

EQUALITY LAW

Harassment at work: is the law failing?

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Introduction

Even in 2022, Black and Muslim women still endure harassment within the workplace, specifically in relation to their naturally textured hair or respecting their religious practice of covering up their hair. In addition, they have to endure comments, jokes and overall harassment within the workplace, which they experience due to what they choose to do with their hair.

Arguably, these issues can be remedied through the law of discrimination, but whilst there are overlaps between harassment and discrimination, this aspect of discrimination does not always cover the constant remarks that are normalised and shrugged off by employees and employers. Thus, neither direct nor indirect discrimination sufficiently or fully compensate the feelings of humiliation and degradation suffered in these cases.

The definition and scope of harassment

Section 26 of the Equality Act 2010 applies to all protected characteristics: age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation. Specifically, harassment can be defined as follows:

A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

Two protected characteristics will be a central focus: Black women (race and sex/gender reassignment), and Muslim women (religion and sex/gender reassignment). The law recognises that there are intersectional crossroads, but this is limited to a duality (only two protected characteristics). Section 14 of the Equality Act has been considered 'too complicated' and 'burdensome'¹ by the government to be applied to three or more different grounds, thus failing to even acknowledge issues of harassment. This in turn causes further problems when an individual in the workplace has to choose whether they are being harassed with respect to their race, sex, or religion. Failing to acknowledge that wearing a hijab is not only a religious based issue puts it under an umbrella rather than also acknowledging it as a gender-based issue as the hijab bears the very nature of one's identity as a Muslim woman.² Similarly, failing to acknowledge that wearing one's natural textured hair is not only a race-based issue but also a gender-based issue fails to recognise that such discrimination flows from the nature of being a Black woman. Moreover, it is because of this duality that they are experiencing harassment within the workplace, rather than simply one of the protected

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¹ Government Equalities Office, 'Equality Bill: Assessing the impact of a multiple discrimination provision' (April 2009) <<https://data.parliament.uk/DepositedPapers/Files/DEP2009-1229/DEP2009-1229.pdf>> accessed 18 April 2022.

² Wendy Greene, 'A Multidimensional Analysis of What Not to Wear in the Workplace: Hijabs and Natural Hair' (2013) 8 FIU Rev 333.

characteristics. Thus, harassment in the workplace occurs due to the duality of being a Black or Muslim women rather than simply one of the protected characteristics.

To consider one protected characteristic in isolation is a deficiency of the law as it is failing to protect individuals who possess more than one protected characteristic: being a Black women or Muslim women. The law's failure to recognise intersectional issues adequately in turn effects the claims of harassment these intersectional groups can bring within the workplace, as if these issues are deemed as 'too complicated' how can we expect employers to be able to deal with these situations sufficiently? It is then Parliament's role to create laws that allow people to benefit from any injustices caused by such acts, include combining multiple protected characteristics; being available for harassment claims in addition to indirect discrimination claims. This reform would bring about an understanding of intersectional issues of harassment within the workplace and negate the number of claims, as it would indicate to individuals that these issues are serious, humiliating and degrading, and thus will make people more aware of harassment related issues within the workplace and other institutions.

Black women

We need more focus on harassment that occurs within the workplace. Whilst it is promising that hair discrimination has gained some acknowledgement, it should not stop there. The result of direct discrimination includes the feeling of not being good enough because your hair does not adopt a 'professional' westernised standard, together with the embarrassment and inability to express your cultural heritage through your hair. Black women's hair has been described as their 'crowning glory',³ holding significant importance and weight. Article 10 of the ECHR contains the right to freedom of expression yet in practice, Black women do not have the ability to express themselves through their hair, as they are often harassed and vilified for it. Black women have and are continuously harassed with stereotypical perceptions disparaging their naturally textured hair as "messy", "unkempt", "dirty", and "unprofessional".⁴ There are countless stories of Black women experiencing harassment within the workplace, from being told to "Wear a weave at work – your afro hair is unprofessional"⁵ and comparisons to objects or animals that are dehumanising.⁶

These remarks create a hostile environment for Black women resulting in them not wearing their natural hair in a specific style. The negative comments are also extremely humiliating as it perpetuates a negative connotation of Black people being unhygienic and lazy.⁷ Such comments serve no purpose other than to instil shame in them about their Blackness.⁸ For Black women to experience these humiliating incidents supports the claim that the law is failing to regulate harassment at work.

³ Crystal Powell, 'Bias, Employment Discrimination, and Black Women's Hair: Another Way Forward' (2018) 2018 BYU L Rev 933.

⁴ D Wendy Greene, 'Splitting Hairs: The Eleventh Circuit's Take on Workplace Bans Against Black Women's Natural Hair in *EEOC v Catastrophe Management Solutions*' (2017) 71 U Miami L Rev 987.

