

DIFFERENT FORMS OF DISCRIMINATION

Case law has evolved, and different types of discrimination have emerged and continue to evolve – *Discrimination can be any of these:*

Direct discrimination can be “overt” from one person to another person.

Indirect discrimination seems fair but actually results in people being treated differently. (An employment agency asked to exclude).

****Constructive or “adverse impact” discrimination. (An employer has a rule that male employees must be clean-shaven).***

Reprisal is punishing someone for complaining about human rights concerns.

Association discrimination your association, relationship or dealings with another person identified by a ground in the Code.

Poisoned Environment may be created by a single Code-related comment that makes you feel unwelcome or uncomfortable.

Harassment occurs when Code-related comments or conduct are unwelcome or ought known to be unwelcome, and are generally repeated.

Racial Profiling – over surveilled and scrutinized because of public security concerns

Systemic discrimination is part of the organization's culture [barriers inherent in the normal functioning of the institution].

Ex. “Monday” – Boston – modern discrimination often occurs in subtle, creative ways → involving non-blatant, sometimes ‘grey’ situations

It is not so much based on the type of discrimination but the impact. Today, the court asks:

1. Was there differential treatment?

2. Does the differential treatment result in disadvantage?

It does not matter if the discrimination is direct/overt, indirect, systemic constructive. It is the adverse impact.

→ To establish prima facie discrimination → a claimant must show three things (1) that he or she is a member of a group protected by the code; (2) that he or she was subject to adverse treatment; and (3) that a code-related ground was a factor in the alleged adverse treatment]