1. Supporting Information: The Equality Act 2010

Equality

Like Health and Safety, everyone has a personal role and a part to play in promoting equality and diversity and preventing discrimination within the organisation. For most of us, a large part of our enjoyment at work is achieved by good relationships, with our colleagues and customers. The key to building good relationships at work is to value and respect all others, whatever their differences. As a worker, you are bound both by the Equality Act and by the organisation's policy on equality, diversity and behaviour at work. You will be expected to:

- Actively challenge or report incidents of discriminatory or bullying behaviour
  - Within your role you may also be expected to be a role model for others and help them to recognise and change unacceptable behaviour
- Be aware of how new policies or services you are involved in developing might potentially disadvantage some groups, and work on solutions
- Teach or train others about the importance of embracing equality and diversity

Personal liability

Anyone found breaching any aspect of the Equality Policy/Dignity at Work Policies/ Company Values will be subject to the disciplinary procedures set out in your workplace. You may also be personally liable under the law if the discrimination is upheld at an Employment Tribunal.

Other "characteristics" which may lead to discrimination, such as appearance (e.g. overweight/underweight), class and homelessness are not protected by law, but that does not mean they are not protected within most company policies and procedures. Any breaches could be open to possible constructive dismissal claims at an Employment Tribunal.

TOP TIP

Good practice suggests a company needs to set down in writing its standards of behaviour and communicate the message widely and frequently, including through awareness training and more specialised training for those with responsibilities for people as part of their job.

Scope of the Act

Protected Characteristics

Age

The Act protects people of all ages. However, different treatment because of age is not unlawful if you can justify it. This means if you can show that it is a proportionate means of meeting a legitimate aim. Harassment and/or victimisation are always unlawful.

Disability (new definition and changes)

- The Act has made it easier for a person to show that they are disabled and protected from disability discrimination. Under the Act, a person is 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, which would include things like using a telephone, reading a book or using public transport.
- As before, the Act puts a duty on the employer to make reasonable adjustments for staff to help them overcome disadvantage resulting from an impairment (e.g. by providing assistive technologies to help visually impaired staff use computers effectively).
- The Act includes a new protection from discrimination arising from disability. This states that it is discrimination to treat a disabled person unfavourably because of something connected with their disability (e.g. a tendency to make spelling mistakes arising from dyslexia). This type of discrimination is unlawful where the employer or other person acting for the employer knows, or could reasonably be expected to know, that the person has a disability.
- Indirect discrimination now covers disabled people. This means that a job applicant or employee could claim that a particular rule or requirement you have in place disadvantages people with the same disability. Unless you could justify this, it would be unlawful.
- The Act also includes a new provision which makes it unlawful, except in certain circumstances, for employers to ask about a candidate's health before offering them work.

Gender reassignment (new definition)

- The Act provides protection for a transsexual person. The law could help you if:
  - You've changed your sex
  - You are in the process of changing your sex
  - You have simply told someone you are planning to change your sex
- The Act no longer requires a person 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.

- It is discrimination to treat trans people less favourably for being absent from work, because they propose to undergo, are undergoing or have undergone gender reassignment, than they would be treated if they were absent because they were ill or injured.

Marriage and civil partnership

The Act protects employees who are married or in a civil partnership against discrimination. Single people are not protected.

Pregnancy and maternity (no change)

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

Race

Race includes colour, nationality and ethnic or national origins.

Religion or belief

In the Equality Act, religion includes any religion. It also includes a lack of religion, in other words employees or jobseekers are protected if they do not follow a certain religion or have no religion at all. Additionally, a religion must have a clear structure and belief system. Belief means any religious or philosophical belief or a lack of such belief. To be protected, a belief must satisfy various criteria, including that it is a weighty and substantial aspect of human life and behaviour. Denominations or sects within a religion can be considered a protected religion or religious belief. Discrimination because of religion or belief can occur even where both the discriminator and recipient are of the same religion or belief.

Sex (Gender)

Both men and women are protected under the Act.

Sexual orientation

The Act protects bisexual, gay, heterosexual (straight) and lesbian people.

Legal Requirements and Breaches

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 (see Perception discrimination below), or because they associate with someone who has a protected characteristic (see Discrimination by association below).

