

“What you really need to know”



Topics to be covered today...

- Equality Act 2010 -
- Other areas we shall cover include:
 - Default retirement ages
 - Additional Paternity leave – will the Coalition Government scrap this?
 - Bribery Act 2010
 - Latest on the rights of Agency Workers
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Equality Act 2010

- The Equality Act 2010 replaces nine laws and more than a 100 regulations to make it easier for employers to understand discrimination legislation.
- The Act applies to England, Scotland and Wales and its provisions are expected to come into force in stages from October 2010. Some provisions will only be implemented through subsequent regulations

Who the law protects

- Whether at work as an employee or in using a service, the message (or purpose) of the Equality Act is that everyone has the right to be treated fairly at work or when using services
- It protects people from discrimination on the basis of certain characteristics. These are known as **protected characteristics** and they vary slightly according to whether a person is at work or using a service.
- If you are an employer, the law generally still applies to you even if your workers are temporary, do not have written contracts of employment or are recruited to other positions such as trainees, apprentices or business partners

Equality Act 2010.

- The Act brings together for the first time all the legal requirements on equality that the private, public and voluntary sectors need to follow.
- It affects equality law at work and in delivering all sorts of services and running clubs.
- It replaces all the existing equality law including:
 - The Equal Pay Act 1970
 - The Sex Discrimination Act 1975
 - The Race Relations Act 1976
 - The Disability Discrimination Act 1995
- Most of the new law is based on current legislation which has been streamlined but there are some important differences,

The Act identifies nine 'protected characteristics'.

1. age,
2. disability,
3. gender reassignment,
4. marriage and civil partnership,
5. pregnancy and maternity,
6. race,
7. religion or belief,
8. sex,
9. sexual orientation.

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What the law protects against: Discrimination

- Treating a person worse than someone else because of a protected characteristic (known as direct discrimination). Although in the case of pregnancy and maternity direct discrimination, this can occur if they have protected characteristic without needing to compare treatment to someone else;
- Putting in place a rule or way of doing things that has a worse impact on someone with a protected characteristic than someone without one, when this cannot be objectively justified (known as indirect discrimination);
- Treating a disabled person unfavourably because of something connected with their disability when this cannot be justified (**known as discrimination arising from disability**). Failing to make reasonable adjustments for disabled people.

What the law protects against: Harassment

- Unwanted conduct which has the purpose or effect of violating someone's dignity or which is hostile, degrading, humiliating or offensive to someone with a protected characteristic or in a way that is sexual in nature.

What the law protects against: Victimisation

- Treating someone unfavourably because they have taken (or might be taking) action under the Equality Act or supporting somebody who is doing so.

What the law protects against:

- As well as these characteristics, the law also protects people from being discriminated against:
 - By someone who wrongly perceives them to have one of the protected characteristics.
 - Because they are associated with someone who has a protected characteristic. This includes the parent of a disabled child or adult or someone else who is caring for a disabled person.

How the Act may affect **you...**

- **Day-to-day management of your team**
 - Deciding employee's pay and benefits
 - Providing training opportunities
 - Setting a dress code
 - Giving everyone fair access to the facilities you have at work
 - Using positive action (this is an area of the law that is 'good practice' rather than an absolute requirement)

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How the Act may affect **you...**

- **People starting and leaving**
 - Recruiting new people including advertising vacancies, conducting interviews and selecting the right person for the job
 - Promoting people
 - Managing dismissals, redundancy and retirement

- **Other things that might come up**
 - Maternity, paternity and parental leave
 - Handling requests from employees to work flexibly
 - Making decisions on time off e.g. annual leave and sick leave.

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Some Exceptions to the law

- If you can objectively justify treating someone differently on the basis of their age – although keep in mind that if you do treat someone differently because of their age the “objective justification” for doing so would need to be robust and clearly demonstrable
- If someone being of a particular **protected characteristic** (e.g. a specific gender) is central to a particular job. This is known in legal terminology as an “occupational requirement”. For example, a theatre company would obviously be perfectly justified in the eyes of the law in recruiting a male actor for a male role
- If you have to do it in order to avoid breaking another law. For example, a driving school looking for a new instructor can reject a 19 year old applicant on the basis of their youth as the law says that driving instructors must be aged 21 or over.
- Special provisions apply to the treatment at work of women who are pregnant or taking maternity leave

