



Equality Act 2010 factsheet

1. What is the background to the Equality Act 2010?

Prior to the introduction of the Equality Act 2010 there was a confusing mix of anti-discrimination and equality laws. Legislation in this area dates back to the 1970s when the Equal Pay 1970 came into effect followed by the Race Relations Act 1974 and the Sex Discrimination Act 1975. Since the 1970s further legislation was introduced that outlawed discrimination on the grounds of disability, age, religion and belief and sexual orientation.

The most recent laws have been passed as a result of EU directives, and the older legislation has been up-dated to ensure it was compliant with directives on these areas. In addition to this various cases over the years have had an impact on the interpretation of the legislation.

Overall the anti-discrimination and equality legislation was desperately in need of simplifying, streamlining and some up-dating, and it was decided to bring everything together into one place. There was also a push to ensure that Great Britain was moving forward in terms of equality.

The resulting Act came into force on 1 October 2010, with the provisions relating to positive action in recruitment and to the public sector equality duty being delayed until April 2011.

2. What is the purpose of the Equality Act 2010?

The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. The purpose of the Act is to ensure that everyone is treated fairly, and with dignity and respect.

The Act amalgamated and streamlined the previous nine separate pieces of anti-discrimination legislation into one single Act and, in doing so, made the law easier to understand. Some up-dates and amendments took place, however some differences between the various elements still remain. The Act is a mixture of rights and responsibilities that have changed, been extended, been introduced for the first time or simply remained the same.

New provisions introduced by the Equality Act 2010 include:

- the introduction of the public sector Equality Duty, meaning that public bodies need to consider all individuals when carrying out their work, including employees
- clearer protection for breastfeeding mothers
- tighter restrictions on the circumstances in which employers can ask job applicants questions about disability or health, meaning that these questions cannot be asked prior to a job offer
- the banning of secrecy clauses in contracts of employment and, therefore, supporting equal pay between men and women

- applying a uniform definition of indirect discrimination to all protected characteristics (see Section 3 below for an explanation of protected characteristics)
- introducing new powers for employment tribunals to make recommendations which benefit the wider workforce

Overall employers' obligations remain largely the same and the Act is not designed to create additional paperwork for organisations.

3. What are protected characteristics?

Protected characteristics are simply all those characteristics covered by the previous anti-discrimination legislation. There are nine protected characteristics, and the Equality Act 2010 offers protection to people with these characteristics. No new characteristics were introduced by the Act.

The protected characteristics are:

1. age
2. disability
3. gender reassignment
4. marriage and civil partnership
5. pregnancy and maternity
6. race
7. religion or belief
8. sex
9. sexual orientation

Gender reassignment, marriage, civil partnership, pregnancy and maternity were previously protected under sex discrimination law, but in the Act they have been taken out as separate protected characteristics.

4. What are the different forms of discrimination?

- **Direct discrimination**

The Equality Act 2010 newly defined direct discrimination as discrimination 'because of a protected characteristic'. This occurs when an employee is treated less favourably due to a protected characteristic. For example, an employee may be turned down for a promotion because of their sexual orientation. See Section 3 above for an explanation of protected characteristics.

- **Associative discrimination**

Associative discrimination was introduced by the Act as a form of direct discrimination. Associative discrimination is discrimination against a person because of their association with someone with a particular protected characteristic. Before the introduction of the Act this already applied to race, religion or belief, and sexual orientation. The Act extended it to cover age, disability, gender reassignment and sex. An



example of associative discrimination might be a non-disabled employee who is discriminated against because they need to care for a disabled dependant.

- **Perceptive discrimination**

Perceptive discrimination is another form of direct discrimination introduced by the Act.

Perceptive discrimination is discrimination against a person because the discriminator thinks the person possesses that characteristic, even if they actually don't. Before the introduction of the Act, perceptive discrimination applied to age, race, religion or belief and sexual orientation.

The Act extended it to cover disability, gender reassignment and sex. For example, an employee may be discriminated against because they look much younger than they actually are, or because they are believed to be gay, when actually they are not.

