



University of Strathclyde
LAW CLINIC

9D Types of claim: (5) Victimisation

A guide for the general public

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Outline

- ▶ Introduction
- ▶ What is victimisation?
 - ▶ What is a detriment?
 - ▶ What is a protected act?
- ▶ Examples of victimisation
- ▶ How to prove a victimisation claim

Introduction

When completing your ET1, you will be asked to identify which claims you are making. This is at Section 8.1 of the ET1.

You will be ticking the box that says discrimination and then the box below that identifies 'disability'. **This may be alongside other complaints.**

However it will also be necessary to be able to identify which type of disability discrimination you are claiming. The earlier you can do this the better so that you can be sure that the type of discrimination you are complaining of is included within the time limit.

You can do this at Section 8.2 of the ET1 where you are asked to set out the background and details of your claim. For more information about completing the claim form see slideshows 3A and 10D.

Types of disability discrimination

There are six possible claims for disability discrimination. These are:

- ▶ Direct Discrimination
- ▶ Indirect Discrimination
- ▶ Discrimination arising from disability
- ▶ Harassment
- ▶ Victimisation
- ▶ Failure to make reasonable adjustments

You can claim for any combination of these six claims. This series of slideshows aims to explain what these six possible claims are so that you can work out which ones might apply in your case.

What is victimisation?

Under Section 27 of the Equality Act, it is unlawful to victimise an employee. The definition of victimisation under the Act is much narrower than the word's everyday use would suggest.

An employer victimises an individual if they subject that individual to a detriment because:

- The individual performed a 'protected act'
- The employer believes the individual performed a protected act, or
- The employer believes that the individual may, at some point in the future, do a protected act

A worker need not have a particular protected characteristic in order to be protected against victimisation under the Act; to be unlawful, victimisation must be linked to a 'protected act'. Making an allegation or doing something related to the Act does not have to involve an explicit reference to the legislation.

What is a detriment?

Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage. This could include being rejected for promotion, denied an opportunity to represent the organisation at external events, excluded from opportunities to train, or overlooked in the allocation of discretionary bonuses or performance-related awards.

A detriment might also include a threat made to the complainant which they take seriously and it is reasonable for them to take it seriously. There is no need to demonstrate physical or economic consequences. However, an unjustified sense of grievance alone would not be enough to establish detriment.

What is a ‘protected act’?

Protected act means:

- ▶ Bringing proceedings under the Equality Act 2010;
- ▶ Giving evidence or information in connection with any proceedings under the Equality Act 2010;
- ▶ Doing any other thing for the purposes of or in connection with the Equality Act 2010;
- ▶ Making an allegation (either express or implied) that the Equality Act 2010 has been contravened by either the person now doing the victimising, or any other person.

Link between protected act and detriment

There is no time limit within which victimisation must occur after a person has done a protected act.

However, a complainant will need to show a link between the detriment and the protected act.

Examples of victimisation

Dave has just raised proceedings against his former employer for harassment. His new employer decides he will be too much trouble and dismisses him.

Sarah brings a claim against her employer for failure to provide reasonable adjustments. Upon learning this, her Line Manager overlooks her for a promotion opportunity.

How to prove a victimisation claim

