

Managing a Diverse Workforce



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Fosters Solicitors of Norwich has been established since 1761 and has offices in Norwich, Wymondham and North Suffolk. Fosters is a high street practice undertaking a cross section of work from commercial to family, mental health and crime. Fosters have doubled in size over the last 10 years and are proud to offer such specialisms as mediation, employment, insolvency, professional negligence and company law, as well as the wider remit of conveyancing, wills, commercial property, family law and crime and defence.

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I

Introduction

What is diverse/diversity?

1.1

The *Collins English Dictionary & Thesaurus* (21st Century Edition) defines diverse as:

‘Having variety; distinct in kind, with “of every description” being an alternative phrase. Diversity being: the state or quality of being different or varied.’

Paramount to diversity is the organisational culture and the working environment. Managing people’s diversity effectively can add value to the organisation. Very often companies will limit their actions to compliance with race, sex and disability legislation. As there is no definitive legislation on managing diversity, employers may not even realise that there is a need to promote a culture where differences and diversity are valued. If a workplace is to be free from discrimination and be a place where everyone is treated fairly and equally, diversity has to be managed as part of the safety management system and a positive culture towards diversity promoted.

Who are diverse employees?

1.2

Diverse employees are those employees who do not fit within the stereotype of ‘normal’. They are those people who receive additional protection under employment and health and safety laws. They are perceived as being at ‘risk’ of harm from poor or less favourable treatment.

Diversity includes almost all ways in which people differ, such as education and sexual orientation, as well as the more obvious ones of gender, ethnicity and disability. The difference may also be considered in the role people play within the organisation, for example homeworkers or loneworkers.

The following groups have been identified, for the purpose of this book, as being diverse within the wider group of workers/employees. Some of the groups may only be diverse on either health and safety or employment law grounds, while others are defined as diverse by both.

Women

1.3

This extremely large group of employees are diverse on a number of levels. One of the main reasons is discrimination. Women can be discriminated against in a number of ways. For example, a high percentage of women are still paid less than men in similar roles. They can also be, and are, treated less favourably on the grounds of their sex. Discrimination can effect a number of issues, such as:

- chances of promotion;
- selection for roles and employment; and
- harassment.

This is not to say that men are not discriminated against on the grounds of their sex, merely that it is more likely that a woman will be discriminated against.

Women of childbearing age fall into the realms of diversity by nature of the fact they could become pregnant and the work they are undertaking could harm them or the unborn foetus. More importantly is where a woman is pregnant and subsequently when she becomes a mother (particularly new mothers). There are a number of additional rights afforded to pregnant women, including the right to attend antenatal classes, to receive maternity leave and, if eligible, maternity pay. New mothers (and existing ones who qualify) have the right to request a change in their hours and have time off to look after their child or any other dependants. The latter points do apply to men also and should be borne in mind as society moves towards a more even match of men and women who look after children.

Religious groups

1.4

Employees within this group have been diverse for some time due to the fact that they have additional needs, which are attributed to their religion or belief. For example, when Sunday trading regulations came into force, they had a large impact on Christian workers, as they did not wish to work on a Sunday in accordance with the rules of their faith. However, their rights and those of other religious bodies have now been protected against discrimination following the implementation of the *Employment Equality (Religion or Belief) Regulations 2003 (SI 2003/1660)* relating to discrimination on the grounds of religion, which came into effect on 2 December 2003.

Religious groups are also diverse on a number of levels. Their religious needs and duties must be considered in respect of their need for prayer time (with regard to Muslims) and their general working week in regard to religious days, for example Sunday/Sabbath working and religious festivals. Companies should also ensure that their policy takes into account religious needs in relation to dress codes. However, it is important to remember that health and safety regulations will be deemed to be a justifiable reason for not allowing a form of religious dress.

These employees are also at risk of discrimination, and not merely due to the additional consideration they require, as mentioned earlier in this section. They can be discriminated against in much the same way as women in relation to selection, promotion and harassment.

Lone workers

1.5

There are some employees who work on their own as part of their normal day to day work. However, working alone can sometimes put people in a vulnerable position because it may be more difficult for them to summon help if things go wrong or if their health and safety is at risk. People who work alone face the same hazards in their daily work as other workers, however the degree of risk of harm is often greater for them than for other workers.

