

The Equality Act 2010: What's All the Fuss About?

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Introduction

The majority of the provisions of the Equality Act 2010 (the Act) come into force on 1 October 2010. The Act brings together 116 pieces of equality legislation concerning sex, race, disability, sexual orientation, religion or belief, and age and seeks to adopt a single approach where appropriate. It also contains a number of important changes to the law. Much legal commentary and analysis has been produced in relation to the Act, but in practice, what do employers *really* need to know?

The Main Implications

A Ban on Pre-Employment Health Questions

An employer that is in the process of recruiting a potential employee will not be able to enquire about the potential employee's health, except where one of the exceptions set out in the Act is relevant (for example, where it is necessary to establish whether the potential employee will be able to undergo aspects of the interview process or whether adjustments need to be made to enable him or her to do so).

There are two consequences for a failure to comply with this provision of the Act:

- i) The Equality and Human Rights Commission can investigate and issue an unlawful act notice
- ii) If the employer relies on health information provided by the potential employee when making an employment decision (for example, deciding not to offer the job), the potential employee can bring a claim for disability discrimination as a result of the employer relying on this information.

It is possible for an employer to make an offer conditional on the potential employee undergoing a medical examination or completing a health questionnaire. However, if the job offer is withdrawn as a result of the information provided, the potential employee can pursue a disability discrimination claim.

Associative and Perceptive Discrimination

Now all forms of direct discrimination based on (i) association with someone who has a protected characteristic and (ii) perception related to a protected characteristic will be prohibited. This will

include, for example, direct discrimination on the basis that a person is perceived to be disabled (even if he or she is in fact not disabled).

Pay Secrecy Clauses

Many employers include pay secrecy clauses in employment contracts to prohibit employees from discussing pay. Under the Act, an employer will be unable to enforce a pay secrecy clause against an employee who discusses pay with a colleague *for the purpose of ascertaining whether he or she is being discriminated against*.

What Might Affect Employers in the Future?

Dual Discrimination

Although the date on which provisions relating to dual discrimination will come into force has not been confirmed, the Act will prohibit discrimination based on the combination of *two protected characteristics*. An example of this is when a black female's employment as a newsreader is terminated because her employer thinks that black women do not perform well in that role. Because the employer could point to equally qualified black male newsreaders and white female newsreaders, the black female newsreader would find it difficult to bring a discrimination claim because of sex or race alone. However, in the future she will be able to rely on the "dual discrimination" provisions in the Act to demonstrate that she has been subjected to less favourable treatment because of the combined characteristics of sex and race.

Positive Discrimination

Although no decision has been made about when provisions permitting positive discrimination will come into force, in the future the Act will allow an employer (in the context of recruitment) to take proportionate measures to hire someone from an underrepresented group, so long as the person is "as qualified as" the other candidate(s) short-listed for the job.

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