

All Created Equal?

Joanna Powell, a solicitor at BTMK Solicitors takes a closer look at the Equality Act 2010, and what it means for your business?



The majority of the Equality Act 2010 came into force just over a year ago, on 1 October 2010. The two main purposes of the Act are to harmonise discrimination law and to strengthen it. The Act protects people from being treated less favourably because they have a protected characteristic.

The relevant protected characteristics are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- race (including ethnic or national origins, colour and nationality)
- religion or belief (including lack of belief)
- sex
- sexual orientation

However, whilst the Act brings together and re-states the existing discrimination legislation, it also contains a number of important changes to the law, which could affect your business.

The key changes include:

Pre-employment health enquiries have been outlawed, unless they are made for prescribed reasons. Therefore employers cannot ask job applicants about their health (including any disability) before making a job offer, except in specified circumstances.

It will now be easier for employees and job applicants to bring claims of disability discrimination because the individual no longer has to show that their impairment adversely affects one of a list of specific capacities, such as speech or mobility.

Employers can be made explicitly liable, in some circumstances, for the harassment of their staff by a third party.

The enforceability of contractual "pay secrecy" clauses has been limited.

Positive action provisions are now in force. This allows employers to take positive action in recruitment and promotion where the employer reasonably thinks that people with a protected characteristic (such as women or ethnic minorities) are under-represented in the workforce, or suffer a disadvantage connected to that protected characteristic.

The power of the Employment Tribunal has been extended. The Tribunal can now make recommendations that an employer takes steps to eliminate or reduce the effect of discrimination on other employees, and not only a claimant in proceedings. For example, the Tribunal might specify that an employer needs to provide training for staff about harassment and bullying.

Do I need to review my existing equal opportunities policies?

Yes. Your policies and procedures are likely to need updating in light of the changes. For instance, recruitment procedures should be reviewed.

My staff haven't had any training on discrimination law; could I be criticised for this?

Yes. Employers can be liable for the acts of their employees. Employers would be well advised to invest in discrimination training for staff. Some forms of discrimination are subtle and managers and staff may not realise their behaviour is inappropriate or unlawful.

If you train staff properly and ensure your policies and procedures are up



to date, you are less likely to encounter claims of discrimination.

I am about to interview a candidate for a labourer position. The role involves heavy manual handling. Can I ask the candidate whether he can perform heavy lifting?

Before you offer a candidate the job, the Equality Act limits the circumstances when you can ask health related questions. You can ask a health related question at this stage to help you decide whether an applicant can carry out a function that is essential to the job.

Therefore, if heavy lifting is an essential part of the job, then you may be able to ask a candidate with say, a mobility impairment, whether

they could manage heavy lifting. However, employers should seek professional advice before asking any candidate a health related question.

For further advice regarding any employment issues or staff training, please contact Joanna Powell at BTMK Solicitors LLP on 01702 238545 or at joanna.powell@btmk.co.uk
