

Briefing on ...

The Equality Act 2010

The New Law

The Equality Act 2010 was passed by Parliament in April, but the majority of its provisions came into force on 1st October 2010. The Act replaces all previous legislation relating to discrimination based on race, sex, sexual orientation, gender reassignment, pregnancy or maternity, marriage or civil partnership, disability, religion or belief and age. These factors will now be known as 'protected characteristics.' Like the old laws, the Act outlaws direct and indirect discrimination, victimisation and harassment, but some of the definitions have changed.

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Discrimination: New definitions

Direct Discrimination is where someone is treated less favourably than others because of a protective characteristic.

This definition is wider than before and can also cover discrimination where a person is associated with someone with a protected characteristic or is believed to have a protected characteristic, for example, when someone is thought to be gay. However, discrimination by association and perception do not apply to marriage and civil partnership or pregnancy and maternity leave.

- **Indirect Discrimination** is where someone with a protected characteristic is put at a disadvantage by measures that apply to everyone. For example, a change to a 24 hour shift pattern puts woman at a disadvantage as they are more likely to have child care responsibilities. Unlike direct discrimination, an employer can justify indirect discrimination if it can be shown to be a proportionate means of achieving a legitimate end.
- **Harassment** Is unwanted conduct related to a protected characteristic which has the purpose of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.
- **3rd party harassment** is where an employee is harassed by someone who is not employed by their employer while in the course of their employment, for example a customer harassing a shop worker. If this occurs 3 times or more and the employer has not taken step to prevent it, the employer can be held liable for the harassment.
- **Victimisation** happens when someone has taken some form of action under the Act and is treated less favorably as a result.

Changes to disability discrimination

- The Act outlaws discrimination arising from disability which includes all detrimental treatment that is linked to the person's disability. However, the employer can only be liable if they know or should know that the person had a disability.
- The Act also introduces indirect disability discrimination although it remains to be seen what types of cases this will be used in as the employer will also have a duty to make reasonable adjustments to any measures that disadvantage employees with disabilities.
- In addition, pre-employment health questions can now only be used to find out if reasonable adjustments are required to the recruitment process or as part of equality monitoring.

Equal Pay

- One of the difficulties facing women in closing the pay gap is that employees are often discouraged or even banned from discussing how much they earn. However, the Equality Act abolishes pay secrecy clauses in employment contracts and further protects employees who are victimised for discussing pay. There is however no obligation on an employee to discuss their salary with their colleagues.

The public sector equality duty

- The Act introduces a single duty to advance equality based on all of the protected characteristics; however this provision is not yet in force.
- Until April 2011 the public sector equality duty will remain restricted to race, gender and disability.
- The Scottish Government is presently consulting on the draft regulations for the new public sector duties. The consultation documents can be viewed at: <http://www.scotland.gov.uk/Publications/2010/09/13094828/0>

The future of the Equality Act - the provisions still to come

- Combined discrimination allows a person to claim they have been discriminated against because of a two protected characteristics, for example, because they are a black woman.
- Positive Action in recruitment and promotion allows an employer to choose a candidate with a protected characteristic over an equally qualified candidate where it is a proportionate means of achieving a legitimate end.
- In the field of Equal Pay the Act has provision for mandatory pay audits for employers with more than 150 employees.

Action for Branches

- Branches should ensure all representatives are aware of the new law and consider seeking advice on discrimination cases as soon as possible rather than later. Remember that any claims must be made to an Employment Tribunal within 3 months of the act of discrimination and that the time does not stop running during internal procedures.