Example

Paul, a senior manager, turns down Angela's application for promotion to a supervisor position. Angela, who is a lesbian, learns that Paul did this because he believes the team that she applied to manage are homophobic. Paul thought that Angela's sexual orientation would prevent her from gaining the team's respect and managing them effectively. This is direct sexual orientation discrimination against Angela.

Discrimination by association

Already applies to race, religion or belief and sexual orientation. Now extended to cover age, disability, gender reassignment and sex. This is direct discrimination against someone because they associate with another person who possesses a protected characteristic.

Example

June works as a project manager and is looking forward to a promised promotion. However, after she tells her boss that her mother, who lives at home, has had a stroke, the promotion is withdrawn. This may be discrimination against June because of her association with a disabled person.

Perception discrimination

Already applies to age, race, religion or belief and sexual orientation, this has now extended to cover disability, gender reassignment and sex. This is direct discrimination against an individual because others think they possess a particular protected characteristic. It applies even if the person does not possess that characteristic.

Example

Jim is 45, but looks much younger. Many people assume that he is in his mid-20s. He is not allowed to represent his company at an international meeting because the Managing Director thinks that he is too young. Jim has been discriminated against on the perception of a protected characteristic.

Indirect discrimination

- Already applies to age, race, religion or belief, sex, sexual orientation and marriage and civil partnership. It is now extended to cover disability and gender reassignment.
- Indirect discrimination can occur when you have a condition, rule, policy or even a practice that applies to everyone but particularly disadvantages people who share a protected characteristic.
- Indirect discrimination can be justified if you can show that you acted reasonably in managing your business, i.e. that it is 'a proportionate means of achieving a legitimate aim i.e. any lawful decision you make in running your business or organisation, (but if there is a discriminatory effect, the sole aim of reducing costs is likely to be unlawful).
- Being proportionate really means being fair and reasonable, including showing that less discriminatory alternatives have been considered.

Example

A small finance company needs its staff to work late on a Friday afternoon to analyse stock prices in the American finance market. The figures arrive late on Friday because of the global time differences. During the winter some staff would like to be released early on Friday afternoon to be home before sunset – a requirement of their religion. They propose to make the time up on the following Monday.

If there is no business requirement for the figures to be available on the Friday, refusing this request could potentially be indirect discrimination. However if the figures need to be worked on immediately and no one else is able to do the work, the requirement to work on Friday afternoon would potentially not be unlawful indirect discrimination as it meets a legitimate business aim and there is no alternative means available.

Breaches – Consequences of discriminatory behaviour

If an employee, or the organisation that employs them, fails to comply with anti-discrimination legislation there are likely to be a number of serious consequences, such as:

- The financial cost of defending a case at tribunal or in the courts and of paying compensation
- The time taken to resolve complaints for both the organisation and the individual
- Personal liability, disciplinary action could be taken against the individual. Equally, individuals may be liable under the law
- Loss of trust, reputation, confidence and community support for the organisation. People will be less inclined to interrelate with organisations which are seen to discriminate against them or a group they belong to
- The cost to the individuals concerned, not just financial but the time, anguish and stress involved in taking action

Further information

Acas website

www.acas.org.uk

The Equalities and Human Rights Commission

www.equalityhumanrights.com

The Government Equalities Office

www.equalities.gov.uk

Business Link

www.businesslink.gov.uk

Direct.Gov

www.direct.gov.uk

2. Supporting Information: Health Work and Wellbeing

General Provisions of the Equality Act for Disabled People

Disability (new definition and changes)

The Act has made it easier for a person to show that they are disabled and protected from disability discrimination. Under the Act, a person is 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, which would include things like using a telephone, reading a book or using public transport.

Examples of disabilities include cancer, diabetes, multiple sclerosis and heart conditions; hearing or sight impairments; a significant mobility difficulty and mental health conditions or learning difficulties. People in these circumstances and some others are likely to have rights under the Act. This means that it is unlawful for that person to be discriminated against in relation to:

- Employment
- Trade organisations and qualification bodies
- Access to goods facilities and services
- Education

Reasonable Adjustments

The Act puts a duty on employers to make reasonable adjustments to help workers overcome disadvantage resulting from an impairment (e.g. by providing assistive technologies to help visually impaired staff use computers effectively).