Who is a lone worker?

1.6

There is no literary definition of a lone worker, but the range of employees working alone is diverse and extensive. In general terms, lone workers are people who work on their own with little or no supervision, in the event of an emergency there is no one to give them assistance or summon help. There is no time limit attached to working alone and so someone could be a lone worker the whole work period or only for a limited time.

The work can be undertaken in a number of situations, for example:

- people who work by themselves in retail premises, eg:
 - in a garage;
 - in a small shop; or
 - in a kiosk;
- home workers;
- people who work separately from others;
- people working outside normal hours such as:
 - cleaners;
 - maintenance; and
 - repair staff.
- mobile workers who work away from their base; such as:
 - health visitors;
 - Environmental Health Officers;
 - HSE Inspectors;
 - postal staff;

1.6 *Introduction*

- social workers;
- home help;
- drivers;
- architects;
- painters and decorators;
- milkmen;
- estate agents;
- doctors;
- district nurses;
- midwives;
- sales staff;
- police officers;
- meter readers;
- window cleaners;
- lorry drivers;
- cleaners; and
- home visitors;
- staff, whom although they are on the company's premises, are working apart from colleagues:
 - hospital staff;
 - security staff;
 - maintenance staff on large industrial sites;
 - teachers; and
 - prison officers.

This list is not definitive, employees may be lone workers for a number of reasons.

Home workers

1.7

There is a growing tendency for more companies to have their employees working from home. From the employer's point of view, there is a saving in working space and overheads. The employee also gains by having to avoid spending time and money travelling, and they can enjoy any relevant home comforts. The use of computers and other modern communication aids means that there can be an immediate exchange of information so that employees working from home are no less in touch than employees who work on the

employer's premises. Home working will not suit everybody and management needs to monitor the situation very closely. Some employees need to be in the company of others to work effectively and feel part of the team or organisation, while others are self-motivated and can adapt to what is in effect a lone working environment. Management must ensure that home workers do not become encapsulated in the home and avoid venturing out to meet clients or visit the office. There can also be home life conflicts where members of the family want to take part in an activity and expect the home worker to stop work and participate in the activity.

Nonetheless, the employer's responsibility for the health and safety of his employees, particularly as set out in s 2(2) of the *Health and Safety at Work, etc Act 1974 (HSWA 1974)*, extends to home workers, and such employees should not be disregarded when producing the diverse employees' policy.

Voluntary/charity workers

1.8

Despite the increasing importance of volunteering (22 million people volunteer each year), the legal obligations of organisations towards their volunteers with regard to health and safety are less clear than they are for employees. Nevertheless, organisations do have legal obligations towards their volunteers. It is clearly good practice to treat volunteers with equal consideration when it comes to health and safety. A volunteer' is defined as someone who commits time and energy for the benefit of others and who does so freely, through personal choice, and without expectation of financial reward, except for the payment of actual out-of-pocket expenses. Most voluntary organisations are employers and as such will have a duty towards persons who are not in their employment but who may be affected by their undertaking', such as clients and volunteers (s 3 of the *HSWA 1974*). This duty extends to the health and safety of those persons in the same way as with paid employees.

Agency workers

1.9

This group is diverse for completely different reasons in relation to employment law. This is due to the fact that they lack additional protection in the employment law arena. There is still much debate as to whether the agency or the company who requests their services is their employer, although agencies should work on the basis that they that are the employer.

Disabled

1.10

This group of employees are probably the most obvious in their diversity, as they will normally have a physical, mental or sensory condition, which may impede the usual way of working. There are obviously health and safety issues here. But there are also employment law issues. Disabilities, whether physical, mental (which would include those with learning difficulties, such as dyslexia) or indeed

1.10 Introduction

newly discovered disabilities, be it illness or injury, require that an employer should treat an employee in a particular manner. This is both in relation to discrimination and making reasonable adjustments to the role and, if necessary, the equipment and premises, as well as ensuring that the company's policies do not add further damage, for example a highly restrictive sickness policy.

