

Equality Act 2010 and Employers Guide

The **Equality Act 2010** is an Act of Parliament of the United Kingdom and fulfils a manifesto commitment of the Labour Party in the 2005 General election.

The primary purpose of the Act is to codify and streamline the numerous UK anti-discrimination acts and regulations. Primarily, the **Equal Pay Act 1970**, the **Sex Discrimination Act 1975**, the **Race Relations Act 1976**, the **Disability Discrimination Act 1995** and three major statutory instruments protecting discrimination in employment on grounds of religion or belief, sexual orientation and age.

A second driver behind the Act was the perceived lack of progress in Great Britain on equality generally and in particular on achieving equality in pay between men and women.

The Act received Royal Assent in April 2010 under a Labour Government. However, it did not come into force before the May 2010 General Election, the outcome of which was a change of government to a Conservative–Liberal Democrat Coalition.

Doubts were cast on the new government's intentions towards the implementation of the Act. In *particular, statements made in the Conservative party manifesto and the subsequent Coalition Government programme indicated dissatisfaction with the equal pay provisions.*

On 3 July 2010, the Coalition Government announced that it would begin implementing the Act according to the original timetable, which envisaged implementation of the main provisions from 1 October 2010. However, in the light of the statement in the Government programme regarding equal pay, doubts must remain about whether the full equal pay provisions will be implemented in 2013 as originally planned (see below).

What does the Equality Act 2010 do?

When fully implemented, the Act will:

- Consolidate nine separate pieces of anti-discrimination legislation into a single Act
- Update and amend existing strands of anti-discrimination law, but not completely re-codify it – so that differences between the different strands will remain
- Create a new single equality duty on public bodies
- Extend the scope for positive action with a new provision for positive discrimination
- Support equal pay between men and women by banning secrecy clauses in contracts of employment and by introducing compulsory pay reporting
- Allow for wider equality objectives to be included in tenders for public sector contracts

Key concepts

The Act introduces a number of key concepts which are listed below.

Protected characteristics

The Act offers protection to people with 'protected characteristics'. The list of nine protected characteristics simply covers all those characteristics covered by existing anti-discrimination law strands. The protected characteristics are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Note that gender reassignment, marriage, civil partnership, pregnancy and maternity are currently protected under sex discrimination law. The Act does not add any protected characteristics to those already defined by law.

Implications for employers

While the Act will not fundamentally change employers' duties to their workers and prospective workers – and so wholesale redrafting of policies should not be necessary – there are matters of detail which employers will need to be aware of and which may impact on how policies are put into practice. These include:

- Associative discrimination will now additionally apply to age, disability, gender reassignment and sex.
- Perceptive discrimination will now additionally apply to disability, gender reassignment and sex.
- Indirect discrimination will now additionally apply to disability and gender reassignment.
- Employers will be potentially liable for harassment of their staff by a third party they don't employ.
- It will be unlawful for employers to ask medical questions of prospective employees, except for certain defined reasons.

Action Points for employers

Review recruitment processes and procedures to remove inappropriate pre-employment medical questions.

Remember, it will not be permissible to send out a blanket 'pre-employment medical questionnaire' to all job applicants. However, questions on medical matters will still be permitted for equality monitoring, compliance with disability discrimination requirements and for genuine job-related reasons.

Consider in what circumstances employees might encounter harassment from third parties and how policies and procedures might be adapted to prevent it.

Customers may say things to your employees that they wouldn't dare say in their own workplaces. However, the stricter requirements for third party behaviour to amount to 'harassment' (see above) mean that one-off incidents may still occur without the employee having any recourse to complain.

You should consider how reporting procedures can be improved so that you can keep track of third party harassment.

Be aware that an employee can complain of harassment even if the harassment was not aimed at him or her, or the employee doesn't possess the protected characteristic.

Employers will be familiar with part of this concept from current sexual orientation discrimination law – the complainant doesn't need to be gay to complain of harassment which assumes they are gay. The Act extends this to allow an offended onlooker to complain and extends protection to all the protected characteristics (other than pregnancy and maternity and marriage and civil partnerships).

Consider how your policies and procedures might need to be operated differently to avoid associative discrimination claims.

