

A Guide to the Equality Act 2017



TABLE OF CONTENTS	PAGE
<u>EQUALITY ACT - INTRODUCTION</u>	3
<u>EQUALITY AND FAIRNESS IN THE WORKPLACE</u>	4
<u>THE BENEFITS TO ORGANISATIONS</u>	6
<u>THE PROTECTED CHARACTERISTICS</u>	8
<u>TYPES OF DISCRIMINATION</u>	10
<u>EXEMPTIONS AND EXCEPTIONS</u>	12
<u>FURTHER GUIDANCE</u>	13

Equality Act - introduction

The protected characteristics of sex, sexual orientation, gender reassignment, pregnancy and maternity, religion or belief, race, marriage and civil partnership are covered by the [Equality Act 2017](#) which came into force on **1st January 2019**. The remaining two characteristics of age and disability come into force on **1st January 2020** together with the principle of equal pay for work of equal value for pay equality between men and women.

The information below is to explain how businesses and organisations can comply with the provisions of the Act and the benefits of doing so.

EQUALITY AND FAIRNESS IN THE WORKPLACE

Fairness in the workplace is a vital part of a successful business or public body. It is supported by the law - the Equality Act 2017 - and also makes good business sense in running and developing an organisation.

The aim of the Equality Act is to improve equal job opportunities and fairness for individuals and job applicants. Organisations should have policies in place so these outcomes happen and, just as importantly, to prevent discrimination. MIRS can provide advice on this.

Under the Act, it is unlawful to discriminate against people at work because of nine areas termed in the legislation as protected characteristics:

- [age](#)
- [disability](#)
- [gender reassignment](#)
- [marriage and civil partnership](#)
- [pregnancy and maternity](#)
- [race](#)
- [religion or belief](#)
- [sex](#)
- [sexual orientation](#)

The scope of the protection provided by the Act is very broad. It is highly likely to cover employees, workers, partners, agency staff, holders of public office and applicants for work. If an individual believes they have been discriminated against they will usually connect this to one or more of the nine protected characteristics listed above. However the way in which they have been allegedly discriminated against will determine which type or types of discrimination claim they might be able to make. Further guidance on this is available on our website.

Individuals who believe they have been subjected to discrimination, or who believe they have witnessed discrimination in the workplace, should be able to feel confident about raising the matter with their employer and be assured it will be taken seriously.

Both employers and their staff can be held responsible and liable for their actions where they discriminate.

To effectively stay within the law, promote equality and prevent discrimination, an employer should have a policy in place so that all staff know what is acceptable and expected of them as individuals and as part of the organisation. It would be helpful if the policy gives details of who to approach if individuals have concerns or complaints. Managers should be trained in how to deal with issues and staff should all be made aware of the policy.

There are different options including policy changes, disciplinary procedures and mediation for handling concerns or complaints about discrimination. An employer should be clear how it will handle such a matter. However, if the complaint is lodged by the individual as a

grievance, the employer must follow certain minimum procedures as with all other types of grievance.

THE BENEFITS TO ORGANISATIONS

Encouraging greater awareness and understanding of the different protected characteristics, alongside tackling discrimination, can help to reduce the chance of complaints, disciplinary action or claims to the Employment and Equality Tribunal and avoid the associated costs and disruption to the organisation. Other potential benefits are as follows -

- improved team spirit – staff who feel happy, fairly treated and respected in work are more likely to be engaged with the organisation, in tune with its aims and therefore more productive in the workplace.
- increased ability to attract, motivate and retain staff and enhance an organisation's reputation as an employer. Finding the right staff can be both difficult and expensive and having a reputation as an employer who values equality and diversity can help bring the right people on board and encourage them to stay with you.
- having staff at all levels from a wide range of backgrounds can help develop a working environment producing ideas and solutions that might not come from a smaller array of diverse groups. A diverse workforce can also help an organisation better understand and meet diverse customer expectations.

