

## EQUALITY ACT 2010

From 1<sup>st</sup> October the Government is introducing most of the major new measures contained in the Equality Act 2010. Other provisions have been held back to allow organisations and those most affected by the changes to get themselves ready.

The Act is a really major piece of legislation. It rolls up into one Act most of the legislation dealing with discrimination passed in the last 6 decades. Its aim is to provide “a simple, modern and accessible framework of discrimination law which protects individuals from unfair treatment and promote a fair and more equal society”.

So, what comes into force on October 1<sup>st</sup>? A few of the main provisions can be summarised, I think, as follows:-

- The basic law and rights of protection against direct and indirect discrimination – including harassment and victimisation in services and public functions
- Protection against discrimination at work, in education, in transport, and in associations
- Protection, eg for carers, of those discriminated against through their association with someone who has a “protected characteristic”
- Harmonising into the one Act the thresholds for the duty to make reasonable adjustments for disabled people
- Making it more difficult for the disabled to be unfairly screened out when applying for jobs, so employers will only have exceptionally limited ability to ask job applicants about disability or health
- Making pay secrecy clauses unenforceable
- Clearer protection for breast-feeding mothers
- Changing the definition of gender reassignment, by removing the requirement of medical supervision

- Introducing a new concept of “discrimination arising from disability”

The Act seeks to protect from discrimination those with “protected characteristics”. These used to be called “grounds”. Protection is given to a very wide range of people. So, for example, for services, the relevant characteristics are:-

- Disability, where the disabled person no longer needs to show their impairment affects a particular “capacity” such as eyesight, hearing, speech or mobility
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Anyone suffering discrimination with protected characteristics in such categories can now rely upon the Act for redress. In addition to criminal charges possibly being brought, there can, in certain circumstances, be a claim in damages in the County Court. This might happen, for example, if you have been discriminated against when buying goods or getting services.

So it is a powerful, all-embracing Act. It should, one would hope, create a level playing field for anyone unfairly discriminated against. The mark of a civilised society is how it protects the minorities, the dispossessed, and the disabled. Let us hope the Equality Act 2010 will be seen by future generations as a true landmark of our civilised society.

Here are a few practical examples, taken from the Government’s own literature, about how the Act will work:-

- You suffer from depression, decision-making is difficult, including getting up in the morning. You cannot think ahead and are forgetful, making day-to-day activities difficult. You have had many linked periods of depression in the last

couple of years which shows the depression is long-term. Under the new Act you are defined as a disabled person and have protection.

- Your employer introduces a new shift pattern bringing in fewer working days, but longer hours. You have a disability which causes you to be exhausted after two days under this new shift pattern, and this puts you at a disadvantage. This will be indirect discrimination against you if your employer cannot justify the new shift pattern.
- You look after your disabled sister and take her for a night out to a nightclub. Entry is refused on the basis that disabled people give it a bad image. Under the new Act your sister can claim disability discrimination, and importantly you too may have a claim of direct discrimination because of your association with her as her carer.
- It is now against the law for the manager of a café to tell you to stop breast feeding the baby, take the baby somewhere more private, or ask you to leave because you need to breast feed.
- You are a member of a club which allows members to bring partners to social events. It is now against the law for the club to refuse entry to your partner because they are a transsexual.
- Your local authority advice centre refuses to give you advice which they would normally give to a member of the public because you have a learning disability because their staff assume you would not understand the advice because of that disability. This is now direct discrimination.
- Your local authority housing department reminds its tenants by telephone of forthcoming appointments. This disadvantages deaf people who do not get such a reminder. It will be indirect discrimination unless the local authority can justify such a policy.
- In queuing for a passport at the passport office, a black lady overhears staff making racially abusive remarks. As this behaviour was unwanted by the black lady and made her feel humiliated and degraded, she is now in a position under the Act to bring a claim of harassment.
- A gay man formally complains against his Primary Care Trust for discriminating against him because he is gay. He resolves his complaint through the grievance procedure set up by the Trust. The GP then strikes him off the medical centre's list. Under the Act this is victimisation.

- Someone with an assistance dog is refused entry to the local mobile library on the basis of insufficient room for the dog. This can be discrimination unless it can be justified by the staff.
- You are a woman. You are paid less than a man doing the same sort of work. Under the new Act your employer will not be able to take action against you if you talk to colleagues or trades union representatives about how much you get paid. This change may help you to find out whether you might be able to make a claim for equal pay.
- Because of your disability you might need more time off work than those you work alongside. Your employer should not treat you unfavourably because you are off work, as long as they know you have a disability - this is subject to your employer possibly being able to justify anything they do, and so long as the justification is proper and appropriate, it will not be against the law.

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