EXPERT INSIGHT

The new EHRC Services Code: what does it mean for employers?



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The most important starting point is simple: **the new EHRC Services Code is not an Employment Code.**

It concerns discrimination in **services, public functions and associations**. It does not automatically apply simply because an organisation is an employer, and the new Employment Code has not yet been published.

But many employers wear **more than one legal hat.**

- A retailer may employ staff **and** provide services to customers.
- A university employs staff **and** provides education.
- A leisure business employs staff **and** provides facilities to members of the public.

The legal analysis can therefore change depending on **which relationship you are dealing with**.

5 things for HR & People teams to remember

1 Start with the legal relationship.	Are you dealing with an employee, customer, student, patient, member or another service user? Don't assume guidance addressing one relationship can simply be transplanted into another.
2 Don't turn permission into obligation.	Where the law permits different or separate treatment in particular circumstances, that does not necessarily mean an organisation is required to adopt it. Ask what the Equality Act actually requires in your particular context.
3 Don't copy and paste the Services Code into employment policies.	Particularly following *For Women Scotland*, organisations should resist making sweeping changes to workplace policies based on guidance addressing a different legal context.
4 Remember intersectionality.	Equality issues rarely exist in isolation. A person may engage several protected characteristics at once – including disability, race, religion or belief, sex, sexual orientation, pregnancy and maternity, age and gender reassignment. Consider the effect of a policy on real people, not protected characteristics in separate silos.
5 Start from inclusion, not exclusion.	The question should not simply be: *"Are we legally allowed to exclude somebody?"* Ask: *"What does the law require, what legitimate aim are we trying to achieve, and is there a lawful and proportionate way of achieving it while including as many people as possible?"*

The takeaway

Equality law is contextual. Identify the relationship, identify the applicable law, and don't automatically translate guidance from one context into another.

Good equality practice means understanding when distinctions are legally necessary – **without turning exceptional permissions into blanket rules.**

FURTHER RESOURCES & CONTACT

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