Examples of some straightforward reasonable adjustments:

- Printing notices in clearer or larger type so that colleagues or customers with a visual impairment can read them easily
- Providing telephones with an amplifying device where necessary
- Providing more flexible hours or duties
- More expensive continuous solutions (e.g. sign language interpreters can sometimes attract external funding)

Example

A deaf student on a Basic Skills class has a sign language interpreter during the class. For the final 15 minutes of each class, the tutor holds a group discussion. Other students complain that the flow is disrupted because of having to wait while the sign language interpreter translates for the deaf student. However, the delay does not significantly adversely affect the group's learning. This is likely therefore to be deemed a reasonable adjustment and the complaint is unlikely to be considered sufficient reason for not allowing the deaf student to participate in the discussion using a sign language interpreter.

Discrimination arising from disability

There is now new protection from discrimination arising from disability. This states that it is discrimination to treat a disabled person unfavourably because of something connected with their disability (e.g. a tendency to make spelling mistakes arising from dyslexia). This type of discrimination is unlawful where the employer or other person acting for the employer knows, or could reasonably be expected to know, that the person has a disability. This type of discrimination is only justifiable if an employer can show that it is a proportionate means of achieving a legitimate aim.

Indirect discrimination

Indirect discrimination now covers disabled people. This means that a job applicant or employee could claim that a particular rule or requirement you have in place disadvantages people with the same disability. Unless you could justify this, it would be unlawful.

Example

A job advertised as requiring applicants to hold a full driving licence, could be seen to discriminate directly against blind applicants if the job merely required candidates to be able to travel, since a 'reasonable adjustment' could be offered, e.g. to provide an additional budget for taxi and train travel.

Associative discrimination

This is direct discrimination against someone because they associate with a disabled person.

Example

June works as a project manager and is looking forward to a promised promotion. However, after she tells her boss that her mother, who lives at home, has had a stroke, the promotion is withdrawn. This may be discrimination against June because of her association with a disabled person.

Perceptive discrimination

This is direct discrimination against an individual because others think they are disabled.

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”.

Example

Paul is disabled and is claiming harassment against his line manager after she frequently teased and humiliated him about his disability. Richard shares an office with Paul and he too is claiming harassment, even though he is not disabled, as the manager’s behaviour has also created an offensive environment for him.

Third party harassment

This is now extended to cover disability. The Equality Act makes an employer potentially liable for harassment of its employees by people (third parties) who are not employees of the company, such as customers or clients. An employer will only be liable when harassment has occurred on at least two previous occasions, and they are aware that it has taken place, and have not taken reasonable steps to prevent it from happening again.

Victimisation

Victimisation occurs when an employee is treated badly because they have made or supported a complaint or raised a grievance under the Equality Act; or because they are suspected of doing so. An employee is not protected from victimisation if they have maliciously made or supported an untrue complaint.

There is no longer a need to compare treatment of a complainant with that of a person who has not made or supported a complaint under the Act.

Pre-employment health-related checks

The Equality Act limits the circumstances when you can ask health-related questions before you have offered the individual a job. Up to this point, you can only ask health-related questions to help you to:

- Decide whether you need to make any reasonable adjustments for the person to the selection process
- Monitor diversity among people making applications for jobs
- Decide whether an applicant can carry out a function that is essential (‘intrinsic’) to the job

Health and Wellbeing

Mental Health

Mental health problems can affect anyone regardless of their age, gender, ethnicity or social group. The most common forms of mental ill health are anxiety, depression, phobic anxiety disorders and obsessive compulsive disorders.

It is classed as a disability under the Equality Act 2010 which makes it unlawful for an employer to treat a disabled person less favourably without a justifiable reason.

Manage mental health by:

- Keeping an open mind
- Learning about the facts about mental health disorders
- Being flexible
- Listening: giving an employee time to talk
- Taking the same approach to managing an employee with a physical disability, i.e. discuss and identify with the person the type of adjustments which may give the person the opportunity to stay in the job
- Not ignoring the issue as this can add to the sense of isolation experience by those with mental health problems
- Using appropriate health services
- Making sure jobs are flexible and well designed

Musculoskeletal disorders (MSDs)

MSDs such as back pain and arthritis account for a third of all GP referrals.

HSE has identified the key workplace risks that can lead to MSDs:

- Repetitive and heavy lifting
- Uncomfortable working position
- Working too long without breaks
- Bending and twisting repeatedly
- Exerting too much force

Minimise risks by:

- Involving everyone in assessing the risks
- Encourage employees to stay active where at all possible
- Minimise stressors such as time pressures and lack of control over the way the job is organised – these are known to increase the risk of developing MSDs

Stress

The Health and Safety Executive (HSE) defines stress as ‘the adverse reaction people have to excessive pressures or demands placed on them.’

