



The Equality Act 2010

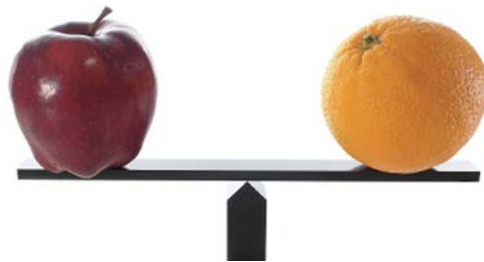
What does it mean for employers?

April 2010

The Equality Act has now become law and certain key provisions for employers are expected to come into force in October 2010.

In a nutshell the Act will...

- harmonise the core provisions of the different types of discrimination law (October 2010);
- extend the scope for employers to use positive action to combat discrimination (October 2010);
- increase pay transparency by making secrecy clauses unenforceable in certain circumstances (October 2010);
- potentially introduce gender pay and equality reporting for public sector employers (April 2011) and private sector employers (April 2013);
- introduce new codes of practice issued by the Equality and Human Rights Commission (EHRC) on Employment; Equal Pay; and Services, Public Functions and Associations (October 2010).



Discrimination

What are the key changes to the concept of discrimination?

- All discrimination legislation will be housed under one roof.
- The definition of indirect discrimination will be harmonised across all types of discrimination.
- Indirect disability discrimination and a new concept of "discrimination arising from disability" will be introduced.
- The concept of objective justification in discrimination cases will be harmonised as a "proportionate means of achieving a legitimate aim".
- The requirement for a comparator in victimisation cases will be removed.
- Discrimination by association and/or perception will be explicitly prohibited across the board.
- Employers will be liable in additional circumstances for harassment by third parties in the workplace.

Employment Tribunals

What changes are there to the powers of Employment Tribunals?

- Employment Tribunals will be given the power to make recommendations that benefit the wider workforce not just a claimant in a successful discrimination claim.

Recommendations could include, for example, that a harassment policy is more effectively implemented or that selection criteria for staff transfers or promotion are made public.

Pre-employment health questions

Will pre-employment health questions be banned?

- Employers will not be able to ask pre-employment health questions of a job applicant other than in

certain limited circumstances, such as, to establish whether the applicant would be able to carry out a function that is intrinsic to the work concerned.

Positive action

What is positive action?

- The Government has been keen to stress that the principle of "selection on merit" will still be key. However, positive action allows (but does not require) employers to positively discriminate in relation to under-represented groups, in recruitment and promotion, if the employer can show:
 - the successful candidate is from a protected group

which is at a disadvantage or under-represented;

- the successful candidate is as *qualified* as any other eligible applicant.

What does "as qualified as" mean?

- This is not defined, but is not merely qualifications in an academic sense. For example, we would expect relevant experience to be acceptable.

Pay transparency

Will I be required to produce gender pay and equality reports?

- There is a power for the Government to require employers to publish information relating to differences in pay between male and female employees, where:
 - the employer has over 250 employees (private sector);
 - the employer has over 150 employees (public sector).

When will this apply?

- Public sector employers may be required to publish gender pay gap information and ethnic minority and disability statistics from April 2011. However, the Government has committed not to apply this power to private sector employers before 2013 and may delay beyond that if voluntary reporting is successful.

Secrecy clauses

Will secrecy clauses be banned?

- No, but a secrecy clause (which requires an employee to keep details of his pay secret and prevents him from discussing his pay with his colleagues) will be unenforceable against employees involved in a "relevant pay disclosure".

discussion with a male colleague seeking to establish whether there is a difference in their pay and, therefore, whether there may have been pay discrimination.

What is a "relevant pay disclosure"?

- This is where, for example, a female employee has a

Can I dismiss an employee who tells another employee what they are paid?

- Victimising an employee because they make or seek a "relevant pay disclosure" will be unlawful.

Public Sector - single equality duty

What is the single equality duty?

- The existing public sector duties will be replaced by a single unified duty covering all types of discrimination. Public bodies will have a mandatory duty to promote equality when making strategic decisions about how to exercise its functions.

Does this apply to private employers?

- No, this duty to promote equality does not apply to private sector employers but public bodies can use procurement to drive equality and an assessment of a bidder's compliance with equality legislation is likely to be part of any tendering process.

What to do next

What do I need to do now?

- Brief line managers about the changes and consider whether you need to update your existing policies.

- Familiarise yourself with any relevant new statutory codes of practice issued by the EHRC.

More information

If you would like further information on the other aspects of the Equality Act 2010, we also have specific briefings for:

- Landlords and property managers
- The public sector

- Service providers (private and public sector)
- Pension schemes

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