Recruiting and operational managers are likely to be familiar with dealing with employees under anti-discrimination laws, but are not likely to be familiar with how a characteristic of an employee's relative can also be relevant.

There might, therefore, be a requirement to review an absence warning procedure to take account of where absences are caused by the characteristics of a dependant.

Remove pay secrecy clauses from contracts of employment

Pay secrecy clauses will become unenforceable under the Act.

Check whether your organisation is affected by the single equality duty for public sector employers.

This also affects organisations carrying out public functions, and those contracted to public bodies.

Consider whether and if so, how, your business would implement the positive action provisions contained in the Act.

There is no obligation on organisations to implement positive action measures, and existing positive action measures are still permitted under the Act. However, organisations might wish to use the positive action provisions during recruitment or promotion exercises to promote equality, but will need to take care to avoid claims from unsuccessful applicants.

Ensure that line managers and managers responsible for recruitment are trained on the implications of the Act.

In most organisations, it will be the actions of line managers and recruiting managers that will present the greatest risk of additional unlawful discrimination claims under the Act. The new provisions on pre-employment medical questions, associative discrimination and combined discrimination are likely to prove the most troublesome, as managers are unlikely to be aware of their implications. Make sure they know about and understand the practical implications of these changes.

Equality 2010 Act an Employees Guide

As an employee you are legally bound to comply with the Equality Act 2010. It is crucial that you understand the anti-discrimination laws, not only to avoid potential claims being brought against you, but also to understand your rights as an employee.

Anti-discriminatory laws cover the following:

Associative discrimination

Associative discrimination is discrimination against a person because they have an association with someone with a particular protected characteristic. This already applies to race, religion or belief, and sexual orientation and is now to be extended to cover age, disability, gender reassignment and sex.

An example of associative discrimination might be a non-disabled employee who is discriminated against because of action she needs to take to care for a disabled dependant.

Perceptive discrimination

Perceptive discrimination is discrimination against a person because the discriminator thinks the person possesses that characteristic, even if they do not in fact do so.

Perceptive discrimination already applies to age, race, religion or belief and sexual orientation, and is now extended to cover disability, gender reassignment and sex.

Indirect discrimination

Indirect discrimination occurs where a policy applies to everybody, but the policy has a disproportionate impact on people with a protected characteristic. Indirect discrimination has now been extended to cover disability discrimination and gender reassignment.

Harassment

Harassment is defined as:

'unwanted conduct related to a relevant 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 that individual'.

Harassment will apply to all protected characteristics except for pregnancy and maternity and marriage and civil partnership.

Under the Act:

- employees can complain of harassment even if they don't possess the protected characteristic or the harassment is not directed at them,
- employers can be liable for harassment of their staff by non-employees (for example, customers).

In the case of third party harassment, an employer will only be liable if the harassment has occurred on at least two previous occasions, knows that it has taken place and has not taken reasonable steps to prevent it happening again. Third party harassment will apply to all protected characteristics except for pregnancy and maternity and marriage and civil partnership.

Direct discrimination and victimisation are other key concepts that are carried over from the anti-discrimination laws and which are largely unchanged by the Act.

Significant changes from existing discrimination law

While the Act consolidates existing anti-discrimination legislation into one Act, the different strands of law remain as now. These are known as 'protected characteristics' (see above) and retain many of their different characteristics.

For example, disability discrimination still contains the obligation on employers to make reasonable adjustments, which is not required in any other strand. However, some attempt has been made to iron out differences between the strands, in particular associative discrimination, perceptive discrimination, indirect discrimination and third-party harassment.

Set out below are some of the other significant changes the Act introduces.

Combined (dual) discrimination

From April 2011, people who consider that they have been discriminated against because of a combination of protected characteristics will be able to bring claims of combined discrimination. This applies to claims based on no more than two combined protected characteristics (excluding pregnancy and maternity and marriage and civil partnerships).

An example of combined discrimination would be the case of a black woman who feels she is unfairly being denied promotion by her employer. Her employer might be able to successfully defend a claim of race discrimination, because black men are routinely promoted and might equally be able to defend a case of sex discrimination, because white women are routinely promoted. It is the combination of her characteristics that disadvantages the black woman.

The Act will allow an employee in this situation to make a claim for unlawful discrimination.

