

EBULLETIN

The Equality Bill - What You Need to Know

The much debated Equality Bill passed its final stage in the House of Commons on 6 April 2010 and is expected to receive Royal Assent shortly.

The Equality Act's main provisions prohibiting discrimination in the workplace are expected to come into force in October 2010 while the integrated public sector equalities duty and dual discrimination protection are expected to come into force in April 2011. However the Conservatives have announced their intention to drop some aspects of the Equality Act if they come into power this year.

The Equality Act will represent the harmonisation of existing discrimination law (comprising of nine pieces of legislation and more than 100 other measures) into a single Act and is intended to make it easier for both employers and employees to understand their own legal rights and obligations. However, while many principles remain the same, the scope of discrimination law has been re-interpreted and employers need to prepare appropriate measures to minimise the risk of claims once the Equality Act comes into force.

Here are the key aspects of the Equality Act employers need to be aware of:

Discrimination - Protected Characteristics

The Equality Act harmonises and extends current discrimination law to apply to all the "protected characteristics" which include age, disability, sex, gender reassignment, sexual orientation, race, religion or belief and, in many but not all instances, marriage and civil partnerships. 'Disability related' discrimination will be replaced with a prohibition on discriminating against a disabled person by treating them unfavourably where that treatment is not a proportionate means of achieving a legitimate aim.

The scope of some of the protected characteristics will also be widened. The Equality Act will add the power to prohibit caste discrimination as part of race discrimination and a draft code of practice accompanying the Equality Act explains that vegans, atheists and Scientologists could be considered to be groups with protected beliefs for the purpose of unlawful discrimination.

From April 2011 employees will be able to bring claims for dual/combined discrimination – for example, that their employer unlawfully discriminated against them because of their race **and** their gender.

Equal Pay Transparency

By April 2011 public bodies employing more than 150 staff will be required to report on gender pay gaps as well as providing other equality data, including the number of ethnic minority and disabled workers they have. Private sector employers with over 250 staff will be encouraged to voluntarily publish gender pay gaps, and the government may make this compulsory from 2013 if it considers that sufficient progress has not been made.

Employers will no longer be able to rely on pay secrecy clauses if an employee has discussed their pay where there is a connection between their pay and a protected characteristic. For example, if a female employee discloses her pay to a male colleague in breach of a contractual pay secrecy clause because she wants to establish whether or not she is being discriminated against, her employer subjecting her to disciplinary action for this would amount to unlawful victimisation.

Ban on Discrimination by Association and Perception

The Equality Act will extend the law on direct discrimination to include discrimination by association and perception to all protected characteristics. As such it will be unlawful to directly discriminate against an employee who

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is perceived to have a protected characteristic or is associated with someone with a protected characteristic e.g a disabled relative.

Positive Action in Recruitment and Promotion

The Equality Act widens the scope of positive action. This will enable employers to favour an under-represented group when choosing to recruit or promote between two equally suitable candidates in order to increase the diversity of their workforce.

However, there is a fine line between positive action and unlawful positive discrimination and the Equality Act requires that selection on merit is still essential and that the employer should not have a policy of automatic selection on this basis. This is arguably the most controversial aspect of the Equality Act and guidance will be produced on how this will operate in practice.

Enhanced Tribunal Powers

Currently Tribunals can make recommendations in respect of individual employees against whom an employer has been found to have unlawfully discriminated. The Equality Act will now enable Tribunals to make recommendations for wider changes to policies and practices that affect other workers within the organisation e.g. to implement training for managers. The recommendations will not be binding, but may be used as evidence against the employer in any future discrimination claims.

If you have any queries or would like advice on how this will affect your business, please contact Amanda Harvey or Nicola Philp or another member of the Employment Team with whom you usually deal.

Amanda Harvey on 020 7880 4281 or amanda.harvey@devonshires.co.uk

Nicola Philp on 020 7065 1819 or nicola.philp@devonshires.co.uk

Public Sector Single Equality Duty

The Equality Act will create a new single public sector equality extending from the current duty regarding race, gender and disability equality to cover all protected characteristics. Public bodies will be required to consider the needs of individuals with all protected characteristics when designing and delivering public services.

Diversity in Procurement

Public sector bodies will be required to take into account potential contractors' equality and diversity record and policies when tendering. While the obligation is on public sector bodies rather than private sector contractors, a local authority could, for example, exercise its single equality duty by making a contract conditional on the contractor furthering diversity by running relevant programmes supporting under-represented groups involved in the scheme.

Ban on Pre-employment Health Questionnaires

The Equality Act will prohibit employers from asking candidates questions about their health that are unrelated to their job. As such, employees with mental health issues, a medical condition or disability will not be required to disclose their condition unless it hinders their ability to do the job.