Young workers

1.11

Young workers are those employees between 16 and 18 who are outside the compulsory education age bracket, ie they have completed Year 11 of High School. Obviously this is a vulnerable group of employees, who should be treated carefully in relation to undertaking long hours or arduous and heavy work. They do receive some additional protection under employment law, but are afforded far more in relation to health and safety regulations (*Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)*).

Race/ethnic minorities

1.12

The employees who fall into this category may also need to be considered alongside religious groups. In general, there is protection against discrimination based on colour, which can effect selection and promotion, as well as bring about the possibility of harassment. However, the situation can be made more complicated where English is not the employee's first language. The employer would need to ensure that reasonable adjustments were made in respect of performance to targets and the employee's understanding of their role and instructions.

Immigrant workers

1.13

There are two Acts which employers have to comply with regarding the employment of immigrant workers and they are:

- the *Race Relations Act 1976*, which makes it unlawful to discriminate on grounds of colour, race, nationality, ethnic or national origins in the recruitment, employment or dismissal of any person; and
- the *Asylum and Immigration Act 1996, s 8*, which makes it a criminal offence to employ a person who has not been granted leave to enter or remain in the United Kingdom or who is subject to a condition prohibiting employment.

A very important factor when considering the health and safety of the workforce is that the language barriers may not be used as a device to exclude immigrants from employment and attempts to impose language tests have resulted in allegations of racial discrimination. The problem extends not just to immigration from Asian or African countries but under article 48 of the Treaty of Rome the free movement of workers throughout the European Union is guaranteed and an influx of non-

English speaking workers from Europe cannot be excluded. Training for safety officers may well include some form of instruction in foreign languages.

Sexual orientation **1.14**

Effectively every employee will fall within this category, as the issue is not whether the employee is gay but their general sexual orientation. Since 1 December 2003 employees are protected against discrimination relating to their perceived sexuality. This means that they can be discriminated against in the same ways as has been mentioned above, based on what sexual preferences someone believes them to have, not what they actually do.

Health service workers **1.15**

Hospital staff, especially in Accident and Emergency departments, may experience verbal abuse or physical violence because people are kept waiting or from casualties under the effects of drink or drugs.

Community midwives/district nurses/carers/social workers are placed in a lone worker situation and although their work could be considered to be proactive, caring and of low risk they are:

- visiting clients at home;
- visiting locations that may be poor or run down housing estates;
- dealing with unknown people and situations involving domestic violence or drug/alcohol abuse;
- driving on remote country roads and in areas unknown to them;
- working at night;
- working in clinics/health centres in the evenings and at weekends, when there are fewer staff around;
- encountering domestic violence; and
- having to remove children from abusive parents.

Public workers **1.16**

There are serious implications for a number of public workers as regards personal safety due to the nature of their work or their lone worker status, which make them diverse. These public workers include thousands of council employees throughout the country who may have to visit clients in their own homes or come into contact with clients in job centres, social services offices and rent offices, where although the employee is there to help the client, they may become verbally abusive or even physically violent due to the nature of their business with the service.

1.16 Introduction

Transport workers such as bus and taxi drivers, as well as ticket collectors on trains, are also public workers, as are the police and prison officers.

Bus drivers

1.17

There are groups of people who serve the public in a general way and yet are subject to confrontation and violence. One such group is bus drivers. Today the main public transport companies are large organisations and may provide both rail and bus services. Such a large organisation may have overseas operations and in the UK has a number of operating companies. A bus company may have several hundred buses and more than a thousand bus drivers and many of those drivers will encounter times of conflict from passengers and other road users. Operating companies, therefore, need to implement a programme of violence prevention and management measures with the outcome of preventing violence to its drivers.

Taxi drivers

1.18

Another group who face the public are the drivers of around 23,000 licensed black cab' taxis in London. The black cab' drivers are mobile workers who pick up customers hailing them in the street or waiting at designated taxi ranks and the customers pay the driver at the end of the journey. Drivers who are members of organisations such as Radio Taxis also do account work or get jobs through telephone or Internet bookings and money does not change hands if an account is used.

Police

1.19

Having reviewed the problems faced by staff groups who are in the caring professions or undertaking work that would not normally be considered to place them in a violent situation, there are groups who face violent confrontation as a matter of course. The most obvious are police officers who have a duty to protect and safeguard property. The nature of their job means that it is normal for an officer to be in contact with potentially violent people.