- **Indirect discrimination**

The Equality Act provided a uniform definition of indirect discrimination to all protected characteristics.

Indirect discrimination occurs where a provision, criterion or practice (PCP) applies to everybody, but the PCP has:

- a disproportionate impact on people with a particular protected characteristic,
- it is to the disadvantage of a person with that protected characteristic, and
- it is not a proportionate means of achieving a legitimate aim.

PCPs can mean rules, requirements, conditions, policies and procedures.

For example, if an employer requires employees to commit to working until 11pm every evening they may be indirectly discriminating against women who are more likely to be the primary carers of children. The employer would have to objectively justify this requirement. (See Section 5 below for a further explanation of objective justification).

5. What is meant by 'objective justification'?

An employer may be able to defend certain discrimination claims by arguing that the treatment or practice is justified. Those claims are:

1. Indirect discrimination
2. Direct age discrimination
3. Discrimination arising from disability



In these claims, if an employer can show that the treatment or practice is a proportionate means of achieving a legitimate aim, then the claim will not succeed.

The test is best applied in two stages:

- Does the aim of the treatment or policy represent a real need, which is not discriminatory?
- Are the means of achieving the aim proportionate - are there less discriminatory ways of achieving it?

If the aim is legitimate and there are no less discriminatory ways of achieving it, then in some instances discrimination may be objectively justified.

For example, a small finance company requires employees to work late on Friday afternoons to analyse American figures. The figures arrive late on a Friday because of the time difference. A number of employees wish to be released early on a Friday afternoon for religious reasons. However the company refuses their request. The figures are essential for the business and need to be analysed immediately. The company is too small to arrange cover. The requirement to work on Friday afternoon is not unlawful indirect discrimination as it meets a legitimate business aim and there is no alternative means available.

6. Does the Equality Act also cover harassment and victimisation?

Yes the Equality Act provides protection against both harassment and victimisation.

Harassment takes place when a person is subjected to: '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'.

Some points to note in relation to harassment and the Equality Act 2010 are:

- 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. For example, if harassment of a colleague in the office is causing an offensive environment.
- Employers can also be liable for 'third party harassment' of their staff by people they do not actually employ (for example, harassment by customers or clients). However, an employer will only be liable if the harassment has occurred on at least two previous occasions, the employer knows that it has taken place



and has not taken reasonable steps to prevent it happening again. Reasonable steps could include speaking to the third party and making them aware that their behaviour is unacceptable, and subsequently monitoring the situation.

- In 2012 the Government announced that it was intending to remove liability for third party harassment from the Act, owing to concerns that it was an 'unworkable concept' which would impose additional liabilities on employers, hindering business growth and economic recovery. Therefore the Enterprise and Regulatory Reform Act 2013 abolished the third party harassment provisions from 1 October 2013. However, the government consultation actually revealed that there was very little support for this repeal of the law. Furthermore, in circumstances where an employer fails to prevent third party harassment, there are still potential claims which can be lodged under the Equality Act 2010. So, despite the removal of liability for third harassment, employers should always be mindful that any form of harassment at work, whether from colleagues or third parties, is certainly not acceptable and employers should aim to prevent this.
- Employers should ensure that their anti-harassment policy expresses zero tolerance and third parties are informed that harassment will not be tolerated. This can be done by including it as a term in commercial contracts or displaying public notices etc. Managers should intervene, as appropriate, if they observe harassment by third parties. Employees should always report any harassment and any complaint of harassment by a third party should be promptly investigated and acted on.
- Harassment applies to all protected characteristics except for pregnancy and maternity and marriage and civil partnership. However, because of the overlap with sex and sexual orientation discrimination, for practical purposes, employers should assume the same protection will be given to people with these characteristics as for other protected characteristics.

Victimisation occurs when an employee is treated less favourably because they have made or supported a complaint related to the Act, or they are suspected of doing so. For example, an employee may be excluded by their colleagues and manager after making a complaint related to the act. However, an employee is not protected from victimisation if they have maliciously made or supported an untrue complaint.

