



## Equality Act – what is new from 1 October 2010

The Equality Act 2010 came into force on 1 October. About 90% of the Act is being implemented and these are the main changes. This briefing highlights where branches will need to look at current agreements and practices of their employers.

### A. The Act brings in new language and concepts. The three main concepts are:

#### 1. Protected Characteristics

The Act identifies 9 protected characteristics

Age, Disability, Gender Reassignment, Race, Religion or Belief, Sex, Sexual Orientation, Marriage + Civil Partnership, and Pregnancy + Maternity. (nb the first 7 are officially listed by alphabetical order)

#### 2. Prohibited Conduct which includes

- direct discrimination
- indirect discrimination
- discrimination arising from disability

- harassment
- victimisation
- failure to make reasonable adjustments in order to accommodate a person's disability

### 3. Proportionate means of achieving a legitimate aim

This is the new test of justifying policies which may indirectly disadvantage a particular group. An employer can justify this through it being a proportionate means of achieving a legitimate aim. For example, changing shift patterns which may impact more on women with caring responsibilities may be a proportionate means of achieving a legitimate aim.

## B. Changing policies and procedures

In looking at your employers policies there should already be:

- Harassment policy and procedures covering 3<sup>rd</sup> party harassment under sex equality
- Harassment policies covering all protected characteristics except pregnancy and maternity and marriage and civil partnership.
- Policies with reference to discrimination covering
  - o direct for all protected characteristics

- o discrimination by association for race, religion or belief, and sexual orientation,
- o discrimination by perception for age, race, religion or belief, sexual orientation
- o indirect discrimination for age, race, religion or belief, sex and sexual orientation

### What needs to be changed?

- Harassment policies which cover 3<sup>rd</sup> party harassment (previously only applied to sex and sex related harassment) to include age, disability, gender reassignment, race, religion or belief and sexual orientation
- Harassment policies should now recognise that people can complain of behaviour that they find offensive even if it is not directed at them. The complainant need not possess the relevant characteristic themselves.
- Updating policies with reference to discrimination to include Age (association), Disability (association, perception and indirect), Gender Reassignment (association, perception and indirect), Sex (association and perception). The Act does not extend the scope of indirect discrimination to pregnancy and maternity but this may amount to indirect sex discrimination.

- There must be policies which refer to victimisation which should cover all protected characteristics. These should remove reference to a need to compare the claimant with anyone who has not made or supported a claim under the Act. Claimants only need show that they have been treated badly as a result of making or supporting a claim under the Act.
- Policies that cover groups such as carers need to be reviewed as there is now extended coverage for people discriminated against because they are associated with someone who has a protected characteristic.
- Review all recruitment materials and procedures as an employer can no longer ask health related questions before a person has accepted a job (see below)

## C.Changed definitions and other provisions

### Disability

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. There are no impairment categories which were included in the Disability Discrimination Act. Under the Act a claimant does not have to show that their impairment affects a particular capacity such as mobility, speech, hearing or eyesight.

- *Discrimination arising from disability*

It is discrimination to treat a disabled person in a particular way that, because of their disability, amounts to being treated unfavourably when the treatment cannot be shown to be justified. For example, if a disabled person is dismissed after a long period of disability related ill health there may be a claim of discrimination 'arising from disability'. For this to occur the employer must know, or could reasonably be expected to know, that the person has a disability.

**Action: Encourage employers to monitor disability but with the necessary assurances of confidentiality and not to be used to the detriment of disabled employees.**

- *Reasonable adjustment*

The Act reinforces the duty to provide reasonable adjustments extending physical features of premises to any provision, criterion or practice such as altering the physical environment, working hours or working arrangements.

This is a **positive** duty which means employers are required to take active steps in order to reduce disadvantage.

- *Enquiries about disability and health*

The Act brings in new provisions which limit the circumstances when job applicants can be asked about their health prior to the job being offered. The allowed circumstances are, using health questions to

- i. decide whether there is a need to make any reasonable adjustments for the person in the selection process
- ii. decide whether an applicant can carry out a function that is essential to the job
- iii. monitor diversity among people making applications for the jobs
- iv. take positive action to assist disabled people
- v. assure the employer that a candidate has the disability where the job genuinely requires the jobholder to have a disability

## Gender Reassignment

The definition has changed so that people no longer have to be under medical supervision to be protected by the law. Gender Reassignment still only covers those who intend to live permanently in a gender other than the one assigned at birth.

