

Guide to Equality and Diversity

Diversity: recognises that everyone is different in a variety of visible and non-visible ways, and that those differences are to be recognised, respected and valued.

Equality: 'Equality is a fundamental part of a fair society in which everyone can have the best possible chance to succeed in life.' However equal opportunities is not about that 'everyone should be treated the same.'

The Equality Act 2010 brought together all previous equality legislation, and put it into one Act, including some new aspects.

The Equality Act covers 9 groups or "protected characteristics"

These are age, disability, gender reassignment, marriage / civil partnership, race, religion / belief, sex, sexual orientation, pregnancy and maternity.

Where the Act refers to the protected characteristic of age it means a person belonging to a particular age group. An age group includes persons of the same age and people of a particular range of ages.

A person has a disability for the purposes of the Act if he or she has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on his/her ability to carry out normal day-to-day activities.

Gender reassignment is where a person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex. It no longer requires a person to be under medical supervision to come within it.

A person has the protected characteristic of marriage and civil partnership if the person is married or is a civil partner. People who are not married or in a civil partnership do not have this characteristic, ie single people are not protected.

Discrimination of women on the grounds of pregnancy or maternity during pregnancy and any maternity period is prohibited under the Act. There are different provisions covering employment.

Race for the purpose of the Act includes colour, nationality, ethnic or national origin and there is a power to amend the definition to include caste.

The Act covers specified religions but there must be a clear structure and belief system. It covers philosophical beliefs which meet particular criteria. It also includes a lack of belief/religion. A philosophical belief must not be incompatible with human dignity or conflict with fundamental rights of others.

The Act provides protection against sex discrimination for males and females of any age. (While pregnancy and maternity discrimination is a form of sex discrimination these are covered separately under the Act).

Sexual orientation means a person's sexual orientation towards persons of the same sex, persons of the opposite sex, or persons of either sex.

Forms of discrimination defined in the Act are direct discrimination, indirect discrimination, discrimination arising from disability, duty to make reasonable adjustments, harassment, and victimisation.

Direct discrimination occurs when someone is treated less favourably than another person because they have a protected characteristic, they are thought to have a protected characteristic or they associate with someone who has a protected characteristic. Direct discrimination under the Act is defined as follows: *A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*

Indirect discrimination occurs when a policy or practice that applies to everyone particularly disadvantages people who share a protected characteristic. Indirect discrimination under the Act is defined as follows: *A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.* Indirect discrimination can only be justified if you can show that the policy or practice is a proportionate means of achieving a legitimate aim.

A person discriminates against a disabled person if he/she treats them unfavourably because of something arising in consequence of their disability, and this treatment cannot be justified as a proportionate means of achieving a legitimate aim. If you are acting as either an employer or service provider and did not know and could not reasonably have been expected to know of the disabled person's disability, then the unfavourable treatment will not amount to discrimination. However, you must do all you can reasonably be expected to do to find out if a person has a disability. Unlike direct and indirect discrimination, this form of discrimination does not require the use of a comparator to establish less favourable treatment.

The duty to make adjustments by employers and suppliers of goods and services is three fold. Where a provision, criterion or practice puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, the person to whom the duty applies must take reasonable steps to avoid the disadvantage. Where a physical feature puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled, the person to whom the duty applies must take reasonable steps to avoid the disadvantage. Where a disabled person would, but for the provision of an auxiliary aid, be at a substantial disadvantage in comparison with persons who are not disabled, the person to whom the duty applies must take reasonable steps to provide

the auxiliary aid. In relation to requirements where the provision, criterion or practice in question or the auxiliary aid required relates to the provision of information, 'reasonable steps' include making sure that the information is in an accessible format.

Harassment is defined in the Act 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 applies to all protected characteristics except for pregnancy and maternity, and marriage and civil partnership. The Act specifically prohibits three types of harassment, harassment related to a relevant protected characteristic, sexual harassment; and less favourable treatment of a person because they submit to or reject sexual harassment related to sex or gender reassignment.

An employer is liable for harassment if an employee is harassed by a third party (eg a customer) and the employer failed to take reasonable steps to prevent it. This liability does not arise unless the employer knows of at least 2 other occasions when that employee has been harassed by a third party, though it need not be the same third party.

Victimisation occurs when an employer or service provider subjects a person to a detriment because the person has carried out (or you believe they have or may carry out) what is referred to as a 'protected act'. A protected act is any of the following: bringing proceedings under the Act, giving evidence or information in proceedings brought under the Act, doing anything which is related to the provisions of the Act, making an allegation that another person has done something in breach of the Act.

The previous public sector equality duty only applied to race, disability and gender. The new single equality duty requires public bodies to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Act, and advance equality of opportunity and foster good relations across all the protected characteristics with the exception of marriage and civil partnership.

Other issues covered by the Act are positive action, equal pay, pay secrecy, gender pay reporting, default retirement age.