

Article by **Chris Weaver**, Employment solicitor at **Payne Hicks Beach** first published on 22 May 2014 at SMEWEB online

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[How to avoid religious discrimination claims](#)

Written by **Chris Weaver**, a solicitor in the Employment department at Payne Hicks Beach

Thursday, 22 May 2014 10:46



You should consider whether your policies, rules and procedures indirectly discriminate against staff of particular religions or beliefs.

The case of Donna Tunkara, who with her husband is suing their former employer Morrisons supermarkets, highlights the importance of employers having a coherent approach to dealing with requests made by staff for time off during religious holidays.

The Tunkaras claimed their requests for holiday during the Muslim holy month of Ramadan were refused, that they subsequently suffered discrimination, harassment, and victimisation and were constructively dismissed. Morrisons argued that the Tunkaras were refused time off because they submitted their requests too late and there was no unlawful discrimination.

The Equality Act does not say that employers must give time off for religious festivals. However, you should consider whether your policies, rules and procedures indirectly discriminate against staff of particular religions or beliefs and, if so, whether reasonable changes can be made.

Direct discrimination will be a relatively familiar concept to most readers. It occurs where an individual is treated less favourably than another because of religion or belief. The Tunkara case also raised the issue of indirect discrimination, which may be less apparent.

Indirect discrimination is where an organisation has practices, policies or procedures which, although they are applied to everyone, have the effect of disadvantaging people of a particular religion or belief. For example, a business which is open seven days a week may require all its employees to work at weekends. This may put certain employees who observe a day of rest over the weekend at a particular disadvantage.

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Indirect discrimination will not be unlawful if it can be justified. An employer must show that there is a legitimate aim (a real business need) and that the particular practice, policy or procedure is proportionate to that aim (i.e. necessary to achieve that aim, and there is no alternative less discriminatory means available).

It is, for example, more likely that a small employer can justify refusing an employee's request for leave on grounds that it will have a substantial impact on the business. By contrast, a larger employer may find this argument more difficult as its other staff may reasonably be expected to provide cover.

You should sympathetically consider requests by staff for time off to observe religious festivals. While it may be possible to agree for a small number of employees to be absent at a particular time, it is likely to become more difficult if numerous requests for time off are made.

In such circumstances, you should consult with affected employees with the aim of balancing their needs with those of the business and other employees. Discussion and flexibility between you and your staff will usually result in a mutually acceptable compromise.

You should have clear, reasonable procedures for handling requests for leave and ensure that all staff are aware of and adhere to the procedures. Staff should be asked to give as much notice as possible when requesting leave and should be aware that they are likely to be others who would like leave at the same time.

You should consider whether any criteria you have in place for deciding who will be granted leave are fair and not indirectly discriminatory. If the criteria may be indirectly discriminatory, then you must consider whether they can be justified.

You should be aware that the dates of some religious festivals change from year to year and may not be clear until quite close to the actual day. This may put particular groups of employees at a disadvantage, for example where there is a cut-off point for submitting holiday requests - this is precisely what happened in the Tunkaras' case where requests for time off over the summer period had to be made by the end of February.

If you operate a holiday system whereby your business closes for specific periods when all staff must take annual leave, you should consider whether such closures are justified as they may prevent individuals taking leave at times of specific religious significance to them.

A similar approach of considering whether policies and procedures may be indirectly discriminatory, and whether this can be justified, should be taken when dealing with other requests based on religious belief are made by employees, for example in relation to dress codes, provisions to accommodate prayer or dietary requirements.