In the workplace it is important that everyone understands the difference between positive pressure which creates a buzz and that pressure that is beyond a person’s ability to cope.

Managers have responsibilities to manage these risks within the workplace, but employees may have factors outside the workplace which can turn otherwise normal pressures into excessive ones. Employees need to manage these issues and talk with their managers, so the whole picture is understood.

The construction industry is a high pressure environment and the requirement to complete work on time and to cost increases the pressure on individuals. Stress could be caused by many triggers and different people will react in different ways. They may become short tempered and angry more easily or they may become tired, possibly leading to mistakes or them feeling the need to take short cuts. It is important for managers and supervisors to understand the symptoms of stress and know how to address them most effectively.

As well as anxiety and depression, stress can also lead to heart disease, back pain and gastrointestinal illnesses.

Checklist for managing health in the workplace

1. Have clear guidelines for dealing with drug and alcohol addiction.
2. Bullying and harassment can severely damage health and wellbeing – ensure you have a zero tolerance and that everyone knows it.
3. Make reasonable adjustments to jobs and workplaces for disabled workers. This ensures equal opportunities happen as the disabled worker can remain in work.

Language and Disability

It is important that words used for disability do not send out negative messages. Language used in the workplace must be used in a way which promotes a more positive image of disability. This is important if people are to feel both included and valued in their workplaces. The language should show a respect for the rights of disabled people. Everyone is an individual and care should be taken when “labelling” or making assumptions about a person’s abilities or disabilities.

Not everyone considers themselves disabled. For example a Deaf person using British Sign Language may regard this as a linguistic rather than disability issue – however their rights will be protected under the Equality Act.

Terminology

‘Disabled Person’ is advocated by the British Council of Disabled people’s organisations. It recognises that people are disabled more by society than their impairment. This is more recognised in Britain than “People with Disabilities” which although historically considered positive because of its emphasis on people first has been rejected by the UK’s Disabled People’s Movement.

Treating people with respect means treating people as individuals and not putting labels on them that can be offensive and/or patronising. For example:

Don’t say: People with Special Needs.

Disabled people’s needs are not “special”. All of us have different specific needs. However society tends to have a “one size fits all” view so alternative provision often has to be made – e.g. Environmental/buildings or an organisation’s practices.

Don’t say: The Disabled, The Blind, The Deaf.

This tends to take away a person’s individuality and instead he/or she is described by a physical condition. It groups people together who have no connection other than a shared physical condition. It is a dehumanising phrase. If it is necessary to refer to the condition, it is more respectful to say instead “people with a hearing impairment” or “people with a visual impairment.”

Don’t say: An Arthritic, an Epileptic, a Diabetic.

This tends to dehumanise a person. A person is not an impairment. This implies that a medical condition is the most significant fact about someone. Stephen Hawking is more defined by his intellectual abilities and his effect on science than his medical condition.

Don’t Say: Mental Handicap.

The word “handicapped” is offensive because of its strong historical associations with mental defectiveness. It also suggests an inability to succeed within a competitive environment. Don’t confuse mental disability with mental illness. People with “learning difficulties” do not have any greater or lesser mental health problems as anyone else. It is not a consequence of their disability.

Further information

Acas

Tel: 08457 474 747

www.acas.org.uk

Health and Safety Executive (HSE)

Tel: 0845 345 0055

www.hse.gov.uk

Equality and Human Rights Commission (EHRC) Disability helpline

EHRC (England)

Tel: 08457 622633

Textphone: 0845 762 2644

EHRC (Wales)

Tel: 0845 6048810

Textphone: 0845 604 8820

EHRC (Scotland)

Tel: 0845 6045510

Textphone: 0845 604 5520

Mental Health

Information and Advice

www.rethink.org www.mind.org.uk

General

Employer's Forum on Disability

www.employers-forum.co.uk

Shaw Trust

www.shaw-trust

Bullying and Harassment

Action Against Bullies

www.actionagainstbullies.co.uk

3. Supporting Information: Respect and Responsibility

The legal position and General Scope of the Equality Act 2010 with regard to Harassment

Employers are responsible for preventing bullying and harassing behaviour. It is in their interests to make it clear to everyone that such behaviour will not be tolerated — the costs to the business may include poor employee relations, low morale, inefficiency and potentially the loss of staff. An organisational statement to all staff about the standards of behaviour expected can make it easier for all individuals to be fully aware of their responsibilities to others.