Prison officers and other staff

1.20

Prison staff can be considered diverse by nature of the alien environment in which they work with the constant threat of potential violence by inmates.

There are risks of violence to others, in particular teaching staff, as all prisons have some kind of education facility, usually for formal education as well as vocational-type training. A prison may have some full-time staff to provide this, but it is usually supplemented by contracts with local education providers, such as further or higher education colleges. Clearly the training providers also have a

duty to their employees under s 2 of the *HSWA 1974*. Teachers are frequently not familiar with the prison environment and may not have had an induction or even basic personal safety training. Voluntary and charity workers also visit prisons on a regular basis, such as the Citizens Advice Bureau and prison visitors, all of whom will encounter similar risks to those of prison officers and education staff.

Security staff

1.21

Unlike the police, security staff are not employed to go into confrontational situations and their main function is to undertake security patrols and control of access to buildings which is generally carried out by lone workers. Some staff may also have key-holder responsibilities, which means they lock up buildings when staff have gone and may be called to a building on their own if an incident occurs.

Nightclub stewards

1.22

Another group of people who have to face confrontation are nightclub stewards. A city nightclub will be licensed to hold a predetermined number of members of the public and the key nights for clubbing are generally Thursday, Friday and Saturday nights. Clubs that are well run will have a strong policy on dealing with drugs on the premises and establish a reputation as a drugs-free' zone. Clubs employ a range of staff including stewards who work at the door and patrol inside the club. Some clubs have a nurse on duty and staff should be trained in first aid.

Stewards often face threats and abuse from customers waiting to get into the club, particularly by potential customers who are drunk. A main part of their duties is to manage violent situations and that requires staff to intervene in fights or remove troublemakers and they may be assaulted while carrying out this activity. If the stewards are male there may be situations where there are claims of sexual harassment by female customers and there is a potential for robbery with staff handling large amounts of cash.

Window cleaners

1.23

Self-employed window cleaners carry out a variety of domestic and commercial work and develop a regular customer base. Generally payment is collected from domestic customers by visiting their houses after completing the work, while commercial clients are called upon during daytime working hours. The problems faced by window cleaners include grievances from customers, which can include, for example, access problems to a customer's house, ladder marks on a customer's lawn and accidental scratching of windows and sills. Some customers do not value the window cleaner's work and have the attitude 'You're only a window cleaner' and as a consequence are more likely to be aggressive or impolite.

Shop workers

1.24

In large shops there will be a number of staff on duty at any one time, however there are many shops where staff will, at some point, spend time working alone. Some shops are going to be more vulnerable than others, such as those that sell expensive items that are highly desirable may be more at risk from robbery. A shop that sells alcohol can be a target and businesses, such as rural post offices, are subjected to the threat of theft. Staff may also have to face verbal abuse from rude, angry and frustrated customers, in particular when there is non-authorisation of credit card purchases. The list of incidents that shop workers may have to endure will be extensive and often over what can be trivial matters, such as when a customer reacted angrily and became verbally abusive when a delivery was 20 minutes late. In another situation the member of staff activated the panic alarm because of a drunk and disorderly customer in the shop.

Service engineers

1.25

Service engineers deal with commercial and industrial premises, as well as domestic homes. The operatives work away from the office and are, therefore, considered to be mobile. Working in environments such as private homes, factories, shops and offices, some of which may be isolated properties, and carrying expensive tools and equipment. Service staff encounter all manner of confrontational situations and in one case a screwdriver was put to an engineer's face while working in a probation hostel and the same engineer was threatened by a Stanley knife taken from his bag. A real problem is thieves who break into engineers' vehicles parked outside jobs, usually for their tools, equipment or mobile phones.

Sales and field representatives

1.26

Field sales involves cold calling' on potential customers, which requires staff to knock on doors to advise potential customers about the benefits of changing their gas, electricity or phone supply to the company they represent. The staff will normally work alone, but in built up areas other team members and the manager are likely to be nearby. They usually work from noon to eight in the evening, which means that sales staff are particularly at risk when working at night, although the level of risk varies depending on the location.