**Action: To press absence related to gender reassignment or disability related absence to be recorded separately from sick leave.**

## Pay

- *Equal Pay*

The Equality Act allows for claims of direct pay discrimination to be made without reference to a **real** comparator if evidence can show that a hypothetical person of the opposite sex would receive better remuneration.

- *Pay Secrecy*

The Act makes it unlawful for employers to prevent employees from discussing pay in order to establish if differences in pay exist that are related to protected characteristics. An employer can require employees to keep pay rates confidential from some people outside the workplace, for example a competitor organisation.

### Extension of employment tribunal powers

Tribunals can now make recommendations to an organisation that steps are taken to eliminate or reduce the effect of discrimination on employers, not only the claimant.

### Breastfeeding

The Act also clarifies when and how positive action can be taken and that it is unlawful to discriminate against a woman because she is breastfeeding.

## D. When does the 2010 Equality Act come into force?

1 October 2010.

The Act **DOES NOT** cover cases of discrimination, harassment or victimisation that happened **BEFORE** 1 October but cases that began before 1 October and carried on after can be considered

under the Act. Cases that happened after 1 October 2010 need to be taken under the 2010 Equality Act.

## Equality Act questionnaires

There are now two new sets of forms: one for discrimination or other prohibited conduct complaints and the other for complaints about equality of terms (equal pay). You should use these forms if the possible unlawful conduct in question happened on or after 1 October 2010 or if it started before 1 October 2010 but continued on or after that date. If the possible unlawful conduct took place before 1 October 2010, the Equality Act 2010 will not apply and these are not the right forms to use for obtaining information.

Instead you will be covered by the provisions in the legislation that is repealed or revoked on 1 October and should use the individual forms that are specific to claims relating to each “protected characteristic” and to equal pay. The forms and guidance are on the Government Equality website.



## E. What has not come into force on October 1 2010

### The Government is still considering:

- Public Sector Equality Duty (currently consulting on the regulations). This is now extended to include age, gender reassignment, religion or belief, sexual orientation and pregnancy and maternity). Expected April 2011.
- dual discrimination (claims of **direct** discrimination on the basis of two protected characteristics: age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation).
- gender pay gap information
- positive action in recruitment and promotion
- prohibition on age discrimination in services and public functions

### Further Information

ACAS *The Equality Act – What's new for employers?*

[www.acas.org.uk](http://www.acas.org.uk)

ECU *Equality Act 2010 – Implications for higher education institutions* [www.ecu.org.uk](http://www.ecu.org.uk)

## The Equality and Human Rights Commission

([www.equalityhumanrights.com](http://www.equalityhumanrights.com)) and the Government Equality Office ([www.equalities.gov.uk](http://www.equalities.gov.uk)) have both produced information and it can be found on their websites.

### Contacts:

- Helen Carr – National Head of Equality  
[hcarr@ucu.org.uk](mailto:hcarr@ucu.org.uk) | Tel: 020 7756 2500 | Fax: 020 7756 2501
- Seth Atkin – Equality Support Official  
[satkin@ucu.org.uk](mailto:satkin@ucu.org.uk) | Tel: 020 7756 2500 | Fax: 020 7756 2501
- Charlotte Nielsen – Equality Support Official  
[cnielsen@ucu.org.uk](mailto:cnielsen@ucu.org.uk) | Tel: 020 7756 2500 | Fax: 020 7756 2501
- Chris Nicholas – Equality Support Official  
[cnicholas@ucu.org.uk](mailto:cnicholas@ucu.org.uk) | Tel: 020 7756 2500 | Fax: 020 7756 2501
- Sharon Russell – Equality Officer  
[srussell@ucu.org.uk](mailto:srussell@ucu.org.uk) | Tel: 020 7756 2500 | Fax: 020 7756 2501