or have been in the past.

**Fact:** Yes, they are covered by the law regarding the time they are married or in a civil partnership. However, they would no longer be protected against any marriage and civil partnership discrimination relating to a period outside of that time.

**Myth:** There’s no harm in an employer asking a job applicant if they are married if it helps the employer build a picture of the applicant.

**Fact:** Absolutely not. And if the information is mentioned by the applicant, even though they have not been asked, the employer must discount that information.
Myth: It would be ok for an employer to offer a job or a promotion to a single person, rather than someone who is married, if it was thought the role would better suit someone who is single because the job requires long periods away from home.

Fact: Definitely not, if the married candidate is the best person for the role in terms of skills, experience and qualifications – and they have made it clear the long periods away from home will not be a problem. It’s fine to ask about the travel requirements of the job, but an employer must ask all the applicants.

Myth: Employers should not be too worried about unfairness because of marriage and civil partnership because in law there are fewer ways it can happen compared to discrimination for other reasons.

Fact: On face value, that may appear to be the case. However, cases of marriage and civil partnership discrimination often overlap into other areas of discrimination such as sex, religion or belief, race and sexual orientation.

Myth: As a general rule, it’s ok for an employer to ban a couple who are married or in a civil partnership from working together.

Fact: While it can be acceptable, an employer would need a good reason. For example, to prevent a conflict of interest or breach of confidentiality, and that business need would have to outweigh the couple’s right to be married or in a civil partnership. Also, if an employer has a good reason for having a policy on personal relationships at work it should usually apply to all personal relationships in the workplace – for example, relatives, too.

Myth: It’s too complicated to work out how to refer to people in relationships these days!

Fact: In law, in both same-sex marriage and opposite-sex marriage, ‘husband’ means any married man and ‘wife’ any married woman. In civil partnerships, the couple each have the legal status of ‘civil partner’ – although in practice that tends to get shortened to ‘partner’.

Want to learn more about this area of workplace law? Download the free Acas guide

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