



A GUIDE TO THE EQUALITY ACT 2010

No. 473

October 2010

Introduction

The Equality Act 2010 (the Act) has been introduced to simplify discrimination law, making it easier for organisations and individuals to understand their rights and obligations. The Act brings together, and in many cases replaces, previous equality and discrimination legislation. It strengthens certain aspects of equality law and extends protection to groups not covered by previous legislation. Businesses with existing equality policies and procedures will need to ensure that these are updated to take account of changes implemented by the Act. The Equality Act covers England, Scotland and Wales and the majority of the Act comes into force in October 2010. The Act does not apply in Northern Ireland.

This factsheet explains what the Act covers, who it applies to and what businesses must do to comply with the Act. It also provides hints and tips and sources of further information.

What does the Act cover?

The Act covers discrimination against certain groups of people sharing what the legislation defines as 'protected characteristics', including age, disability, race and sex. The Act covers discrimination against both employees and non-employees, such as customers or job candidates. The Act brings together and re-states the obligations of the following pieces of legislation:

- The Equal Pay Act 1970.
- The Sex Discrimination Act 1975.
- The Race Relations Act 1976.
- The Disability Discrimination Act 1995.
- The Employment Equality (Religion or Belief) Regulations 2003.
- The Employment Equality (Sexual Orientation) Regulations 2003.
- The Employment Equality (Age) Regulations 2006.
- The Equality Act 2006, Part 2 and Part 4.
- The Equality Act (Sexual Orientation) Regulations 2007.

All the above legislation has been repealed and replaced by the Equality Act 2010, apart from certain aspects of the Employment Equality (Age) Regulations 2006, parts of the Equality Act 2006 relating to the Equality and Human Rights Commission and certain aspects of the Disability Discrimination Act 1995 relating to Northern Ireland. For more information on equality legislation in Northern Ireland go to www.equalityni.org/sections/default.asp?secid=3.

The Act also strengthens the law in several areas, extending protection against discrimination because of a protected characteristic, or a combination of protected characteristics, or association with someone with a protected characteristic. It gives businesses and other organisations the authority to take positive action in order to enable employees, potential employees or customers to overcome any possible disadvantage that might arise from their protected characteristic.

Who does the Act apply to?

The Act applies to any business or other organisation that employs people or provides goods, services or facilities. It also applies to membership clubs or associations with 25 or more members.

What are the protected characteristics covered by the Act?

The Act makes it unlawful for businesses to discriminate against people with protected characteristics. The nine protected characteristics covered by the Act are:

Age

The Act protects people of all ages, making it unlawful to discriminate against someone on the grounds of their age, except when it can be justified as a proportionate means of meeting a legitimate aim. An example of a legitimate aim is areas of work where age restrictions exist, such as the sale of alcohol. Employers still have the right to set a default retirement age of 65, however ongoing Government consultation may result in this right being phased out.

Disability

The Act defines a person as disabled if they have a long-term physical or mental impairment that substantially affects their ability to carry out normal day-to-day activities. Employers are obliged to make reasonable efforts to ensure that employees are not disadvantaged as a result of their disabilities, for example by implementing appropriate adaptations. The Act also makes it unlawful to discriminate against a disabled person because of something connected to their disability. An example of this is where a person with a disability uses or wears a particular device, such as a hearing aid.

Gender reassignment

The Act protects transsexual people, defined as those who plan to undergo, are currently undergoing, or have completed a process to change their gender. In a change from previous legislation, transsexual people do not need to be under medical supervision in order to be protected. For example, a man who lives permanently as a woman but does not undergo a medical procedure to change his gender is protected by the Act.

Marriage and civil partnerships

People who are married or in a civil partnership are protected equally by the Act. Businesses cannot discriminate against a person on the grounds of their being married or in a civil partnership.

Pregnancy and maternity

The Act protects women from discrimination during periods of pregnancy and statutory maternity leave. It is unlawful for employers to take into account pregnancy-related absences when making decisions about employment. Discrimination during periods of pregnancy and statutory maternity leave is treated separately from sex discrimination.

Race

The Act protects people from being discriminated against due to their race. For the purposes of the Act, 'race' covers nationality, ethnic origin and skin colour.

Religion or belief

The Act protects individuals who follow a religion and individuals who do not follow a religion. It also covers people who have philosophical beliefs and those without philosophical beliefs. Therefore it is unlawful to discriminate against someone because of a religious or philosophical belief they hold or do not hold.

Sex

Men and women are both protected by the Act and it is unlawful to discriminate against a person on the grounds of their sex.

