

What is the Equality Act 2010?

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The Equality Act is a new piece of legislation which brings together and replaces the following legislation, as of 1 October 2010:

- The Equal Pay Act 1970
- The Sex Discrimination Act 1975
- The Race Relations Act 1976
- The Disability Discrimination Act 1995
- The Employment Equality (Religion and Belief) Regulations 2003
- The Employment Equality (Sexual Orientation) Regulations 2003
- The Employment Equality (Age) Regulations 2006
- The Equality Act (Sexual Orientation) Regulations 2007

The act will affect all businesses that provide goods and services to the public, or a section of the public- including goods or services that are given away free.

There are some elements not coming into force yet, such as the prohibition of age discrimination in the provision of goods and services, which you should be aware of for the future.

The Equality Act covers exactly the same groups of individuals that were protected by the previous legislation. However, the headings of age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, and pregnancy and maternity are now to be known as '**protected characteristics**'.

1. Protected characteristics

Age

The Act protects employees of all ages but remains the only protected characteristic that allows employers to justify direct discrimination, i.e. if an employer can demonstrate that to apply different treatment because of someone's age constitutes a proportionate means of meeting a legitimate aim, then no discrimination will have taken place. The Act continues to allow employers to have a default retirement age of 65, as long as the default retirement age remains.

Disability

The Act includes a new protection arising from disability and now states that it is unfair to treat a disabled person unfavourably because of something connected with a disability. An example provided is the tendency to make spelling mistakes arising from dyslexia. Also, indirect discrimination now covers disabled people, which means that a job applicant could claim that a particular rule or requirement disadvantages people with that disability.

The Act includes a new provision which makes it unlawful, with limited exceptions, for employers to ask about a candidate's health before offering them work.

Additionally, indirect discrimination now covers disabled people. This means that a job applicant

or employee could claim that a particular rule or requirement you have in place disadvantages people with the same disability. Unless you could justify this, it would be unlawful.

Gender reassignment

It is discriminatory to treat people who propose to start to or have completed a process to change their gender less favourably, for example, because they are absent from work for this reason.

The Act provides protection for transsexual people. A transsexual person is someone who proposes to, starts or has completed a process to change his or her gender. The Act no longer requires a person to be under medical supervision to be protected – so a woman who decides to live as a man but does not undergo any medical procedures would be covered.

It is discrimination to treat transsexual people less favourably for being absent from work because they propose to undergo, are undergoing or have undergone gender reassignment than they would be treated if they were absent because they were ill or injured.

Marriage and civil partnership

The Act continues to protect employees who are married or in a civil partnership. Single people are however not protected by the legislation against discrimination.

Pregnancy and maternity

The Act continues to protect women against discrimination because they are pregnant or have given birth.

Race

The Act continues to protect people against discrimination on the grounds of their race, which includes colour, nationality, ethnic or national origin.

Religion or belief

The Act continues to protect people against

discrimination on the grounds of their religion or their belief, including a lack of any belief.

Sex

The Act continues to protect both men and women against discrimination on the grounds of their sex.

Sexual orientation

The Act continues to protect bisexual, gay, heterosexual and lesbian people from discrimination on the grounds of their sexual orientation.

2. Types of discrimination

Employers and business owners now need to be aware of the **seven different types of discrimination** under the new legislation. These are:

Direct discrimination - where someone is treated less favourably than another person because of a protected characteristic.

Associative discrimination - this is direct discrimination against someone because they are associated with another person who possesses a protected characteristic.

Discrimination by perception - this is direct discrimination against someone because others think that they possess a particular protected characteristic. They do not necessarily have to possess the characteristic, just be perceived to.

Indirect discrimination - this can occur when you have a rule or policy that applies to everyone but disadvantages a person with a particular protected characteristic.

Harassment - this is behaviour that is deemed offensive by the recipient. Employees can now complain of the behaviour they find offensive even if it is not directed at them.

Harassment by a third party - employers are potentially liable for the harassment of their staff or customers by people they don't themselves employ, i.e. a contractor.

Victimisation - this occurs when someone is treated badly because they have made or supported a complaint or grievance under this legislation.

3. Key changes affecting employment law

Positive action

The Act allows you to take what is known as 'positive action' if you think that employees or applicants for a job who share a protected characteristic suffer a disadvantage connected to that characteristic.

Pre-employment health questionnaires

Your ability to ask questions about an applicant's health before offering them a job will be limited. This will discourage the use of pre-employment health questionnaires as part of your recruitment process.

You will only be able to ask applicants questions about health if:

- The information will be used to make reasonable adjustments for them to take part in the interview process or carry out their job
- To decide whether the applicant could carry out essential elements of the job
- To monitor diversity and take positive action.

Direct discrimination in equal pay

Most pay inequality claims will be dealt with in the same way as the existing legislation, which requires a comparison to be made with a

real person of the opposite sex working in the same company.

However, the Act will also allow a claim of direct pay discrimination with regards to sex, even if no comparator exists in the business. Therefore, a claimant who can demonstrate that they would have received better pay if they were a member of the opposite sex could make a claim.

Pay secrecy

It will be unlawful to prevent employees from discussing differences in pay that are related to protected characteristics.

Any terms and conditions in your contracts of employment that require pay secrecy will be unenforceable in these circumstances, unless they refer to discussing pay with competitors. The Act makes it unlawful for you to prevent or restrict your employees from having a discussion to establish if differences in pay exist that are related to protected characteristics. It also makes terms of the contract of employment that require pay secrecy unenforceable because of these discussions.

An employer can require their employees to keep pay rates confidential from some people outside the workplace, for example a competitor organisation.

Employment tribunals

The powers given to tribunals have been extended under the Act. If a tribunal finds an employer guilty of discrimination, it will be able to make recommendations that they eliminate or reduce the effect of discrimination on employees other than the claimant. This is meant to prevent further discrimination in the workplace.

Under previous legislation, an employment tribunal could make a recommendation that an employer must eliminate or reduce the effect on the claimant of any discrimination. The Act

extends this power so that it will now be possible for a tribunal to make recommendations that an organisation takes steps to eliminate or reduce the effect of discrimination on other employees, not only on the claimant. For example, the tribunal might specify that an employer needs to train all staff about the organisation's bullying and harassment policy. This power does not apply to equal pay cases.

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Hounslow Race & Equalities Council is committed to equality rights for all residents, students, employees and workers in the Borough of Hounslow on age, race, sexual orientation, sex, disability, religion or belief, disability, marriage, pregnancy and maternity and civil partnerships.