

Equality Act 2010 – Focusing on Disability and Employment

The Equality Act was given Royal Assent on 8th April 2010. It brings together, updates and simplifies 9 major pieces of equality legislation – including the Disability Discrimination Act 1995 - and over 100 minor equality laws. Most changes came into effect on 1st October 2010 – these are the main provisions which affect individuals.

The act provides a basic framework of protection for people from different equality groups against direct and indirect discrimination, harassment and victimisation in services and public functions; premises; work; education; associations, and transport. This briefing gives a very short overview of the main provisions affecting the employment of disabled people.

Some measures will be introduced later - or perhaps not at all depending on the outcome of current government deliberations. The single equality public sector duty should come into force in April 2011 and is currently being consulted on. A full list of the measures still being considered is available on the Government Equalities Office website at: http://www.equalities.gov.uk/equality_bill.aspx.

Overall, the act aims to protect individuals from unfair treatment and promote a fair and more equal society. Areas relating to disability discrimination specifically have been strengthened.

What are the main employment changes compared to the Disability Discrimination Act (DDA)? 1

Protected Characteristics.....2

Definition of Disability2

Main types of discrimination.....3

Aspects of employment covered by the Equality Act.....4

Health Related Questions5

Further reading5

What are the main employment changes compared to the Disability Discrimination Act (DDA)?

- A ban on asking most health related questions prior to a job offer – this was campaigned for by mental health organisations.
- Scrapping of the list of ‘capacities’ which had to be affected for someone to come under the DDA (for example: mobility, memory and continence). There has been no other change to the definition of disability which is still medical model despite calls from disabled people’s organisations to change this.

- Introduction of the concept of 'protected characteristics', for example age, sexual orientation, disability etc. These were called 'grounds' in previous legislation.
- Detriment Arising from Disability – a new form of discrimination replacing Disability-Related Discrimination in the DDA.
- The Equality Act keeps the mostly the same criteria for reasonable adjustments as the Disability Discrimination Act. It now specifically states that the cost of adjustments must not be passed on to a disabled person.
- Discrimination by Association.
- Discrimination by Perception.
- Indirect discrimination in disability cases.
- Employment tribunals will be able to make recommendations in discrimination cases that benefit the wider workforce.
- Under harassment, employees can complain of behaviour they find offensive, even if it is not directed at them.
- Employers are now potentially liable for harassment of their staff on equality grounds by people they don't employ.

Protected Characteristics – these are the grounds on which an individual is protected by the Equality Act.

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership (more limited protections)
- Pregnancy and maternity (more limited protections)
- Race
- Religion or belief
- Sex
- Sexual orientation

Definition of Disability

A disabled person – as far as the Equality Act is concerned - is (still):

“...someone who has a physical or mental impairment which has a substantial and long term effect on their ability to carry out normal day to day activities”

- Long term = 1 year or more
- List of capacities has been scrapped
- Still a medical model definition
- Guidance on the definition is still out for consultation – see:

<http://www.officefordisability.gov.uk/working/equality-bill.php>

Main types of discrimination

Direct discrimination: treating a person **worse** (less favourably) than someone else just because of a protected characteristic. This can now also apply to someone who is believed to have a protected characteristic even if they do not. It can also apply when someone is treated less favourably because they associate with someone who has a protected characteristic. Direct discrimination cannot normally be justified except for the protected characteristic of Age only, where direct discrimination can be objectively justified.

Indirect discrimination: doing something to someone in a way that has a worse impact on them and other people who share a particular protected characteristic than on people who do not have that characteristic, unless objectively justified. ***New for disability***. This could happen when your workplace has a rule or policy that is aimed at everybody, but that especially disadvantages people who share a particular protected characteristic. Employers would have to show that their blanket application of the policy was 'a proportionate means of achieving a legitimate aim'.

Discrimination by Association: treating a person worse than someone else because they are associated with a person who has a protected characteristic. ***New for disability***. There was a case in 2008 where a woman called Sharon Coleman claimed that she was forced to resign from her job as a legal secretary after being harassed by her employers and being refused flexible working which other employees were granted so that she could take time off to look after her disabled son. The European Court of Justice (ECJ) ruled that she should be covered under disability legislation by association.

Discrimination by Perception: treating a person worse than someone else because they incorrectly think they have a protected characteristic. ***New for disability***. So this is direct discrimination against someone who is mistaken for a disabled person, or for someone with a different protected characteristic.

Victimisation: treating a person badly or victimising them because they have complained about discrimination, helped someone else complain, or have done anything to uphold their own or someone else's equality law rights.

Harassment: engaging in unwanted conduct related to a person's protected characteristic that has the purpose or effect of violating their dignity, or creating an intimidating, hostile degrading, humiliating or offensive environment. Employees can complain of behaviour they find offensive, even if it is not directed at them. ***New*** Employers are potentially liable for harassment of their staff by people they don't

employ – this liability does not arise unless the employer knows of at least 2 other occasions when the employee has been harassed by a 3rd party, not necessarily the same person ***New***

Dual Discrimination: treating a person worse because of a combination of 2 (and only 2) relevant protected characteristics. ***New and not due to be implemented until April, if at all. Not looking promising***

Detriment arising from disability: treating a disabled person unfavourably because of something connected to their impairment where the organisation cannot show that what they are doing is objectively justified i.e. “a proportionate means of achieving a legitimate aim” ***New***. Employer could also argue that they did not know, or could not reasonably know, that the person was a disabled person.

This form of discrimination has been brought in to replace the ineffective ‘disabled-related discrimination’ in the DDA. Case law such as Malcolm 2008 changed the comparator for less favourable treatment from “someone to whom the disability-related reason for the treatment did not or would not apply” - which was not too hard to prove - to “someone who is in the same or very similar circumstances”, which made the law unworkable.

Failure to make reasonable adjustments. Employers have a duty to make reasonable adjustments where a disabled person is placed, or likely to be placed at a substantial disadvantage to a non-disabled person. This involves changing:

- the way things are done (a provision, criterion or practice).
- any physical features of the workplace.
- the absence of an auxiliary aid or service.

There is now a duty on employers to take reasonable steps to provide an auxiliary aid if it would stop a disabled person being placed at a substantial disadvantage.

Aspects of employment covered by the Equality Act

- Application forms
- Shortlisting
- Interview arrangements
- Proficiency tests
- Job offers
- Terms of employment
- Promotion, transfer or training opportunities
- Work-related benefits such as access to recreation or refreshment facilities
- Dismissal or redundancy

Health Related Questions ***New***

Employers cannot ask job applicants about their health / impairment until they have been offered a job (outright / conditional) except in relation to:

- Reasonable adjustments in the recruitment process
- Proficiency tests
- Diversity monitoring
- Schemes to increase the number of disabled workers e.g. guaranteed interview schemes
- A genuine occupational requirement
- An ability to carry out a function intrinsic to the job.

Further reading

Equality Act 2010 – Non statutory guidance:

<http://www.equalityhumanrights.com/advice-and-guidance/guidance-equality-act-2010/equality-act-2010-guidance/>

Summary guides:

http://www.equalities.gov.uk/equality_act_2010/equality_act_2010_what_do_i_n.asp
[x](#)