Field representatives' work involves dealing with customers who have not paid their bills. In most cases this is going to be a confrontational situation because they are asking for payment of debts and that carries with it an inherent risk of violence. This is particularly so in certain geographical areas which have a higher risk of violence. Staff generally make the first visits alone where they knock on the door and ask customers if they are willing to pay their bills and are able to offer customers an opportunity to pay the outstanding bill by different methods. A warrant visit' is carried out as a last resort, enabling forced entry to a property using a magistrate's warrant and staff should never work alone on these visits.

Bullying

1.27

Bullying at work can very often be the catalyst for vulnerable or diverse employees and is one of the more frequent causes of stress and other work-related illnesses which would normally, but not necessarily, stem from the actions by senior members of the workforce. Frequently, bullying is caused by some form of interpersonal conflict and can take a number of different forms, apart from physical violence. Subtle forms of bullying can take place when someone in authority deliberately withholds essential information or makes belittling or offensive remarks, unwarranted criticism, public humiliation, unnecessary threats, veiled hints of inadequacies and generally undermining confidence are other examples which can have an adverse reaction on the person bullied. The end result can be an increase in work-related illnesses, causing absenteeism, low morale, poor performance and possibly accidents. The problem is probably more widespread than is generally realised.

Why are these employees diverse?

1.28

A diverse employee does not fit into the stereotype of the normal employee, who is deemed to be a white, English, fully able, male and of a middle class background. As we live in an ever-expanding multicultural society the likelihood of any workforce fitting this category is slim.

The diverse employee is at risk of harm. Employees of all backgrounds, ages, sexes and sexual orientation fill the workplace. The need is to ensure that they are afforded full protection both in relation to their employment rights and their safety during employment.

The Health and Safety Executive's (HSE) best available statistics, the *1995 Self-reported Work-related Illness (SWI) Survey* found that one in ten 25-34 year old women workers have been physically attacked by a member of the public at work, which means that attack rates are generally a third higher than for men. The survey showed that hazards traditionally associated with male industrial work are also commonplace in the jobs that women do. More than a quarter of women have to lift or move heavy loads at work and one in five are exposed to dust, fumes or other harmful substances. The survey also identified that the jobs with the highest rates of skin disease, for example hairdressing and repetitive assembly work, are jobs employing a predominantly female workforce. The GMB union guide on women's work hazards cites a HSE report which found that:

'Unavailability of, or improperly fitting, personal protective equipment has been shown to be a significant cause of some workplace injuries to women.'

The TUC's 1999 report, *A Woman's Work is Never Safe*, is based on official statistics and identifies the following:

- women are more exposed to repetitive and monotonous work and to stressful conditions;

1.28 Introduction

- young women are more likely than men to be physically assaulted at work; and
- women are more likely than men to experience back strain, skin diseases, headaches and eyestrain.

UK statistics show that in 1998 women made up nearly half of the workforce (44 per cent, or 11.7 million workers). The great majority (86 per cent) worked in the service industries, such as health, education, hotels and restaurants and the retail trade, compared to 59 per cent of men. Only one in seven women (13 per cent) work in construction and manufacturing, compared to 37 per cent of men.

Equal Opportunities Commission (EOC) statistics found that in 2001, out of 1,434 potential tribunal cases involving pregnancy/maternity related discrimination, 1,387 involved some breach of health and safety legislation. It is shown that problems arise when employers are uninformed or confused about their legal duties to pregnant employees or new mums. The *Equal Opportunities Review*, a legal journal, reveals that the employers increasingly have to pay higher awards in sex discrimination cases and the average compensation payout for a case involving dismissal due to pregnancy is £9,871. It is an important fact that there is no limit to how much a company could be ordered to pay in compensation.

The number of complaints received and investigations initiated by HSE in the last five years

Year	Complaints	Investigations
1997/1998	79	10
1998/1999	89	13
1999/2000	94	26
2000/2001	67	8
2001/2002	67	3
TOTAL	396	60

Compensation payouts awarded, compiled by the Equal Opportunities Review (EOR no 108/Aug 02)

Average award for dismissal due to pregnancy	£9,871
Average award for injury to feelings in sex discrimination cases	£4,349
Range of awards for aggravated damages in sex discrimination cases	£2,000 to £50,000
Awards for personal injury in sex discrimination cases	£1,000 to £17,000