



Equally Confused by the Equality Act?

Louise Haward, Solicitor within the Employment Team at Smith Partnership sets out what the Equality Act 2010 which comes into force next month means to employers.



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With the Equality Act due to be implemented in October 2010 employers should now be taking action to review their policies and procedures to ensure that they comply with the changes brought in by the Act.

Following the 5 year review process the aims of the Act are to in fact simplify and standardise the laws relating to discrimination by not just solely drawing together existing legislation but also incorporating new rights and remedies and as a result creating new obligations on employers and with so much information it's no wonder employers are confused.

The Equality Act covers the same groups that were protected by existing legislation- age, disability, gender reassignment, sex, race, religion, pregnancy and maternity etc, now called "protected characteristics".

There are changes in the Act which also cover companies providing goods or services but this article will focus on changes affecting an employment relationship. So what is going to change for employers?

Race, Age, Marriage and Civil Partnership, Religion or Belief, Sexual Orientation, Sex, Pregnancy and Maternity- no changes

Disability Discrimination- the new legislation will make it unlawful to ask invasive questions, e.g. through health questionnaires, about disability and health before the job offer stage in a recruitment process (unless essential to the nature of the role). After offering a job an employer can ask these questions in order to consider whether any reasonable adjustments will be required. If a job offer is withdrawn after this disclosure this may give rise to a claim and an employer will need to show that the withdrawal of the offer was for a non-discriminatory reason.

Gender- the new legislation has directed itself towards issues of transparency about pay as there remains a gender pay discrepancy despite current legislation. In particular employers, who have previously included a contractual provision banning employees from discussing their pay with colleagues, will need to think about removing these clauses as disciplinary action cannot be taken against staff for discussing and comparing pay where this may be linked to discrimination. Although not coming into force in October 2010 there is also the potential to include within the Act rules requiring employers to monitor and report on gender pay.

Positive action- the new legislation allows an employer to take positive action if it is thought that employees or job applicants who share a particular protected characteristic suffer a disadvantage connected to that characteristic, or to encourage them to participate in an activity where they are underrepresented. Positive action would include offering training to particular groups of employees. No date has yet been given to introduce changes that would allow recruitment or promotion of "as qualified as" employees (on a case by case basis) because of their protected characteristic.

Under current legislation an employment tribunal could make a recommendation that an employer must eliminate/ reduce the effect on of any discrimination a claimant. The new legislation extends this power so recommendations that an organisation takes steps to eliminate or reduce the effect of discrimination on all employees may be made.

Employers therefore need to check their policies and procedures to ensure that these new developments are applied in the work place and employers are not left vulnerable to a discrimination claim.

If you have any queries about the Equality Act or any other employment law related issues please contact the Smith Partnership Employment Team on 01332 225225.