Summary of the Law

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."

The Equality Act uses a single definition of harassment to cover protected characteristics. Employees will now be able to complain of behaviour that they find offensive even if it is not directed at them. In addition, the complainant need not possess the relevant characteristic themselves and can be because of perception or association. Harassment applies to all protected characteristics except for pregnancy, maternity and marriage and civil partnership.

Examples of bullying/harassing behaviour include:

- Spreading malicious rumours, or insulting someone by word or behaviour (particularly on the grounds of age, race, sex, disability, sexual orientation and religion or belief)
- Ridiculing or demeaning someone – picking on them or setting them up to fail
- Exclusion or victimisation
- Unfair treatment
- Overbearing supervision or other misuse of power or position
- Unwelcome sexual advances – touching, standing too close, the display of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected
- Making threats or comments about job security without foundation
- Deliberately undermining a competent worker by overloading and constant criticism
- Preventing individuals from progressing by intentionally blocking promotion or training opportunities

Example

A young employee is continually told he is “wet behind the ears” and “straight out of the pram” which he finds humiliating and distressing. This is harassment.

Example

An employee works alongside his father. His workmates are continually calling his father “Grandad“ and telling him that his father is “past it” and should be put out to pasture. This upsets the son and may be harassment on the grounds of age even though it is not the victim’s age that is the subject of the teasing.

Example

A worker has a son who is gay. People in the workplace often tell jokes about gay people and often tease the worker about his son’s sexual orientation. This may be harassment on the grounds of sexual orientation despite it not being the worker’s own sexuality that is the subject of the teasing.

The Impact of Bullying and Harassment

Bullying and harassment can make someone feel anxious and humiliated. Feelings of anger and frustration at being unable to cope may be triggered. Some people may try to retaliate in some way. Others may become frightened and de-motivated. Stress, loss of self-confidence and self-esteem caused by harassment or bullying can lead to job insecurity, illness, absence from work, and even resignation. Usually job performance is affected and relations in the workplace suffer.

People being bullied or harassed may sometimes appear to overreact to something that seems relatively trivial but which may be the ‘last straw’ following a series of incidents. There is often fear of retribution if they do make a complaint. Colleagues may be reluctant to come forward as witnesses, as they too may fear the consequences for themselves. They may be so relieved not to be the subject of the bully themselves that they collude with the bully as a way of avoiding attention.

Complaints and how to deal with them

- Investigate the complaint promptly and objectively.
- Take the complaint seriously. Employees do not normally make serious accusations unless they feel seriously aggrieved.
- Employers investigating claims of harassment should consider all the circumstances before reaching a conclusion, and particularly the perception of the complainant as harassment is often felt differently by different people.
- Having gathered all the evidence employers should ask themselves “could what has taken place be reasonably considered to have caused offence?

- Informal approaches.
  - In some cases it may be possible to rectify matters informally. Sometimes people are not aware that their behaviour is unwelcome and an informal discussion can lead to greater understanding and an agreement that the behaviour will cease. It may be that the individual will choose to do this themselves, or they may need support from personnel, a manager, an employee representative, or a counsellor.
  - Counselling. In both large and small organisations, counselling can play a vital role in complaints about bullying and harassment, by providing a confidential avenue for an informal approach, and perhaps the opportunity to resolve the complaint without need for any further or formal action. Counselling can be particularly useful where investigation shows no cause for disciplinary action, or where doubt is cast on the validity of the complaint. Counselling may resolve the issue or help support the person accused as well as the complainant.
  - Mediation. An independent third person or mediator can sometimes help resolve disciplinary or grievance issues. Mediation is a voluntary process where the mediator helps two (or more) people in dispute to find a solution to the issue that they can both agree to. The mediator does not take sides or tell those in dispute what to do. Mediation is most likely to be successful if both parties:
    a) understand what mediation involves
    b) enter into the process voluntarily
    c) are seeking to repair the working relationship.

    Mediation can be a good way of dealing with bullying, discrimination or harassment situations depending upon the nature of any allegation

Further information

Acas
Tel: 0845 747 4747
www.acas.org.uk

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