7. In what way did the Equality Act 2010 change the law on disability discrimination?

The Disability Discrimination Act came into force in 1995 and since then gaps in the protection provided by the legislation have been highlighted by the decisions reached in individual cases (known as case law). Therefore the Equality Act 2010 made significant changes to the law meaning that indirect discrimination, associative discrimination and perceptible discrimination now all apply to discrimination against disabled people.

The Act has made it easier for a person to show that they are disabled and protected from disability discrimination. Under the Act, a person is disabled if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities, which would include things like using a telephone, reading a book or using public transport.

The Equality Act also restored protection under the Discrimination Act 1995 which had been lost due to case law. This means that the Equality Act clarified that discrimination arising from a disability is forbidden. The Act also added new protection from discrimination arising from a disability. This means that it is unlawful to discriminate because of the effect of a disability or because of something connected with a person's disability (e.g. a tendency to make spelling mistakes arising from dyslexia).

As previously, the Act puts a duty on employers to make reasonable adjustments for their employees to help them overcome disadvantage resulting from an impairment (e.g. by providing assistive technologies to help visually impaired staff use computers effectively).

As mentioned above, the Equality Act 2010 also made pre-employment health questions unlawful. This means that questions about health, illness and absence cannot be asked prior to making a job offer except for the following clearly defined reasons:

- to make suitable arrangements for interview or selection to ensure all candidates have an equal chance of giving their best
- for the purposes of equality and diversity monitoring (for example, to see whether recruitment advertisements are reaching all potential applicants)
- to decide whether an applicant can carry out a function that is 'intrinsic' to the job (for example, a candidate with a mobility impairment may be asked whether they could manage handling heavy goods if this was an essential part of the role).
- to take positive action (see Section 9 for further information on taking positive action)
- to assure the employer that a candidate has a disability where the job genuinely requires the jobholder to have a disability



If an employer asks these questions, and a claim of discrimination is subsequently made against them, then they would need to prove that they had not discriminated by asking these questions.

Once an applicant has passed the interview stage, and has been offered a job, then an employer is able to ask appropriate health-related questions. This applies even when a job offer is conditional.

8. How has the Equality Act 2010 addressed differences in pay between men and women?

Although the Equal Pay Act was first introduced back in 1970 there still remains a disparity in pay between men and women. The Equality Act took several steps towards addressing these inequalities in pay.

- The Act made a change which allows a claim of direct pay discrimination to be made, even if there is no real person of the opposite sex in the same employment. This means that a claimant who can show evidence that they would have received better remuneration from their employer if they were of a different sex, may have a claim under sex discrimination even without a person of the opposite sex carrying out the same work for comparison
- It made it unlawful for an employer to prevent employees discussing whether differences in their pay are due to protected characteristics. If an employer disciplined an employee for discussing whether they were being paid less due to their disability this would be unlawful, and the employee concerned may have a claim for victimisation
- The Act made any clause in an employment contract that requires pay secrecy unenforceable. However, an employer can require their employees to keep their pay rate confidential from some people outside of the organisation such as competitors
- It imposed an obligation on organisations employing over 250 staff to provide public reports on differences between male and female pay within their organisation

The gender pay reporting measures were originally scheduled to be implemented in 2013. However in December 2010 the Government announced that it would not be proceeding with compulsory reporting while it is working with businesses to publish equality workforce data on a voluntary basis. Acas has also issued guidance for employers and further information is available on the GOV.UK website (see Further Guidance below).