Sexual orientation

The Act protects heterosexual, gay, lesbian and bisexual people and makes it unlawful to discriminate against anyone due to their sexual orientation.

What conduct is prohibited under the Act?

The Act sets out seven types of prohibited conduct. These are:

Direct discrimination

This type of discrimination occurs when someone is treated less favourably or is placed at a disadvantage because they have a protected characteristic. This applies to all protected characteristics.

Associative discrimination

This arises when someone is discriminated against because they associate with another person who has a protected characteristic. This applies to all protected characteristics apart from marriage and civil partnership and pregnancy and maternity.

Perceptive discrimination

This occurs when someone is discriminated against because others believe they have a protected characteristic, even if they do not. This applies to all protected characteristics apart from marriage and civil partnership and pregnancy and maternity.

Indirect discrimination

This occurs where a rule, policy or practice applies to everyone, but particularly disadvantages someone with a protected characteristic. In some circumstances indirect discrimination can be justified, if it can be shown to be as a result of acting reasonably in the management of a business, for example in implementing necessary health and safety procedures. However, non-discriminatory alternatives would need to be considered. This type of discrimination applies to all protected characteristics apart from pregnancy and maternity.

Harassment

This is defined as behaviour that creates an intimidating, degrading, humiliating or offensive environment or violates the dignity of a person. The Act covers harassment related to a protected characteristic, including sexual harassment. Harassment does not necessarily have to be directed at a person who has a protected characteristic in order to be considered unlawful. For example, an employee who was offended by comments regarding another employee's protected characteristics could make a claim for harassment. This form of discrimination applies to all protected characteristics apart from marriage and civil partnership and pregnancy and maternity.

Third party harassment

The Act protects employees from harassment from third parties about a protected characteristic. Examples of third parties are customers or visitors and the Act deems employers potentially liable. Employers become liable when they are aware that the harassment has occurred on two or more previous occasions but have not taken steps to prevent it from recurring. This applies to all protected characteristics apart from marriage and civil partnership and pregnancy and maternity.

Victimisation

This occurs when an individual is treated badly because they have made or supported a complaint, or are thought to have made or supported a complaint, related to equality issues. The Act does not protect individuals who have made or supported a malicious or false complaint. This applies to all protected characteristics.

What other obligations does the Act place on businesses?

The Act places a number of other key obligations on businesses, including:

Positive action

The Act allows employers to take positive action when people with a protected characteristic are seen to be at a disadvantage or are less involved in a particular activity. For example, if your business has a vacancy on its all-male management team and there is one male and one female candidate for the vacancy, positive action enables you to use proportionate means to help the female overcome the disadvantage of this protected characteristic. As long as the male and female candidates are equally suited to the role, you may, on the grounds of positive action, recruit the female candidate.

Reasonable adjustments

The Act obligates businesses to make reasonable adjustments in order to ensure that disabled people are not placed at a disadvantage due to their disability. This can include making adjustments to physical features in a business premises, for example by installing access ramps, lowering workbenches or making easier access to toilets and washroom facilities. It can also include making reasonable adjustments to policies and procedures, for example by altering working hours or duties, or modifying instructions or reference manuals.

Pre-employment questions

Under the Act, as an employer you may ask health-related questions to prospective employees during the selection process only in certain circumstances, including to:

- Provide any necessary adjustments or help during the selection process, for example wheelchair access for an interview.
- Determine whether an individual can perform an activity intrinsic to the job, for example whether someone with a physical disability can carry out heavy lifting.
- Take positive action, for example in order to increase the number of disabled people reaching the interview stage of the selection process.
- Determine whether an individual has a disability that is required for the job, for example where a counsellor role requires the job holder to have personal experience of a particular condition.
- Monitor diversity among applicants, for example to make sure your advertisements are reaching a particular group of people.

You may, however, ask prospective employees health-related questions once the selection process is over and they have been offered a job.

Pay equality and secrecy

The Act allows individuals to challenge employers on pay inequality and other differences in contractual terms and conditions due to sex discrimination. A challenge can be made if an individual can supply evidence that they would receive better pay, terms or conditions if they were of the opposite sex. However, unlike under previous legislation, the individual does not have to make a comparison to an actual person of the opposite sex in the same job when the claim is for direct pay discrimination.

In addition, the Act makes it unlawful for employers to restrict employees from discussing pay if the aim of this is to establish whether pay inequality exists. This makes pay secrecy clauses in employment contracts unenforceable.

If your business employs 250 or more staff you are obliged by the Act to make public accounts of any pay differences between male and female employees. Non-complying businesses could face a fine of up to £5,000 plus criminal and civil sanctions.

