

CLIENT GUIDE 9 : THE EQUALITY ACT 2010

The Equality Act 2010 became law on 1 October 2010. As an employer, your obligations remain largely the same. The Act has two main purposes – to harmonise discrimination law and to strengthen the law to support progress on equality.

The Act covers the same groups that were protected by previous legislation – age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity. These are now called ‘protected characteristics’.

The Act extends some protections to characteristics that were not previously covered and also strengthens particular aspects of equality law. As a result, you may need to review some of your policies and practices.

The main changes are as follows:

- Disability discrimination – there will be a slightly different test of the meaning of ‘disability’. It will be easier for an employee to show that they have difficulty carrying out their day-to-day tasks and that therefore they come under the definition of ‘disabled person’ and are protected under the Act. The Act also creates a new form of disability discrimination called ‘discrimination arising from disability’ to replace the current and empty concept of disability related discrimination. Employers will also generally no longer be allowed to ask questions about health or disability before offering a job or before including a person in a pool of people to be offered a job when a vacancy arises. Employers will, however, still be allowed to ask necessary health/disability questions in certain situations for example in order to establish whether the employer will owe a reasonable adjustment duty.
- Equal pay – an employer will not be able to take action against an employee for talking to colleagues or trade unions representatives about how much they get paid. This may assist a person who may be making a claim for equal pay. An employer can require their employees to keep pay rates confidential from some people outside the workplace for example a competitor organisation.
- Gender reassignment discrimination – under the Act a person no longer has to be under medical supervision to be protected from discrimination and harassment if they are a transsexual person. A person will also be protected from direct discrimination as a result of being associated with someone who is transsexual or if a person is being discriminated against by someone because they think they are a transsexual even if they are not. Transsexual people will also be protected from indirect discrimination where a rule, policy or practice particularly disadvantages transsexual people and cannot be justified.
- Harassment – harassment is behaviour which hurts a person’s dignity or is offensive. The Act makes it clearer that a person will be protected if they are harassed because they associate with someone who has a protected characteristic for

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example someone is harassed because their son is gay or because someone wrongly thinks another person is a Muslim. The Act makes you potentially liable for harassment of your employees by third parties who are not employees of your company such as customers of clients. You will only be liable when harassment has occurred on at least two previous occasions, you are aware that it has taken place and have not taken reasonable steps to prevent it happening again.

- Extension of employment tribunal powers - under previous legislation an employment tribunal could make a recommendation that an employer must eliminate or reduce the effect on the claimant of any discrimination. The Act extends this power so that it will now be possible for a tribunal to make recommendations that an organisation takes steps to eliminate or reduce the effect of discrimination on other employees not only the claimant. Recommendations could include, for example, that a harassment policy is more effectively implemented or that selection criteria for staff transfers or promotion are made public. This power does not extend to equal pay cases.

If you require further information, please contact **Judith Long**.

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