

# The new 2010 Equality Act

## What are the main changes and will this result in a new rush of discrimination claims?

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**With the introduction of the new Equality Act from 1st October 2010, even more employees will have protection from discrimination. What are the main changes and will this result in a new rush of claims?**

The Equality Act came into effect on 1st October despite speculation that the new Government might scrap it or radically amend it.

It was drafted by the previous Labour administration and one of its major aims is to increase protection against discrimination in the workplace.

It's a huge piece of work which replaces measures that were previously scattered across nine different pieces of legislation dating back to the 1970s.

This should make things simpler in future but it's not just a streamlining exercise. It both broadens and deepens previous laws.

At its core is the provision making it illegal to discriminate against people who have a "protected characteristic". The Act lists these characteristics as being:

- disability
- gender reassignment
- pregnancy and maternity
- race – including ethnic or national origins, colour and nationality
- religion or belief
- sex and sexual orientation

Some of this will seem familiar territory but there are several important developments.

### **Pre-employment health questionnaires**

Employers will no longer be able to ask questions about health and disability when considering candidates for a job – unless they can show that they need to determine whether applicants could carry out functions that are intrinsic to the role (for example where a role involves heavy duty packing).

### **Discrimination arising from disability**

A significant difference is that under the definition of disability it is now easier for an individual to show that they are disabled and protected as the meaning for disability has become broader. The disabled person no longer needs to show that their impairment affects a particular capacity such as hearing, eyesight, mobility or speech as they had to under the previous legislation. A disabled person only need show that their physical or mental impairment has a substantial and long term adverse effect on their ability to carry out normal day to day activities, such as using a telephone or using public transport.

Another new right which has been introduced for the first time is discrimination arising from disability where a disabled person is treated unfavourably because of something arising "in consequence" of their disability. For instance an individual suffering from dyslexia may have a tendency to make spelling mistakes. There would be discrimination on the part of the employer where he knows or ought to have known that the employee had such a disability and is treating the employee unfairly as a result. In this example, the spelling mistakes by the employee is "connected" to the disability.

### **Discrimination by perception**

The Act also develops the concept of discrimination by "perception". This would involve a person being treated unfairly because they are wrongly perceived to have a protected characteristic. It might apply, for example, if a person is discriminated against because they are thought to be gay when they are not. Another example is where a prospective white employee submits a job application, but the employer rejects the application as wrongly assuming the job seeker to be Asian as he has an Asian sounding name.

### **Discrimination by association**

The same principle and protection also extends to people who are treated unfairly because they associate with someone who has a protected characteristic. This is called "associative discrimination". For example an employee is refused flexible working arrangements even though it has been offered to others because that employee has caring responsibilities for a child or spouse who has a disability and the employer believes that employee may not be dedicated enough for flexible working. These rights have been extended to Age, Disability, Gender Reassignment and Sex discrimination claims.

### **Indirect discrimination**

Indirect discrimination has also been extended to cover disability and gender reassignment. Indirect discrimination occurs where an employer introduces a rule or policy that applies to everybody in the workforce but where such rule in turn creates a disadvantage for employees with a particular protected characteristic.

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#### Harassment and victimisation

There are also changes relating to harassment and victimisation. The Act introduces the concept of "harassment by a third party". This means that employers are potentially liable for harassment of their staff by people they don't employ, such as customers and clients, if they do not take proper steps to address the same when they became aware of it.

Employees also have extended protection where someone is treated badly because they have made or supported a complaint or grievance or complaint under the Act.

#### Equal pay

One of the major themes of the Act is equal pay. Employers can no longer enforce secrecy clauses in contracts of employment banning employees from revealing their pay rates to colleagues where they are related to protected characteristics such as race or sex. If an employer disciplines someone because they have become aware of such discussions, this could amount to victimisation under the Act.

The Government is still considering other equal pay measures such as obliging companies and public authorities to reveal information about the gender pay gap within their organisations. These may be introduced next April when the next raft of provisions in the Equality Act are due to come into force.

#### Employment tribunal powers

The powers of the Employment tribunals will now extend under the Act as the tribunal can now make a recommendation to the employer to eliminate or reduce the effect of discrimination on the whole of the employers workforce. Such recommendation is not binding but if not followed, could be used as evidence to support any future claims from other employees in the same workplace.

#### Conclusion

By harmonising the existing discrimination law into one Act, and introducing a wider scope of protection for employees, the Government has tried to simplify matters and at the same time make the workplace a fair environment for all.

This should not require a huge shift in an employer's attitude as long as they are acting fairly in the first place. Employers will though, need to check that their current grievance procedures and equal opportunities policies to ensure they take account of all the changes brought in by the Act.

Ultimately, employees should benefit under the Act as it offers more protection against discrimination than previous legislation and I would expect a whole raft of new claims to be brought as a result.

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