

Beliefs, Backlash and the Workplace – Navigating the New Culture Wars

Guidance on managing and mitigating risks associated with the expression of beliefs in the workplace

Understanding the risks

Disciplining employees for expressing their beliefs – whether within the workplace or externally, such as on social media – carries potential legal consequences under the Equality Act 2010 (**EqA**), including claims for direct or indirect discrimination, as well as harassment. Even where a belief is not protected under the EqA, dismissal arising from the expression of a belief may result in a claim for unfair dismissal.

Conversely, failing to take appropriate action in such situations may expose the employer to risk. An employee's expression of controversial views, particularly where this is perceived as reflective of the organisation's values, can lead to reputational damage. There is also the risk of internal complaints of discriminatory harassment, for which an employer may be held vicariously liable.

Proactive measures: preparation before issues arise

Employers should set clear expectations regarding acceptable behaviour through robust policy frameworks, including:

Code of Conduct	Clearly articulate the standards of behaviour expected of employees, including whether and how these extend beyond the workplace and working hours.
Social Media and IT Policies	<p>These should prohibit personal use of social media during working hours or on work-issued devices and clarify that breaches may amount to misconduct. They should also outline expectations regarding personal use of social media outside working hours. For instance:</p> <ul style="list-style-type: none">• Remind employees that disclosing their place of work may lead to association with the organisation, with heightened expectations for senior staff.• Require a disclaimer stating that views expressed are personal and not representative of the organisation.• Provide examples of conduct that may give rise to disciplinary action, including dismissal.
Equality and Anti-Harassment Policies	These should set out the protected characteristics under the EqA, include illustrative examples of protected beliefs and describe conduct likely to be considered harassment.
Disciplinary Rules	These should make clear that violations of the Code of Conduct and internal policies may constitute misconduct or gross misconduct.

Employees should acknowledge in writing that they have read and understood the relevant policies, with signed copies retained on file. These policies should be reinforced through regular training on equality, anti-harassment, and appropriate social media use.

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Reactive measures: responding to potentially problematic expressions of belief

- **Identify the legal framework** – Assess whether the belief in question is likely to be protected under the EqA or Article 9 of the European Convention on Human Rights (freedom of thought, conscience and religion). It is prudent to assume most beliefs will qualify. Even unprotected views may attract unfair dismissal protection and fall within Article 10 (freedom of expression).
- **Exercise caution in suspension** – Do not suspend as a matter of course. Refer to [Acas guidance](#) and consider whether suspension is necessary, or if less intrusive alternatives exist. If suspension is imposed, it should be for the shortest period possible and kept under continuous review.
- **Assess whether misconduct has occurred** – Consider why the expression constitutes misconduct by reference to applicable policies. Assume the view is linked to a protected belief unless it is clearly unconnected. This means the employer will need to show that the conduct in question was objectionable and compromised one or more legitimate organisational aims.
- **Conduct a thorough and impartial investigation** – Assess the facts of each case in accordance with the framework established in *Higgs v Farmor's School*. Consider:
 - The nature of the expression (e.g. original post vs. liking or sharing).
 - The tone of the content - was it moderate, robust or intemperate? Mere offence is not sufficient; the conduct must jeopardise a legitimate business interest, such as the employer's reputation or the wellbeing of others.
 - The intended or likely audience - was it limited to a private circle, or more broadly accessible, including to individuals likely to take offence?
 - The extent of any intrusion upon the rights of others, including employees or service users, and the resulting impact on the organisation.
 - Whether the employee made clear their views were personal, or whether they may have been perceived as representing the organisation.
 - The seniority of the employee and any resulting power imbalance.
 - The nature of the organisation and the potential impact of the expression on clients or vulnerable individuals.
 - The interests of other relevant stakeholders potentially affected by the communication.
- **Follow a fair disciplinary process** – Any disciplinary action should be procedurally fair, evidence-based, and consistent with previous cases, and must comply with the [Acas Code of Practice on Disciplinary and Grievance Procedures](#).
- **Anticipate grievances** – The employee may submit a grievance during the disciplinary process, particularly if the belief is protected. Such grievances may allege discrimination and could constitute a "protected act" under the EqA. Care must therefore be taken to avoid retaliatory conduct, including by colleagues, which could give rise to a claim for victimisation.
- **Ensure sanctions are proportionate** – Evaluate whether a formal response is warranted. If so, consider whether a less severe response—such as removal of content, further training or a warning—would be sufficient. Any sanction must be justified, necessary, and proportionate in light of the employee's rights. Even relatively minor disciplinary action could give rise to legal challenge if it is perceived as discriminatory or could form the basis for a constructive dismissal claim.

You can watch BDBF's webinar on this topic [here](#).

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Gareth Brahams (garethbrahams@bdbf.co.uk), Emma Burroughs (emmaburroughs@bdbf.co.uk), Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.