In the UK, where the Equality Act was introduced in 2010, the former Department for Business Innovation and Skills produced a report on the business case for equality and diversity which can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/49638/the_business_case_for_equality_and_diversity.pdf

This report says that those firms that have benefited from equality and diversity have done so by making these issues part of their business strategy, instead of treating them separately.

Evidence, though, shows there is not a "one-size-fits all" approach. Businesses and other organisations know their own markets and sectors best and should address equality and diversity with that in mind. That does not mean they can ignore equality and diversity if they think they are not in their business interests, as employers must still comply with the law.

The report suggests businesses may be overlooking potential advantages. For example, having staff with roots in other countries and cultures can help firms build relations with a wider range of customers and market its products or services more appropriately and sensitively. A driver for some firms is in enhancing a brand's reputation.

Promoting equality and diversity within an organisation will give a better chance:

- that the best candidate from the widest possible pool of applicants is selected for the job

- of reasonable adjustments being made for individuals with disabilities to make sure they are not disadvantaged
- of a workplace which values the differences between staff and which expects an environment of fairness, dignity and respect
- of being given the opportunity for work-life balance - for example, through working flexible hours or working from home
- of getting training, career development and promotion opportunities based on merit, skills, knowledge and experience relevant to the role.

THE PROTECTED CHARACTERISTICS

[Age \(from January 2020\)](#)

The Act protects people of all ages. However, different treatment because of age is not unlawful direct or indirect discrimination if you can justify it, i.e. if you can demonstrate that it is a proportionate means of meeting a legitimate aim. Age is the only protected characteristic that allows employers to justify direct discrimination.

However the Act does allow limited exceptions in some areas, including pay and other employment benefits, based on length of service. There are also some limited exceptions and exemptions relating to payment of the minimum wage, redundancy payments, insurance and pensions

[Disability \(from January 2020\)](#)

The Act protects against disability discrimination. It defines somebody as disabled if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

The Act places a duty on the employer to make reasonable adjustments for staff to help them overcome disadvantage resulting from an impairment. An example of this would be software to help staff with dyslexia.

Some conditions such as cancer, HIV or multiple sclerosis are automatically regarded as disabilities. Other progressive conditions would be considered a disability as soon as their symptoms manifest themselves.

Lifestyle choices that result in conditions such as alcoholism or illicit drug addiction are not covered but any other conditions that manifest as a result of addiction (for example, liver disease) may be.

Further information and guidance on the definition of disability can be found [here](#)

[Gender Reassignment](#)

The Act provides protection for transgender people. A transgender person is someone who proposes to, starts or has completed a process to change his or her gender. A person is not required to be under medical supervision to be protected – so a woman who decides to live as a man but does not undergo any medical procedures would be covered.

[Marriage and Civil Partnership](#)

The Act protects individuals who are married or in a civil partnership against discrimination. Single people and couples not in a legally recognised relationship are not protected.

[Pregnancy and Maternity](#)

A woman is protected against discrimination on the grounds of pregnancy and maternity during the period of her pregnancy and any maternity leave to which she is entitled.

This would include discounting any absence due to pregnancy related illness or appointments when making decisions about her employment.

If an organisation is considering redundancies then an employee who is pregnant or on maternity leave may have additional rights.

Race

The Equality Act protects individuals on the grounds of their Race. Race is an umbrella term which covers:-

- colour, e.g. black or white
- ethnic origin, e.g. Sikhs, Jews and Romany Gypsies
- national origin, e.g. Welsh and Irish
- nationality
- caste

Religion or Belief

In the Equality Act, religion includes any religion. It also includes any denomination or sect within a religion. It also includes a lack of religion. Therefore it offers protection for those who do not follow a certain religion or who follow no religion at all. A religion must have a clear structure and belief system to fall within the scope of the Act.

