



THOMPSONS
SOLICITORS

STANDING UP FOR YOU

Equality Act 2010

Our pledge to you

Thompsons Solicitors has been standing up for the injured and mistreated since Harry Thompson founded the firm in 1921. We have fought for millions of people, won countless landmark cases and secured key legal reforms.

We have more experience of winning personal injury and employment claims than any other firm – and we use that experience solely for the injured and mistreated.

Thompsons will stand up for you by:

Staying true to our principles – regardless of how difficult our job is made by government, employers or the insurance industry

Remaining committed to the trade union movement, working closely with them and with professional associations for the benefit of working people everywhere

Thompsons pledge that we will:

Work solely for the injured or mistreated

Refuse to represent insurance companies and employers

Invest our specialist expertise in each and every case

Fight for the maximum compensation in the shortest possible time

standing up for you

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The Spirit of Brotherhood
by Bernard Meadows

About this booklet

The Equality Act, which came into force on October 2010, provides the legal framework for discrimination law in England, Scotland and Wales.

- Discrimination
- Harassment
- Victimisation
- Equal pay
- Public sector equality duty
- Positive action

What does the Equality Act do?

The Act outlaws discrimination for the following nine “protected characteristics” – age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

It replaces all previous equality law including the Equal Pay Act, the Sex Discrimination Act, the Race Relations Act, the Disability Discrimination Act and the regulations outlawing discrimination on the basis of age, religion or belief and sexual orientation as well as all other related legislation.



Who is protected?

It covers all forms of employment and applies to apprentices, those working under a contract of employment and the self-employed working under a contract personally to do the work.

Where there is a contract between an agency worker and an employment agency or business they are likely to be covered.

What is considered to be unlawful discrimination under the Act?

Direct discrimination

This is when someone with a protected characteristic is treated less favourably than someone else who does not have the same a protected characteristic.

Associative discrimination

This is the same as direct discrimination but applies where someone is treated less favourably because of their association with a person who has a protected characteristic (such as the mother of a disabled child).

This provision does not apply specifically to the protected characteristic of pregnancy and maternity, although it may be possible to argue that a worker treated less favourably because of their association with a pregnant woman amounts to associative sex discrimination.

Perception discrimination

This is the same as direct discrimination but applies to someone who is discriminated against because they are perceived to have a protected characteristic. For example, where someone is treated less favourably because they are perceived to be of a certain age group. This provision does not apply to the protected characteristic of marriage and civil partnerships and pregnancy and maternity.

Indirect discrimination

This is when an employer applies a provision, criterion or practice (PCP) equally to everyone, but which in fact puts (or would put) people with a protected characteristic at a particular disadvantage compared to those who do not share that characteristic and which cannot be justified by the employer.

Indirect discrimination can only be justified if the employer can show that the PCP is a proportionate means of achieving a legitimate aim. This essentially requires an objective assessment of the needs of the business as compared to the discriminatory effect on the worker.

The provisions on indirect discrimination do not apply to pregnancy and maternity. However a claim of indirect discrimination for pregnancy and maternity may amount to indirect discrimination because of the protected characteristic of sex.

Discrimination arising from disability

It is unlawful for an employer to treat a worker with a disability unfavourably because of something arising from their disability. This is not the same as discrimination because of disability. An example of discrimination arising from disability could include where a person is treated unfavourably because of disability related absence. An employer will be liable for a claim where they know or could reasonably be expected to know that the worker has a disability and the unfavourable treatment cannot be justified i.e. it is not a proportionate means of achieving a legitimate aim.

Duty to make adjustments

Employers have a duty to make reasonable adjustments for workers with a disability in three circumstances. Where a:

- PCP puts them at a substantial disadvantage in comparison with someone who is not disabled;
- physical feature puts them at a substantial disadvantage in comparison with someone who is not disabled;
- disabled person would be put at a substantial disadvantage in comparison with someone who is not disabled, were it not for an auxiliary aid.

What other conduct is prohibited?

Harassment

Harassment is defined as “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”.

The Equality and Human Rights Commission (EHRC)’s Employment Code gives examples of unwanted conduct as spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, and pranks, acts affecting a person’s surroundings or other physical behaviour. “Conduct” is only regarded as harassment when all the circumstances are taken into account (including the perception of the person subject to harassment) and if it is reasonable to conclude that it could have had that effect.

The Act specifically prohibits three types of harassment – unwanted conduct relating to a relevant protected characteristic; sexual harassment; and less favourable treatment of someone because they agreed to or rejected sexual harassment or harassment related to their sex or gender reassignment.

The provisions on harassment do not apply to the protected characteristics of pregnancy and maternity and marriage and civil partnerships. However, someone subject to harassment related to these protected characteristics may be able to claim harassment related to sex and/or sexual orientation.

People at work can complain about behaviour that they find offensive even if they do not have the protected characteristic themselves. So, for example, witnesses to harassment may be protected.

