



Unite Legal Services



Summary of the law

Equality Act 2010

Contents

About this booklet	3
What does the Equality Act do?	3
To whom does the Act apply?	4
What is unlawful discrimination under the Act?	4
What other conduct is prohibited?	6
What does the Act say about pay?	7
What is the public sector equality duty?	8
What is positive action?	9
What are pre-employment health-related checks?	10
Can Tribunals make general recommendations?	10

About this booklet

The Equality Act, which came into force on 1 October 2010, provides the legal framework for discrimination law in England, Scotland and Wales.

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| ■ Discrimination | ■ Equal pay |
| ■ Harassment | ■ Public sector equality duty |
| ■ Victimisation | ■ Positive action |

What does the Equality Act do?

The Act outlaws discrimination for the following nine “protected characteristics”: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

It replaces all previous equality law including the Equal Pay Act, the Sex Discrimination Act, the Race Relations Act, the Disability Discrimination Act and the regulations outlawing discrimination on the basis of age, religion or belief and sexual orientation as well as all other related legislation.

To whom does the Act apply?

The Act applies to all employers and anyone providing a service (for instance organisations that provide goods or facilities to the public) or exercising a public function. It also applies to anyone running a private club or association.

All job applicants and employees are protected, as are workers (including contract workers). It also covers the self-employed who are personally engaged to do the work.

Agency workers engaged by an employment business may be classed as contract workers if they are employed by that business. Agency workers supplied to a principal to do work and paid by an employment business under a contract will also be protected.

What is considered to be unlawful discrimination under the Act?

Direct discrimination

This is when someone with a protected characteristic is treated less favourably than someone else who does not have a protected characteristic.

Associative discrimination

This is the same as direct discrimination but applies to someone because of their association with a person who has a protected characteristic (such as the mother of a disabled child).

This provision does not apply specifically to the protected characteristic of pregnancy and maternity, although it may be possible to argue that a worker treated less favourably because of their association with a pregnant woman amounts to associative sex discrimination.

Perceptive discrimination

This is the same as direct discrimination but applies to someone who is discriminated against because another person thinks they possess a particular protected characteristic. This provision does not apply to the protected characteristic of marriage and civil partnerships and pregnancy and maternity.

Indirect discrimination

This is when an employer applies a provision, criterion or practice (PCP) equally to everyone, but which in fact puts (or would put) people with a protected characteristic at a particular disadvantage compared to those who do not share that characteristic and which cannot be justified by the employer:

Indirect discrimination can only be justified if the employer can show that the PCP is a proportionate means of achieving a legitimate aim.

The provisions on indirect discrimination do not apply to pregnancy and maternity.

Discrimination arising from disability

This is when an employer knows that someone has a disability, and discriminates against them because of something relating to or arising from their disability which cannot be justified.

Duty to make adjustments

Employers have a duty to make reasonable adjustments for disabled people in three circumstances:

- If a PCP puts them at a substantial disadvantage in comparison with someone who is not disabled.
 - If a physical feature puts them at a substantial disadvantage in comparison with someone who is not disabled.
 - If a disabled person would be put at a substantial disadvantage in comparison with someone who is not disabled, were it not for an auxiliary aid.
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What other conduct is prohibited?

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”.

The provisions on harassment do not apply to the protected characteristics of pregnancy and maternity and marriage and civil partnerships. However, someone subject to harassment related to these protected characteristics may be able to bring a claim of harassment related to sex and/or sexual orientation.

People at work can complain about behaviour that they find offensive even if they do not have the protected characteristic themselves. So, for example, witnesses to harassment may be protected.

The Act specifically prohibits three types of harassment - unwanted conduct relating to a relevant protected characteristic; sexual harassment; and less favourable treatment of someone because they agreed to or rejected sexual harassment or harassment related to their sex or gender reassignment.

Third party harassment

Although the government repealed the provision whereby employers could be found liable for harassment by third parties in October 2013, it may still be possible to bring a claim under the general provisions on harassment.

Victimisation

This is when an employee is treated badly because they have done or may do a protected act.

Examples of protected acts include:

- Bringing proceedings under the Act, or previous discrimination legislation.
- Making allegations of a breach of the Act or previous discrimination legislation.
- Giving evidence or information in connection with proceedings that someone else has brought.
- Doing anything else such as raising a grievance or giving evidence in someone else's grievance.

The person complaining of victimisation has to have acted in good faith when doing a protected act. A false allegation will not amount to a protected act.

What does the Act say about pay?

Equal pay

The Act says there shall be no sex discrimination in pay (for more detail, see our leaflet on equal pay). If there is no actual comparator doing equal work but there is evidence of direct sex discrimination in pay, a person can bring a claim.

If the claimant can provide evidence showing that they would have been paid more if they were of a different sex, they can still bring their claim, even if there is no-one of the opposite sex doing equal work in the organisation.

Pay secrecy

The Act says that employers cannot stop their employees from having a discussion about whether there are differences in their pay related to protected characteristics. It also outlaws "gagging clauses" in people's contracts.

However, employers can stipulate that employees keep pay rates confidential from certain groups outside the workplace, for example competitor organisations.

Gender pay reporting

The Act allows for compulsory pay audits for organisations with more than 250 employees from 2013, although given this government's preferred voluntary approach, it is not clear when or if this section will be enacted.

However, it has decided to introduce a power for Employment Tribunals to order compulsory gender pay audits when an employer has been found to have discriminated on the ground of sex. Micro-businesses with fewer than 10 employees will be exempt. It is not yet clear when it will exercise that power.

What is the public sector equality duty?

Public bodies such as local government, the NHS and those carrying out public functions are under a duty to consider equality when making day-to-day decisions both in terms of service delivery and employment. This consists of a general duty and specific duties.

The general duty has three aims and requires public bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people from different groups.
- Foster good relations between people from different groups.

The specific duties are designed to help public bodies comply with the general duty. The specific duties for devolved public authorities are different in England, Wales and Scotland. Trade unions should therefore check that the employer is complying accordingly.

What is positive action?

The Act allows employers to treat someone with a protected characteristic more favourably during the recruitment or promotion process.

If they think that the person with a protected characteristic has a reasonable chance of being disadvantaged because of that characteristic (or there are fewer people with a particular protected characteristic employed), they can choose that person over someone who does not have the characteristic provided that:

- The person is “as qualified” as the other candidate.
- The employer does not have a recruitment or promotion policy of treating people of the under-represented group more favourably.
- The more favourable treatment is a proportionate means of achieving a legitimate aim (the legitimate aim being encouraging participation and overcoming disadvantage).

These provisions are voluntary. An employee cannot bring a claim because the employer did not apply positive action during the recruitment or promotion process, although they may still be able to bring a claim if they were discriminated against during it.

What are pre-employment health-related checks?

An employer must not ask about a job applicant's health or whether they have a disability until they have either been offered a job or been included in a pool of successful applicants.

However, this is not a blanket ban and an employer can ask questions about whether a person has a disability before offering a job to an applicant if it will help them to:

- Make a reasonable adjustment to the selection process.
- Decide whether an applicant can carry out a function that is essential to the job.
- Monitor diversity among applicants.
- Take positive action to help disabled people.
- Ensure that the candidate actually has the disability if the job genuinely requires the job-holder to have a particular disability.

Can Tribunals make general recommendations?

Under the Act, Tribunals can recommend that organisations take steps to eliminate or reduce the effect of discrimination on other employees, not just the claimant (with the exception of equal pay claims).

The government announced in May 2013 that it will repeal this provision but has not, as yet, indicated when this will be.

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