As an employer you can help avoid discrimination by:

- Making sure you know why you are paying employees differently.
- Checking that people who share a particular protected characteristic are not generally paid less than people who do not share it
- Using an equal pay audit to check the impact of decisions on pay and benefits
- Implementing a transparent, structured pay system based on a valid job evaluation scheme rather than one which is based on management discretion

9. Did the Equality Act 2010 introduce any other key changes to legislation that employers need to be aware of?

The Equality Act introduced a number of other key changes that employers should familiarise themselves with including:

- **Employment tribunals' powers**

Employment tribunals' powers were 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, recommending that all employees undertake equal opportunities training, or that an organisation develops a harassment and bullying policy and ensures all employees are trained to understand it. However, the Government is concerned that this is excessive and is currently consulting on reducing the powers.

- **Gender reassignment**

Previous legislation required that a transsexual person must be under medical supervision to qualify for protection. The Act removed this stipulation. So, for example, a woman who decides to live as a man, but does not undergo any medical procedures, would be covered.

- **Positive action**

The Equality Act harmonised provisions allowing voluntary positive action. Positive action enables employers to remove barriers that might prevent certain people being employed by, or progressing within, their organisation. This means that, as with previous equality legislation, the Equality Act allows employers to take positive action if they think that employees or job applicants who share a particular protected characteristic suffer a disadvantage connected to that characteristic, or if their participation in an activity is disproportionately low. This could mean setting up a training and development programme for female employees in an organisation where women are under-represented to attract female applicants and to remove any disadvantage that female staff may face.

The Act 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. This does not mean that they must have the same qualifications, but that the selection assessment process has found them to be equally capable of doing the job. It is not a requirement to apply this positive action when faced with two equal applicants, but employers are allowed to do so. However, employers must not have a policy of automatically treating job applicants who share a protected characteristic more favourably in recruitment and promotion.

- **Additional obligations on public sector employers**

The Act requires public sector employers to lead by example, in promoting equality in their workplaces. From 5 April 2011 all public bodies, and others carrying out public functions, have been under a single equality duty to demonstrate that they are achieving equality in their workforce across all the protected characteristics. This means that public bodies have to consider all individuals when carrying out their day-to-day work – in shaping policy, in delivering services and in relation to their own employees.

This supports good decision-making by ensuring public bodies consider how different people will be affected by their activities, helping them to deliver policies and services which are efficient, effective and accessible to all, and which meet different people's needs.

The Act also requires that, when public bodies are making decisions or carrying out their activities, they always have due regard, or consciously consider, the need to eliminate discrimination, advance equality of opportunity and foster good relations.

10. What does the Equality Act say about recruitment?

Recruitment policies should ensure that the organisation stays within the law, recruits from the widest possible talent pool and finds the best person for the job.

The Act covers the entire recruitment process and employers should be mindful of the Act at each stage of their recruitment procedure.

Examples include:

- Reviewing job advertisements to ensure they do not give the impression that the organisation intends to discriminate. This includes avoiding age limits (unless they can be objectively justified – see Section 5) and words such as 'mature' or 'young'. Adverts should not state a preference for a man or woman unless the requirements of the job make it lawful. Gender



specific terms such as waitress, secretary, and salesman should be replaced with the appropriate gender neutral job title.

- Application forms and interview arrangements should not discriminate against disabled people. For example, application forms should be available in larger print.
- Overseas qualifications that are equivalent to UK qualifications should be accepted to avoid racial discrimination.
- As discussed above (Section 7) employers are not allowed to ask a job applicant about health, disability or previous sickness absence until they have made a job offer, which can be a conditional offer. This makes it more difficult for disabled people to be unfairly screened out when applying for jobs. Employers can ask questions to allow them to make adjustments to the recruitment process (as per the point above regarding application forms and interview arrangements), or for monitoring purposes. Questions can also be asked if there is an occupational requirement for a particular job (for example a visually impaired project worker to work for an organisation that supports people with visual impairments) or where the questions relate to a person's ability to carry out a function that is a necessary part of the job, particularly where these questions are to establish whether the applicant can carry out the function with reasonable adjustments in place.
- Employers cannot refuse to employ a woman because she is pregnant or on maternity leave. If an employer finds out that a new recruit is pregnant they cannot dismiss her this reason. Employers are also unable to ask an applicant if she intends to have children as this is never something that should be taken into account when deciding whether the applicant has the right skills for the job.