⁵ Rozina Sini, "'Wear a weave at work – your afro hair is unprofessional' *BBC News* (UK, 15 May 2016).

⁶ Jessica Morgan, 'These Black Women's stories Prove Hair Discrimination Happens Here Daily' *Refinery29* (UK, 11 February 2020).

⁷ Nicola A Corbin, William A Smith, and J Roberto Garcia, 'Trapped between justified anger and being the strong Black Women: Black college Women coping with racial battle fatigue at historically and predominantly White insinuations' (2018) *International Journal of Qualitative Studies in Education* 626-643.

⁸ Jane Edwina, 'Halo Code' (October 2020) <<https://halocollective.co.uk>> accessed 22 March 2022.

Education in the workplace

There is a direct parallel regarding harassment at schools and the further maintenance of school policies. School hair polices which Black students and teachers have to follow, as well as teachers policing students' hair, creates a hostile environment which in turn further enables their peers, and even staff members, to tease, shame, embarrass and target Black students' hair.

If the law fails to recognise the danger of not highlighting and remedying the impact of harassment in early education, this follows into the workplace environment later in life where it becomes normalised. If the law begins to identify the issues within educational institutions, then the law will be better equipped to identify and more easily tackle harassment issues when they occur. Simultaneously will enable the individual who is being harassed to feel comfortable in the knowledge that the law will aid them when making a claim of harassment.

In hindsight, the law is failing to consider this type of harassment in the workplace. The way the law regulates harassment within education is ineffective, as the implementation of the polices is restrictive and breeds the notion that wearing your natural hair is an issue. Already from a young age, Black women are placed in an intimidating, hostile, degrading, humiliating and offensive environment that continues to cause discrimination due to the inadequate protection provided by the law.

World Afro Day Report

Research gathered from De Montfort University provides valuable statistics that provides some insight into the harassment that occurs within the workplace and educational institutions:

- 82.9 per cent of children experienced their hair being touched without their permission;⁹
- 46 per cent of parents say that their children's school's policy penalises Afro hair;¹⁰
- 58 per cent of Black students have experienced name-calling or uncomfortable questions about their hair at school;¹¹
- One in five Black women feel societal pressure to straighten their hair for work.¹²

These statistics reinforce the idea that the law is failing to protect Black women against harassment, not only in the workplace but also in educational settings. The statistics do not expose the entire UK population, and thus the value may be skewed. However, the value that these statistics hold further highlights the issues within the law in relation to Black women and harassment within the workplace.

⁹ Michelle De Leon and Denese Chikwendu, 'Hair Equality Report 2019: "More than just Hair"' (2019) <<https://www.worldafroday.com/hair-equality-report>> accessed 19 April 2022.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

The Halo Code

The Halo code is the first UK-based initiative that pledges to those members of the Black community that they have the “freedom and security to wear all afro-hairstyles without restriction or judgement.”¹³

It is promising that the Halo Code exists, and that there has begun some focus on hair discrimination. The focus is in connection with harassment that exists alongside discrimination, and the code will protect against occurrence of harassment in the workplace, as its aim is to incorporate the Code into workplaces and education establishments. This will facilitate a proactive stand, that no member of the community will face barriers or judgement because of their Afro-textured hair.¹⁴ Nevertheless, this is a rising, independent organisation that is not governed by the law. This suggests that the law is failing to regulate harassment in the workplace, as otherwise independent groups would not have to create a code to help individuals that suffer from a humiliating and hostile environment within the workplace.

It would be in the law’s best interest to take this code and adopt it into formal, primary legislation, as it is important not only to ensure that everyone is included within the law, but to highlight that harassment in the workplace in relation to Black women and their hair will not be tolerated.

Workplace harassment – literature from the US

Several articles from the United States make it clear that Black women alter their natural hair or rather maintain it by straightening their hair because of an explicit or implicit term or condition of employment.¹⁵ Moreover, employers have instructed Black women to cut off, cover or alter their natural textured hair in order to obtain employment for which they are qualified.¹⁶

The US has recently introduced legislation (considered below), which will make it unlawful to make individuals feel any type of humiliation, intimidation, and should create a beneficial and safe environment rather than a hostile one for Black men and women. This is a clear example of how the USA has attempted to regulate the law against harassment in the workplace.

The Crown Act

The US has recently passed legislation - the Crown Act (Creating a Respectful and Open World for Natural Hair), the Act prohibiting “discrimination based on an individual’s texture or style of hair.”¹⁷ The USA has thus successfully passed legislation to more fully combat discrimination and harassment claims within the workplace. Although, the UK is showing signs of progression, nothing has yet become a specific law. True, there is protection against discrimination for protected characteristics, yet there are no specific provisions to protect Black people, or more specifically Black women in respect to their hair and the experiences that they go through within the workplace. Unlike in the US, there is no

¹³ Jane Edwinal, ‘Halo Code’ (October 2020) <<https://halocollective.co.uk>> accessed 22 March 2022.