Disability discrimination

Some of the most significant changes made by the Act affect the law on disability discrimination. These are the result of shortfalls in protection highlighted by case law since the Disability Discrimination Act 1995 came into force.

The main changes are:

- Indirect discrimination will apply to discrimination against disabled people.
- Associative discrimination will apply to discrimination against disabled people.
- Perceptive discrimination will apply to discrimination against disabled people.
- Discrimination arising from a disability will be forbidden.
- Pre-employment health questions will be unlawful except for certain defined reasons.

Discrimination arising from a disability is discrimination because of the effect of a disability, rather than on grounds of the disability itself.

Pre-employment health questions may not be asked unless the reason is one of the following:

- To make suitable arrangements for interview or selection.
- For the purposes of equality and diversity monitoring.
- For a genuine, job-related, reason.
- To take positive action.
- To assure the employer that a candidate has a disability where the job genuinely requires the jobholder to have a disability.

Employment tribunals' powers

Employment tribunals' powers will be extended so that they can make recommendations that an employer takes steps to eliminate or reduce the effect of discrimination on other employees, not only on the claimant. For example, a tribunal might specify that an employer needs to undertake certain training of all staff on equal opportunities. This power does not apply to equal pay cases.

Gender reassignment

The significant change to the law on discrimination on the grounds of gender reassignment is that transsexual people will be protected from discrimination even where they are not under medical supervision. Current law requires that a transsexual person must be under medical supervision to qualify for protection.

Pay secrecy and gender pay reporting

It will be unlawful for an employer to prevent employees discussing whether differences in their pay are due to protected characteristics. Any clause in an employment contract that requires pay secrecy will be unenforceable.

The Act also seeks to address inequalities in pay between men and women which remain forty years after equal pay legislation was introduced. The Act seeks to do this by imposing an obligation on organisations employing 250 or more staff to provide public reports on differences between male and female pay within their organisation.

The gender pay reporting measures would require detailed regulations before implementation and were originally scheduled to be implemented in 2013. However, there remains doubt about whether, and how, this provision will in fact be implemented. The Conservative party manifesto in the 2010 General Election proposed that compulsory audits should only take place in cases where an organisation had been the subject of an adverse ruling in an employment tribunal. The Coalition Government's programme is not specific about its proposals for equal pay, but background material to the Queen's Speech in May 2010 stated that 'more action is needed than is provided in the Equality Act 2010'.

Positive action

As under current law, the Act allows for positive action, under which employers are able to remove barriers that might prevent certain people being employed by, or progressing within, their organisation.

The Act also allows employers to favour a candidate from an under-represented minority in cases where two candidates for a job or for promotion are equally well qualified – which might be termed 'positive discrimination'. This is not an obligation on employers – it is an option. However, it is a new and unexplored area of the law and employers might find it appropriate to await the publication of further detailed guidance before applying it in practice (see below).

Additional obligations on public sector employers

The Act will require public sector employers to lead by example, in promoting equality in their workplaces.

According to the original implementation timetable, from April 2011 all public sector organisations will be under a single equality duty to demonstrate that they are achieving equality in their workforce across all the protected characteristics.

Additionally, public sector organisations will be subject to specific guidance issued by ministers to drive equality in their workplaces. This guidance can be issued only after consultation with the Equality and Human Rights Commission.

It is unclear exactly how this will work in practice, and whether the Coalition Government will seek to implement this part of the Act in the way anticipated by the Labour Government.

Equality and Human Rights Commission (EHRC)

The Equality and Human Rights Commission (EHRC) consulted on non-statutory guidance on the Act and draft codes of practice.

Since this factsheet was updated, the EHRC has published comprehensive guidance on the provisions in the Act.

- [Go to EHRC website](#)

The EHRC has also issued new proposals for gender pay reporting in the private and third sectors at the request of the Government.

- [Go to EHRC website](#)

For more information on the provisions of the Equality Act 2010 see our Discrimination FAQ.

- [Go to Discrimination FAQ](#)

Useful contacts

[Government Equalities Office](#)

[Equality and Human Rights Commission](#)

[Acas](#)

References

1. Equality Act 2010. London: Stationary Office.

Online version also available at:

http://www.opsi.gov.uk/acts/acts2010/ukpga_20100015_en_1