Employers should also remember that the same principles also apply to internal promotions and transfers.

11. What action should employers take as a result of the Equality Act 2010?

As an employer, it is important to understand the implications of the Equality Act 2010. All employers have the same legal duties under the Act and no employer is exempt. The Act applies to organisations of all sizes, however, the way that an organisation carries out these duties may differ depending on their size.

There are a number of steps employers should take as a result of the Equality Act 2010.

- 1) **Review recruitment procedures** - It is important that organisations review their current recruitment procedures to remove inappropriate pre-employment medical questions. Questions regarding health are only allowed for the reasons outlined in Section 7 above. Also see Section 10 above for further information on the Equality Act 2010 and recruitment.
- 2) **Consider adapting policies and procedures to prevent third party harassment** - As explained in Section 5 the legislation relating to third party harassment has been repealed. However, to prevent employees being subjected to harassment it is still important that employers consider in what circumstances employees might face harassment, including harassment from third parties (such as customers or clients). Employers should review policies and procedures and adapt them where possible to prevent harassment.
- 3) **Avoid associative discrimination claims** - Managers are likely to be familiar with the need to avoid discrimination when dealing with recruitment or operational matters, and may have already received training on anti-discrimination legislation. However, associative discrimination will probably be a new concept for them (see Section 4 for an explanation of associative discrimination). Therefore it is necessary to consider how policies and procedures might need to be operated to avoid associative discrimination claims. For example, there might be a requirement to review an absence warning procedure to take account of absences that are caused by the characteristics of a dependant.
- 4) **Remove pay secrecy clauses** - Pay secrecy clauses should be removed from contracts of employment.
- 5) **Check whether the public sector Equality Duty applies** - It is important to check whether the 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.
- 6) **Provide training** - Employers must ensure that line managers, plus any managers responsible for recruitment, are trained on the practical implications of the Act, especially the changes relating to areas such as pre-employment medical questions and associative discrimination.

- 7) **Regularly review policies and procedures** - It is important to carry out a regular review of organisational policies and consider whether they need any up-dating in light of the Equality Act. Policies should always prevent discrimination, stay within the law and attract the best employees.

Employers should always remember that it makes good business sense to treat employees fairly and with consideration.

Further guidance for employers on Equality and Diversity and the Equality Act 2010 can be found at:

1. **Acas** – general advice on equality including links to information on equal pay and discrimination
www.acas.org.uk/index.aspx?articleid=1363
2. **Acas** – The Equality Act 2010 including the chance to download the guidance booklets (1) The Equality Act 2010 – whats new for employers and (2) Acas Delivering Equality & Diversity
www.acas.org.uk/index.aspx?articleid=3017
3. **Acas** – Equality Act 2010 Questions and Answers
www.acas.org.uk/index.aspx?articleid=3024
4. **Acas** – Voluntary Gender Equality Analysis and Reporting – download the guidance booklet
www.acas.org.uk/index.aspx?articleid=3439
5. **GOV.UK** – Equality Act 2010: guidance for employers and employees
<https://www.gov.uk/equality-act-2010-guidance>
6. **GOV.UK** – Guides outlining key changes to the law made by the Equality Act 2010
<https://www.gov.uk/government/publications/equality-act-guidance>
7. **GOV.UK** – Factsheet on Voluntary Gender Equality Reporting
<https://www.gov.uk/government/publications/factsheet-voluntary-gender-equality-reporting>
8. **Government Equalities Office** – Creating a fairer and more equal society
<https://www.gov.uk/government/policies/creating-a-fairer-and-more-equal-society>
9. **Equality and Human Rights Commission** – view the Equality Act 2010 and download guidance for employers
www.equalityhumanrights.com/legal-and-policy/equality-act/



Notes compiled by Clare Cooper with information from the following sources:

1. CIPD
2. Acas
3. Equality and Human Rights Commission
4. GOV.UK

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