

The Equality Act 2010



The Equality Act replaces nine separate pieces of anti discrimination Acts and is intended to make it easier to understand and give protection to more people. However I am sure our customers do not want to read all 238 pages so we have produced this summary for you.

The bulk of the Act came into force from October 1st 2010 and details a number of "protected characteristics" where discrimination is unlawful. The focus is on the characteristic rather than who has it which will bring protection to a much wider group of people.

Age (no change)

Protection is still given to all ages. Currently a default retirement age of 65 is still lawful, however it will be changing next year.

Disability (changes)

The definition of disability is someone who has a physical or mental impairment that has a substantial and long term adverse effect on their ability to carry out normal day to day activities.

Employers must make reasonable adjustments for disabled applicants and employees.

Gender reassignment (changes)

This provides protection for transsexual people. Previously the person had to be undertaking medical intervention but now it is sufficient that they have decided to change their gender. Cross dressers are not protected by this because they are not living their life in the opposite gender.

Marriage and Civil Partnership (no change)

This protects employees who are married or in a civil partnership.

Race (no change)

This includes colour, nationality and ethnic and national origins.

Religion and belief (no change)

This offers very wide protection to all religions or those who have no religious faith. Additionally this covers philosophical belief but not political belief.

Sex (no change)

This protects both males and females.

Sexual orientation (no change)

Gay, lesbian, bisexual and heterosexual people are covered by this.

It is important that Employers are knowledgeable about the types of discrimination so that they can ensure their workplace is safe and free from discrimination. The Act has introduced some new areas and widened the scope of others. Given that tribunal payouts are unlimited for discrimination claims this section is important.

Direct Discrimination

This happens when a person (A) discriminates against another (B) because of a protected characteristic.

With the exception of age, direct discrimination can never be justified.



Indirect Discrimination

This has been extended to cover disability and gender reassignment and now covers all the protected characteristics apart from pregnancy and maternity which are covered by indirect sex discrimination.

It occurs when a condition or Company policy disadvantages people who share a protected characteristic. Sometimes there are grounds that allow this, for instance, asking for a female social worker for a Women's refuge which would count as a proportionate means of achieving a legitimate aim.

Associative Discrimination

This has been extended to cover age, disability, gender reassignment and sex. This means the person is discriminated against because they associate with someone with one or more of the protected characteristics. For example a parent who has to have more time off to care for a disabled child or elderly relative.

Perceptive Discrimination

This is discrimination because others think they have one of the protected characteristics. For instance where an employee is assumed to be gay and is taunted by work colleagues but in fact is heterosexual.

Victimisation

Employees who have taken out grievances or supported others with complaints under the Act are protected from any detrimental treatment.

Harassment

Harassment is the unwanted conduct related to a protected characteristic which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the individual.

Under the Act employees can now complain about behaviour that they find offensive even if it is not directed at them. Furthermore they do not have to have the protected characteristic themselves.

Third Party Harassment

This has been extended to cover age, disability, gender reassignment, race, religion or belief sexual orientation as well as sex.

Employers can be liable for the actions of third parties who could be customers, suppliers or your employees. This is the three strikes rule. The employer will be liable if harassment has occurred on two previous occasions you know about, but have taken no action to prevent it happening again.

Pre employment Health Questionnaires

The Act only allows you to ask health related questions before an offer of employment in certain circumstances which are:

To see if reasonable adjustments need to be made for an applicant to attend a job interview.

To establish whether an applicant will be able to carry out an essential part of the job i.e. heavy lifting for a labourer.

To monitor diversity in applications for jobs.

Take positive action to assist disabled people where you are allowed to.

To make sure that the person has a disability where this is a genuine requirement for the job.

Our advice is to ask health related questions after you have offered someone the job. The offer can then be subject to a satisfactory medical.

Equal Pay and Pay Secrecy

The existing equal pay legislation is retained. The new part is that it is unlawful for you to prevent employees discussing their pay. If you have such a clause in your contract it will be unenforceable although you can still prevent them discussing rates of pay with your competitors.

Areas in the Act which cover Positive Discrimination and Dual discrimination claims have not yet been brought into force.

Good and Services

The Equality Act also covers the sale of goods and services and is aiming to ensure that everyone accessing your goods, facilities or services is fairly treated regardless of whether they have a protected characteristic themselves or by association or perception.