An employer is able to defend a claim of harassment if he can show that he took all reasonable steps to prevent the employee from carrying out acts of harassment.

Victimisation

This is when a worker is subjected to a detriment because they have done or may do a protected act. Examples of protected acts include:

- Bringing proceedings under the Act, or previous discrimination legislation;
- Making an allegation that another person has done something in breach of the Act;
- Giving evidence or information in connection with proceedings brought under the Act;
- Doing anything else which is related to the provisions of the Act;
- Making or seeking a relevant pay disclosure for or from a colleague including a former colleague.

The person complaining of victimisation has to have acted in good faith when doing a protected act. A false allegation will not amount to a protected act.



What does the Act say about pay?

Equal pay

It is unlawful for an employer to discriminate between men and women in relation to the terms of their contracts of employment. The Act implies a 'sex equality clause' into every employee's contract of employment, which enables an employee to bring a tribunal claim if they are treated less favourably than a comparable employee of the opposite sex in relation to a contractual term. The most common example of a claim is where a woman is paid less than a man doing like work, work rated equivalent under a job evaluation scheme and/or work of equal value.

Pay secrecy

The Act provides that a contractual clause which restricts or prevents someone from disclosing their pay with a view to establishing whether or not there is a discriminatory pay practice is unenforceable. A clause in a contract of employment which prevents employees from discussing their pay generally is not prohibited by this provision.

Gender pay reporting

Gender pay gap regulations which apply to employers in the private and voluntary sectors with at least 250 employees came into force on 6 April 2017.

These employers are required to publish certain information about their gender pay gap of their employees based on a 'snapshot' taken on 5 April each year. The required data includes the:

- mean and median gender pay gap;
- difference between mean and median bonuses paid to men and women;
- proportions of men and women who are paid bonuses; and
- proportions of men and women in each of the four quartiles of the employer's overall pay distribution.

There are separate regulations which apply similar gender pay reporting requirements on non-devolved public sector employers in England. Scotland and Wales have their own separate legislation on gender pay reporting.

What is the public sector equality duty?

Public bodies such as local government, the NHS and those carrying out public functions are under a duty to consider equality when making day-to-day decisions both in terms of service delivery and employment. This consists of a general duty and specific duties.

The general duty has three aims and requires public bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- Advance equality of opportunity between those who share a protected characteristic and those who do not;
- Foster good relations between those who share a protected characteristic and those who do not.

The overall aim of the general equality duty is to ensure public authorities address inequality and discrimination by taking equalities into account as an integral part of their decision making processes. The key point is that the duty is proactive in the sense that it puts a positive obligation on public authorities to take steps to prevent discrimination on all protected grounds.

The specific duties are designed to help public bodies comply with the general duty. Separate regulations set out the specific duties for devolved public authorities in England, Wales and Scotland. Trade unions should check that the employer is complying with the specific regulations according to whether the devolved public authority is in England, Wales or Scotland.





What is positive action?

The Act enables an employer to treat a person with a protected characteristic more favourably in the process of recruitment and promotion if the employer reasonably thinks a person with a protected characteristic suffers a disadvantage connected to the protected characteristic or there are fewer people with a particular protected characteristic employed.

The more favourable treatment must be aimed at encouraging participation of those with a protected characteristic who are underrepresented or put at a disadvantage.

The provision effectively allows an employer to choose a candidate with a protected characteristic in favour of one who does not have a protected characteristic, provided that the:

- person is "as qualified" as the other candidate;
- employer does not have a recruitment or promotion policy of treating persons of the underrepresented group more favourably;
- more favourable treatment is a proportionate means of achieving a legitimate aim (the legitimate aim being encouraging participation and overcoming disadvantage).

What are pre-employment health-related checks?

An employer must not ask about a job applicant's health or whether they have a disability until they have either been offered a job or been included in a pool of successful applicants.

However, this is not a blanket ban and an employer can ask questions which are necessary for determining whether the person could attend an interview, selection test or carry out the job duties, after having considered the duty to make a reasonable adjustment.

The employer can also ask questions for the purpose of:

- equality monitoring;
- enabling the employer to take positive action; and
- establishing whether the applicant has a particular disability, where that disability is an occupational requirement.

Can Tribunals make recommendations?

The Tribunal can make recommendations for the purpose of preventing or reducing the effect of the discrimination on the claimant of any matters to which the proceedings relate.

For example, a recommendation that the employer provides a programme of training in equal opportunities for those who acted in a discriminatory way. However, a Tribunal cannot recommend positive action, such as that the person be given a job in a case where an employee successfully claimed they were discriminated against in a promotion exercise. A recommendation will not normally be made if the claimant has resigned or has been dismissed as it would not obviate or reduce the adverse effect on the claimant.

Where an employer fails to comply with a recommendation the Tribunal may order the compensation to be increased or, if no compensation was awarded it can make an order for compensation.



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