

With everyone's time being so precious, this newsletter is intended to give brief outline information with the aim of raising awareness of new developments in employment law and practice. This edition focuses entirely on the **\*new\*** EQUALITY ACT 2010 which comes into force from **TODAY** (1 October 2010). I would urge you to **read it carefully as it applies to all employers**.

For more information telephone or email HRMK,, visit our website [www.HRMK.co.uk](http://www.HRMK.co.uk) (Concierge tab) or use the featured links to other 'quality-assured' websites.

Happy reading!!

### A brief summary...

The Equality Act comes into force on the 1st October 2010 and it will bring in radical changes to UK discrimination law. The biggest change is that it replaces all existing legislation with regards to discrimination in employment, but its provisions have strengthened the discrimination against an individual on the grounds of physical or mental disabilities. The new legislation also includes:-

- Associative discrimination will now additionally apply to age, disability, gender reassignment and sex discrimination. eg. where an employee lives, with, cares for or has another association with someone who has a protective characteristic.
- Perceptive discrimination will now additionally apply to disability, gender reassignment and sex discrimination. eg. where an employee is discriminated against for a perceived protective characteristic.
- Indirect discrimination will now additionally apply to disability discrimination and gender reassignment.
- Employers will be potentially liable for harassment of their staff by a third party they don't employ
- It will be unlawful for employers to ask medical questions of prospective employees, except for defined reasons.
- More transparency on equal pay between men and women by banning secrecy clauses in contracts of employment.

The Act introduces a number of key concepts which are described below.

### Protected characteristics

The Act offers protection to people with 'protected characteristics'. The protected characteristics simply cover all those characteristics already covered by existing anti-discrimination law strands including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

### Associative discrimination

Associative discrimination is discrimination against a person because they have an association with someone with a particular protected characteristic. This already applies to race, religion or belief, and sexual orientation and is now to be extended to cover age, disability, gender reassignment and sex.

An example of associative discrimination might be a non-disabled employee who is discriminated against because of action she needs to take to care for a disabled dependant.

### Perceptive discrimination

Perceptive discrimination is discrimination against a person because the discriminator thinks the person possesses that characteristic, even if they do not. It already applies to age, race, religion or belief and sexual orientation, and is now extended to cover disability, gender reassignment and sex.

### Indirect discrimination

Indirect discrimination occurs where a policy applies to everybody, but the policy has a disproportionate impact on people with a protected characteristic. Indirect discrimination has now been extended to cover disability discrimination and gender reassignment.

## Harassment

Harassment is defined as:-

‘unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.’

Harassment will apply to all protected characteristics except for pregnancy and maternity and marriage and civil partnership.

Under the Act employees can complain of harassment even if they don’t possess the protected characteristic or the harassment is not directed at them. An employer can be liable for harassment of their staff by non-employees, eg. suppliers, customers. In the case of third party harassment, an employer will only be liable if the harassment has occurred on at least two previous occasions, knows that it has taken place and has not taken reasonable steps to prevent it happening again. Third party harassment will apply to all protected characteristics except for pregnancy and maternity and marriage and civil partnership.

## Employment Tribunal powers

Employment Tribunal powers will be extended so that they can make recommendations that an employer takes steps to eliminate or reduce the effect of discrimination on other employees, not only on the claimant. eg. a tribunal might specify that an employer needs to undertake certain training of all staff on equal opportunities.

## Gender reassignment

The significant change to the law on discrimination on the grounds of gender reassignment is that transsexual people will be protected from discrimination even where they are not under medical supervision. Current law requires that a transsexual person must be under medical supervision to qualify for protection.

## Pay secrecy and gender pay reporting

It will be unlawful for an employer to prevent employees discussing whether differences in their pay are due to protected characteristics. Any clause in an employment contract that requires pay secrecy will be unenforceable.

The Act also seeks to address inequalities in pay between men and women which remain forty years after equal pay legislation was introduced. The Act seeks to do this by imposing an obligation on organisations employing 250 or more staff to provide public reports on differences between male and female pay within their organisation.

The gender pay reporting measures would require detailed regulations before implementation and were originally scheduled to be implemented in 2013. However, there remains doubt about whether, and how, this provision will in fact be implemented. The Conservative party manifesto in the 2010 General Election proposed that compulsory audits should only take place in cases where an organisation had been the subject of an adverse ruling in an employment tribunal. The Coalition Government's programme is not specific about its proposals for equal pay.

## Positive action/discrimination

The Act allows for positive action where employers are able to remove barriers that might prevent certain people being employed by, or progressing within, their organisation. It allows employers to favour a candidate from an under-represented minority in cases where two candidates for a job or for promotion are equally well qualified.

## What next?

While the Act will not fundamentally change an employer’s duties to their workers and prospective workers, there are matters of detail which employers will need to be aware of and which may impact on how policies are put into practice. These include:-

- Review recruitment processes and ensure that no pre-employment medical questionnaires are issued before an offer is made or medical-related questions are asked at an interview.
- Anticipating in what circumstances your employees might encounter harassment from third parties.
- Consider how reporting procedures can be improved so that you can keep track of third party harassment, eg. extend the provisions of your Grievance Policy and Procedure.
- Remove any pay secrecy clauses from contracts of employment.
- Ensure that managers are aware of or trained on the implications of the changes.
- Consider how other policies, procedures or documents might need to be amended and operated differently to avoid discrimination claims.