Belief means any religious or philosophical belief or a lack of such belief. A belief must have a substantial effect on an individual's way of life. Political affiliation is not covered by the Act but the dismissal of an employee on this ground is, in part, dealt with in Section 120 of the Employment Act 2006 which relates to membership of a trade union.

Sex

Both men and women are protected under the Act. Favouring one sex over the other would not be acceptable unless it was justifiable under one of the exceptions or exemptions mentioned below. This part of the Act also protects against sexual harassment.

Sexual Orientation

The Act protects individuals who are attracted to other people of the same sex, the opposite sex or to people of either sex. It also protects individuals who are not attracted to anyone of either sex. For example an employer must ensure that an employee is not bullied on the grounds of an actual or perceived sexual orientation.

TYPES OF DISCRIMINATION

The Act covers several different types of discrimination along with 'harassment' and 'victimisation' although not all will apply to every characteristic. These are:-

Direct discrimination

Direct discrimination occurs when someone is treated less favourably than another person because of a protected characteristic they have or are thought to have, or because they associate with someone who has a protected characteristic. Examples would be using a racial slur against an individual or dismissing an individual due to their sexual orientation.

Discrimination by association

This is direct discrimination against someone because they associate with another person who possesses a protected characteristic. An example would be harassing an individual because a family member was undergoing gender reassignment.

Perception discrimination

This is direct discrimination against an individual because others think they possess a particular protected characteristic. It applies even if the person does not actually possess that characteristic. An example would be using homophobic language against an individual who was believed to be gay.

Indirect discrimination

Indirect discrimination can occur when an employer has a condition, rule, policy or practice that applies to everyone but particularly disadvantages people who share a protected characteristic. Indirect discrimination can be justified if the employer can show that they acted reasonably in managing their business, i.e. that it is 'a proportionate means of achieving a legitimate aim'. An example of indirect discrimination could be a strict dress code that discriminates against a certain religion. An example of a legitimate aim could be requiring a practicing Christian to work on a Sunday to meet a particular contract.

Harassment

Harassment is "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 applies to all protected characteristics except for pregnancy and maternity and marriage and civil partnership. Individuals are able to complain about behaviour that they find offensive, even if it is not directed at them, and they need not possess the relevant characteristic themselves.

Victimisation

Victimisation occurs when an individual is treated badly because they have made or supported a complaint or raised a grievance under the Equality Act or are suspected of doing so. An employee is not protected from victimisation if they have maliciously made or supported an untrue complaint. An example of victimisation could be when an employee is ostracised by their team after complaining to management about a colleague making fun of a person with a disability.

EXEMPTIONS AND EXCEPTIONS

The Equality Act does provide certain limited situations where treating staff and job applicants less favourably can be lawful. It may, for example, be lawful for an employer to specify that applicants for a job must have a particular protected characteristic under the Act. As an example, an advert for a carer to provide support to a disabled man might be able to specify that applicants must also be men if the required support included providing intimate personal care such as bathing and taking the individual to the toilet.

In certain other limited circumstances an employer can take what the law terms as “positive action” to help existing staff or job applicants who it thinks:

- are at a disadvantage because of a protected characteristic and / or
- are under – represented in the organisation, or whose participation in the organisation is disproportionately low, because of a protected characteristic and / or
- have specific needs connected to a protected characteristic

An employer must be able to produce evidence that any positive action is justified and will not discriminate against others. If you are considering taking positive action we would strongly recommend you take advice prior to putting any arrangements in place.

FURTHER GUIDANCE

- [Equality and Discrimination: Understand the basics.](#)
- [Prevent discrimination: Support equality](#)
- [Asking and responding to questions of discrimination in the workplace](#)
- [Discrimination: What to do if it happens](#)

A [Code of Practice on Employment](#) gives detailed explanations of the Act's provisions, explaining the concepts of discrimination, harassment and victimisation in everyday work situations. It also provides practical employer guidance for recruitment and during employment, including the duty to make workplace adjustments which are reasonable.

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