¹⁴ Ibid.

¹⁵ Wendy Greene, ‘Splitting Hairs: The Eleventh Circuit’s Take on Workplace Bans Against Black Women’s Natural Hair in *EEOC v Catastrophe Management Solutions*’ (2017) 71 U Miami L Rev 987.

¹⁶ Ibid.

¹⁷ Janelle Griffith, ‘House passes the Crown Act banning discrimination against Black hairstyles’ *NBC News* (America, 18 March 2022).

independent and effective legislation to negate any issues in relation with to discriminatory and humiliating treatment.

Muslim women

In a recent case, harassment was demonstrated in the workplace against a Muslim woman.¹⁸ In this case, physical harassment was suffered by a Muslim woman, when her headscarf was pulled down by Mrs McGonigle, a work colleague, on two occasions. She had only admitted to doing it once, and she claimed that she was ‘only messing around’ and professed that the Muslim women looked ‘prettier without it’. Rejecting the employer’s claim, Judge Hallen stated that there had a breach of the policy on bullying and harassment due to a protected characteristic based on race or religion, which could constitute a disciplinary offence and lead to dismissal. Judge Hallen also identified that employees are entitled to be treated with dignity in the workplace.

This case questions the allegation that the law is failing to protect Muslim women in the workplace, and rather that the law has regulated harassment within the workplace effectively as it was identified as an issue of religious based harassment. However, the ‘Neutrality Policy’²⁰¹⁷¹⁹ may lead to further harassment claims within the workplace. This European Court of Justice Policy states that in some circumstances workplaces can ask Muslim women to remove their hijab if they work face-to-face with customers or if it causes conflict in the workplace.²⁰ Employers should be aware that dress codes should not interfere with an employee’s right to manifest their belief,²¹ unless it can be objectively justified. Further, in a case where religious crosses were not to be visible²² or allowed in the workplace, such discrimination was held to contravene Article 9 ECHR. However, the issue remains that Muslim women will be put into a difficult position, whereby removing their hijab will cause them to feel violated and degraded as the request is based on religious reasons, and where they wear the hijab to maintain modesty and privacy.²³ This will also create an intimidating environment if they choose not to remove their hijab, again supporting the claim that the law has failed to effectively regulate harassment within the workplace. However, it is necessary to note that the law is not binding on UK tribunals and courts, and thus it will be at the discretion of the court to regard this policy or not.

Conclusions

As suggested above, the inclusion of the Halo Code as law would be beneficial for employees and employers, not only to acknowledge that there is a mandated law to protect against harassment, but also to require cultural competency training within the workplace. Cultural competency training would be advantageous for everyone within the workforce as well as educational institutes, allowing them to be aware, understand and learn about the cultural values and beliefs of the issues that Black and Muslim women experience.

The above research has demonstrated the both law’s success and deficiencies. The law has been successful in regulating harassment at work as far as the definition provided with the Equality Act 2010, as well as dealing with general harassment claims. Further Judge

¹⁸ *McGonigle v WM Morrison’s Supermarket plc* [2021] UKET 3202627/2021.

¹⁹ *Achbita v G4S Secure Solutions* [2017] EU: C: 2017: 203.

²⁰ *Müller v MJ* [2021] EU: C: 2021: 594.

²¹ European Convention on Human Rights Article 9 - Freedom of thought, conscience, and religion.

²² *Eweida v United Kingdom* [2013] ECHR 37.

²³ *Qur’an* : An-Nur: 31.

Hallen's judgment indicates that the courts are becoming aware of issues surrounding harassment and indicates that they will be dealt with sufficiently.

On the other hand, the law has failed to regulate harassment in the workplace specifically in relation to Black women and their hair. There seems to be a lack of understanding when dealing with these issues, hence a plethora of issues occurring within the workplace and in educational settings. The law has failed to include a provision that can benefit the Black community, such as the inclusion of the Halo Code. UK law fails to provide legislation such as the US, which demonstrates that the US are further ahead than the UK in this area. It is evident that this issue is not at the top of the current agenda, but it would be a beneficial piece of legislation to incorporate into UK law. Support for this issue is paramount, and the UK law needs to urgently work on this reform to help individuals, especially those that hold more than one protected characteristic, so that any claims of harassment can be dealt with effectively and appropriately. Otherwise, if the law continues to disregard dual or multiple protected characteristics, harassment will continue to occur in the workplace.

The duty of the law is to ensure that everyone is protected and can call on the law to help them. However, if this is not available for Black and Muslim women then the law's lack of protection will lead this demographic to believe that they are not important, in turn changing themselves as individuals to fit into what is normalised in order to prevent being harassed. This should not be the case; rather the law should be changed to diminish the re-occurrence of harassment claims in the workplace.