



## The Equality Act

09 December 2010

The principal aims of the Equality Act 2010, which was brought into force on 1 October 2010, are to harmonise and extend discrimination laws.

The widely familiar statutory framework which previously offered protection against discrimination such as the Sex Discrimination Act 1975 and the Race Relations Act 1976 have, subject to transitional arrangements, been replaced by the Equality Act.

People are generally familiar with prevailing dispositions protected by established discrimination law, and these have not changed. What are now known as Protected Characteristics include age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex and sexual orientation.

As a result, and with few exceptions, the same rules and tests on discrimination will be harmonised across the Protected Characteristics, in replacement of the former, more piecemeal, approach.

In addition to the former types of discrimination, including direct and indirect discrimination, harassment and victimisation, the new Act gives statutory recognition to conduct previously recognised as comprising discrimination in case law in respect of some but not all protected characteristics, in the forms of associative and perceived discrimination, and discrimination by third parties. As a result of this, an employer may be liable if:

- a. An employee discriminates against a colleague not because of that colleague having a Protected Characteristic, but because they are associated with (such as being related to or friendly with) someone who does. This means that someone who simply overhears and who is offended by inappropriate discriminatory banter may make a claim even if that banter is not directed at them.
- b. An employee discriminates against a colleague because he or she believes that that colleague has a Protected Characteristic, even if they do not. For example, if an employee is teased for being homosexual but is not, he or she could make a claim under the Act.
- c. An employee is subjected to discriminatory conduct by a third party on three or more occasions and, having brought the matter to the attention of the employer, the employer has not taken reasonable steps to avoid any recurrence. This is the case even if different third parties treat the employee in this way.

Importantly, employers are barred from enquiring about job candidates' health before they are offered or shortlisted for employment, other than in respect of their ability to undertake tasks which are an intrinsic part of the role. Disabled candidates denied employment because of their disability may, as

before, make a claim for disability discrimination. Further, the definition of what comprises a disability has changed, and it will be easier for a disabled employee to claim protection under the new Act.

Whilst these measures may represent a natural extension to anti discrimination protection in an increasingly multi-cultural and accepting society, employers could potentially face liability as a result of its employees' loose talk and banter, which may, to an extent, be beyond their immediate control. Claims under these new statutory categories of discrimination would generally be for compensation for injury to feelings, the value of which are generally lower than claims for loss of earnings, but employers will undoubtedly wish to avoid the stigma of facing discrimination claims, as well as disgruntled employees, and the costs and time that defending claims often involves.

We recommend that employers take the following actions:

1. Train managers on the implications of the Act, and communicate this to staff generally.
2. Review contracts, equal opportunities policies and disciplinary rules to incorporate the changes and require compliance with their terms.
3. Introduce procedures for the reporting of possible breaches of the Act to minimise risk of claims.
4. Review recruitment procedures.
5. Put measures in place to ensure compliance by staff at work, and at work- related functions outside of working hours and the workplace.
6. Consider displaying signs notifying third parties and where appropriate, the public, that discriminatory behaviour against staff will not be tolerated.

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If you would like to discuss any of the issues raised in this article please contact either Peter McRoberts or Sarah Rushton on 020 7465 4300.

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This publication is not intended to provide a comprehensive statement of the law. It is intended to highlight some issues current at the date of its preparation. Specific advice should always be taken.