

## EMPLOYMENT UPDATE

# Diversity Training: Once is not enough

A recent Employment Appeal Tribunal decision provides a stark reminder to employers that they cannot rely on “*stale*” equality and diversity training to avoid liability for harassment committed by their workers. We set out the key facts of the case and practical takeaways for employers below.

## Case update

The recent decision of the [Employment Appeal Tribunal](#) (EAT) in *Allay (UK) Ltd v Gehlen* serves as a useful reminder to employers to ensure diversity training is kept up to date in order to rely on the ‘*all reasonable steps*’ defence under s.109(4) of the Equality Act 2010.

## Background

An employee brought a claim against their employer for harassment after being subject to racist remarks by a fellow employee in the workplace.

The employer argued that it had taken “*all reasonable steps*” to educate employees and prevent them from committing discriminatory acts by providing equality and diversity training and was therefore not liable.

## Findings

The Employment Tribunal (upheld by the EAT) decided that, although the employer had provided employees with training, this did not amount to taking “*all reasonable steps*”. The training had been delivered several years before the events in question and was therefore “*stale and ineffective*”.

## Key takeaway

- › If training was provided **around a year ago**, arrange for refresher training for all workers.
- › If training was provided **several years ago**, consider re-running the training in full.
- › If **no training** has been provided, it is important to arrange for full training to be delivered promptly.

## Checklist of best practices for employers

The appropriate steps will depend on the size of the particular employer, its resources, and other risk factors specific to that employer and industry.

Employers should also be mindful that discrimination in the workplace can still happen even when many employees are working remotely. Policies, procedures and training should therefore be adapted accordingly.

- › **Policies and procedures:** There must be clear and effective policies and procedures (reviewed annually) which are understood and easily accessible by workers (who should be reminded of them annually).
- › **Training for all:** All workers should attend and engage with thorough diversity training, as well as be provided with refresher training at “*regular intervals*”. Although no guidance is given on how regular this should be (see [EHRC guidance](#), p62), we recommend annual refresher training in light of the EAT decision.
- › **Enhanced training:** This should be provided to those with responsibility for conducting investigations and managing disciplinary and grievance processes.
- › **Detection & review:** Implement strategies for detecting early warning signs, such as informal one-to-ones, return-to-work meetings after sickness absence, and employee surveys. Lessons learned and feedback should be incorporated into updated policies, procedures and training.

**Northridge is experienced in providing engaging and tailored training on these issues to workers, senior managers and HR teams.**

## The Law Explained - The Equality Act 2010

*Employers are responsible for any act of their employee done during the course of business. S.109(4) of the Equality Act 2010 provides a defence if the employer can demonstrate they have taken all reasonable steps to prevent the employee from doing “that thing, or anything of that description”.*

**If you would like any further advice or assistance on this recent case (including on training options), please contact our Employment Lawyer, Jamie Feldman ([jamie.feldman@northridgelaw.com](mailto:jamie.feldman@northridgelaw.com))**