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Default Retirement Ages

- Following the General Election, the Coalition Government announced that it would consult shortly on quickly phasing out the DRA from April 2011. It would also restore the link between the State Pension and earnings from 2011 and call for evidence from the public and interested parties on raising the state pension age to 66

The main proposals are:

- phasing out the DRA from 6 April 2011,
- removing the associated statutory retirement procedures,
- transitional arrangements for retirements that have been notified before 6 April 2011 and where the retirement date falls before 1 October 2011,
- employers can retain a compulsory retirement age after 6 April 2011, but only if they can objectively justify it.
- Consultation ends on 21 October 2010.

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Additional Paternity Leave

- **Additional paternity leave regulations**
- Came into force on 6 April 2010 and 9 April 2010
- Will apply to parents of babies due on or after 3 April 2011 and to adoptive parents who are notified of having been matched with a child on or after that date
- Key provisions under the above regulations:
- A mother will be able to transfer up to six months maternity leave to the father which can be taken once the mother has gone back to work and the child is over 20 weeks old.
- Some of that leave may be paid if it is taken during the mother's maternity pay period
- On 30 September 2010 the Coalition Government confirmed that the Regulations will remain in force as an interim measure for encouraging shared parenting

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The Bribery Act

- The Bribery Act 2010 was given Royal Assent in April 2010 and will come into force in the UK in April 2011. Prior to the Act the law relating to bribery was contained in a number of different pieces of legislation, resulting in a rather confusing approach. The various pieces of law, some over 100 years old, have been brought together in this one Act.
- For the purposes of this Act bribery is defined as the giving or taking of a reward in return for acting dishonestly and/or in breach of the law.

The four offences

1. **Bribing another person**

The offering, promising or giving of a reward to induce a person to perform relevant function or activity improperly.

2. **Being bribed**

The accepting of, agreeing to accept or requesting of a reward in return for performing a relevant function or activity improperly.

A 'relevant function or activity' includes any activity of a public nature or any activity connected to a business.

'Acting improperly' will be any breach of what a reasonable person in the UK would expect in relation to the performing of the function or activity. However, note that the offences apply even if the function or activity is not taking place in the UK.

The four offences

3. **Bribing a foreign public official**

This is a specific offence of trying to influence a foreign public official with the intention of obtaining or retaining business in a situation where the public official was not permitted or required by law to be influenced.

4. **Failure to prevent bribery**

This - the 'corporate offence' - occurs when an organisation fails to stop people who are operating on its behalf from being involved in bribery.

It is the 'corporate offence' that organisations need to pay particular attention to. This offence could occur as a result of the activities of a range of people working on behalf of the organisation – an employee, consultant or agent, for example – if those individuals were involved in accepting or receiving a bribe which resulted in the organisation gaining or retaining business. This is a change to the current approach to the law where only bribery involving senior managers is likely to result in legal action.

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The Agency Workers Regulations 2010

- Key provisions include:
- agency workers will be entitled to equal treatment as permanent staff in relation to basic working and employment conditions, including pay and holidays,
- agency workers rights to pay will not only apply to the basic hourly rate, but to pay for work done, including bonuses which are directly related to agency workers' personal performance,
- the rights do not extend to some wider benefits enjoyed by permanent staff, such as sick pay and occupational pensions,
- penalties for employers trying to avoid implementing equal treatment - anti-avoidance rules.

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Latest rates...

- New rates for Statutory Maternity Pay (SMP), Statutory Adoption Pay (SAP) and Statutory Paternity Pay (SPP) effective from 4th April 2010 – £124.88 per week
- Statutory Sick Pay unchanged at £79.15 per week
- From February 2010 Compensation limits for unfair dismissal reduced from £66,200 to £65,300.
- The maximum of a week's pay applied when calculating redundancy pay, increased to £380 per week in October 2009 and will remain unchanged.
- National Minimum Wage from October 2010:
 - Workers aged 22 + = £5.93 per hour
 - Workers aged 18-21 = £4.92 per hour
 - Workers aged 16-17 = £3.64 per hour

Ones to Watch...

- **Limit on immigration**
- **Consultation on the right to request time off for training**
- **Flexible working and equal pay**



**Give your business
an unfair advantage**

Questions