Breastfeeding

The Act also makes it unlawful for businesses to discriminate against women who are breastfeeding, for example by asking them to stop or leave a premises such as a café or shop.

What if a claim of discrimination is made against your business?

Individuals who believe that they have been discriminated against as a result of a protected characteristic have the right to make an informal or formal complaint, which may be dealt with via your business' internal complaints procedures. Alternatively they can choose to take their claim to an Employment Tribunal or County Court.

Claims of discrimination on the basis of a protected characteristic within the workplace, for example between employers and employees, are heard by Employment Tribunals. Employees who believe they have been discriminated against by you as the business owner or another employee or agent have the right to make a claim. Claims must be made within three months of the alleged discrimination taking place, except for disputes involving equal pay.

Penalties can include an award of compensation, for example for loss of earnings and damages for injuries to feelings, a recommendation requiring the business to take action that would reduce or remove the effects of the discrimination and a declaration issued by the court stating that the business has discriminated against an employee.

The Act extends the powers of employment tribunals. Previously, tribunals could direct an employer to remove or reduce the effect of discrimination on a claimant. Under the new Act, tribunals can direct an employer to remove or reduce the effect of discrimination on all employees, not just the claimant.

Claims of discrimination on the basis of a protected characteristic outside the workplace, for example between businesses and consumers, are heard in the County Court in England and Wales and the Sheriff's Court in Scotland. Claims must be made within six months of the alleged discrimination taking place.

Penalties can include an award of damages, including compensation for injuries to feelings, an injunction to prevent the business from acting in the same way in future and a declaration issued by the court stating that the business has discriminated against a person or persons.

Individuals can also approach the Equality and Human Rights Commission, which can take legal action against businesses that breach equality legislation.

Hints and tips

- Ensure that all employees, consumers and others accessing your business' goods, services or facilities are fairly treated, regardless of their age, disability, gender, any gender reassignment, pregnancy or maternity, race, religion or belief, sex or sexual orientation.

- Remember that, except in the case of pregnancy and maternity, individuals do not need to have a protected characteristic themselves to be protected from discrimination.
- Consider whether positive action could benefit any groups that are currently either disadvantaged or under-represented among the business' staffing structure or customer base.
- When a disabled person applies for a job, take reasonable steps to remove any barriers that would put them at a disadvantage.
- When advertising job vacancies ensure that you avoid language that might lead to claims of discrimination, for example advertising for a 'waitress' instead of a 'waiter or waitress'.
- If your business already has an equality policy, make certain you review it to ensure that it complies fully with the new requirements stipulated by the Act.

Further information

For practical start up and small business tips, ideas, know-how and news, go to:

Website: www.enterprisequest.com

To access hundreds of practical factsheets, market reports and small business guides, go to:

Website: www.scavenger.net

BIF 91 A Guide to Your Employees' Maternity and Paternity Rights

BIF 136 An Introduction to Employment Regulations

BIF 374 A Guide to Flexible Working Regulations

Useful contacts

The Government Equalities Office is responsible for equality legislation in the UK. It publishes information and guidance on issues including the Equality Act 2010.

Tel: 0303 444 1204

Website: www.equalities.gov.uk

Acas offers practical, independent and impartial help to employers, employees and their representatives by providing information and advice, preventing or resolving disputes and settling complaints about employees' rights without the need for an employment tribunal hearing.

Tel: 0845 747 4747

Website: www.acas.org.uk

The Equality and Human Rights Commission works to stop discrimination and promote equal opportunities. It publishes information and guidance for employers on preventing and dealing with discrimination in the workplace.

Tel: 0845 604 6610 (England)

Tel: 0845 604 5510 (Scotland)

Tel: 0845 604 8810 (Wales)

Website: www.equalityhumanrights.com

The Equality Commission for Northern Ireland works to eliminate discrimination and promote equal opportunities in Northern Ireland. It runs events and training courses and publishes good practice guides for employers.

Tel: (028) 9089 0890

Website: www.equalityni.org

For further information contact Business Link

Call: 0845 113 1234

E-mail: info@businesslinkwm.co.uk

Visit: www.businesslinkwm.co.uk

This information is meant as a starting point only. Whilst all reasonable efforts have been made, the publisher makes no warranties that the information is accurate and up-to-date and will not be responsible for any errors or omissions in the information nor any consequences of any errors or omissions. Professional advice should be sought where appropriate.

© Cobweb Information Ltd,
1st Floor, Northumbria House, 5 Delta Bank Road, Metro Riverside Park,
Gateshead, NE11 9DJ, Tel: 0191 461 8000