

An Introduction to the new Equality Act

Introduction

The government has consolidated existing discrimination law into a single Equality Act, due to come into force on 1st October 2010. The new Act will be supported by a Statutory Code of Practice, due to be published during October. The new Act replaces a number of existing pieces of legislation principally the Equal Pay Act; the Sex Discrimination Act; the Race Relations Act; the Disability Discrimination Act; the Employment Equality (Religion or Belief) Regulations; the Employment Equality (Sexual Orientation) Regulations; and the Employment Equality (Age) Regulations 2006.

Key changes

The new Act introduces a number of significant changes.

Discrimination by association

The Act introduces a new form of discrimination - which can arise because of someone's association with a person with a protected characteristic, or where a person thinks someone has a protected characteristic even if they don't (*for example, discrimination because a person's child is disabled, or because you think a person is gay even if they are not*).

Questions about health or disability

Except in very restricted circumstances*, employers are not allowed to ask any job applicant about their health or any disability until the person has been offered a job either outright or on conditions.

This includes asking such a question as part of the application process or during an interview. Questions relating to previous sickness absence count as questions that relate to health or disability.

Note this includes asking an applicant to fill in a pre-employment health questionnaire.

You can ask questions once you have made a job offer. At that stage, you could make sure that someone's health or disability would not prevent them from doing the job. But you must consider whether there are reasonable adjustments that would enable them to do the job.



***Employers can ask all applicants to contact them if they need adjustments made to the assessment process, due to their disability. They can also enquire about the candidate's health if there are specific abilities required that are intrinsic to the job (e.g. working in confined spaces which might exclude certain health conditions).**

Employer's liability for the actions of others

If an employee or someone working on your behalf (e.g. a recruitment consultant) harasses or discriminates unlawfully whilst in the course of their employment or service for you – you could be held liable unless you took all reasonable steps to prevent or stop the unlawful act. This means that you should make very clear in all your documentation and policies (E.g. Equality Policy; Disciplinary Rules; Code of Conduct; Recruitment procedures etc...) that any form of unlawful discrimination will not be tolerated. You might also want to consider explaining these requirements to new staff during their induction process and possibly informing or training your managers and staff.

Employers could also be held liable if their staff are harassed or discriminated against in the course of their employment by a client, supplier or member of the public – but only where they are aware this has taken place and done nothing to try and prevent a re-occurrence.

Other changes which might affect you

Equal pay

The requirements for equal pay; equal pay audits (for larger employers); and the right for employees to discuss their pay with others are likely to raise the profile of equal pay.

Protected characteristics (and some definitions)

Age

Disability

A person has a disability if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.

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Gender reassignment

The process of transitioning from one gender to another.

Marriage and civil partnership

Marriage is defined as a 'union between a man and a woman'. Same-sex couples can have their relationships legally recognised as 'civil partnerships'. Civil partners must be treated the same as married couples on a wide range of legal matters.

Pregnancy and maternity

Race

It refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins.

Religion and belief

Religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief (e.g. Atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition.

Sex (gender)

Sexual orientation

Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.

What you need to do

The key changes employers will need to make are:

- Updating your Equality Policy
- Updating your policies and procedures on misconduct
- Checking that your recruitment and selection procedures are compliant
- Considering whether you need to train your staff

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