



Holte School

Equality and Diversity

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1. Equality Act

The Equality Act 2010 brings together, and expands upon, previous legislation on various kinds of discrimination, so that there are no longer separate Acts and Regulations. The Act defines the grounds on which it is unlawful to discriminate.

2. Types of Discrimination

The types of discrimination have been extended by the Equality Act to include:

- Direct discrimination, which already applies but has now been extended to cover perceptive and associative discrimination.
- Indirect discrimination, which already applies to age, race, religion or belief, sex, sexual orientation and marriage and civil partnership. It has now been extended to cover disability and gender reassignment.
- Associative discrimination, which already applies to race, religion or belief and sexual orientation. It has now been extended to cover; age, disability, gender reassignment and sex. Associated discrimination is direct discrimination against someone because they associate with another person.
- Perceptive discrimination, which already applies to age, race, religion or belief and sexual orientation. It has now been extended to cover disability, gender reassignment and sex. Perceptive discrimination is direct discrimination against someone because others think that they possess a protected characteristic and applies even when the person does not actually possess that characteristic.

3. Harassment

Harassment applies to all protected characteristics except for pregnancy, maternity, marriage and civil partnership. Employees will now be able to complain of behaviour that they find offensive even when not directed at them and the complainant need not possess the relevant characteristic themselves. Protection is also extended to cover perception and association. Third party harassment already applies to sex and has now been extended to cover age, disability, gender reassignment, race, religion or belief and sexual orientation. Employers are liable when;

- harassment has occurred on at least two previous occasions;
- employers are aware that it has taken place;
- employers have not taken reasonable steps to prevent it from happening again.

4. Victimisation

Victimisation occurs when an employee is treated badly because he or she has or is suspected of having made a complaint under the Equality Act. The Act removes the requirement of the complainant to demonstrate a comparator. Employees raising malicious or supporting untrue complaints are excluded from the protection.

5. 'Protected characteristics'

The Equality Act defines these as follows:

- Age
- Where this is referred to, it refers to a person belonging to a particular age (e.g. 32 year olds) or range of ages (e.g. 18 - 30 year olds). This is the only characteristic where direct discrimination is allowed if it is a proportionate means of achieving a legitimate aim.

- Disability
- A person has a disability if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities. It is unlawful to ask about health (which covers disability in this context) before offering a person work (other than for certain exceptions). An employer will not commit an act of disability discrimination if at the time the employer could not reasonably have been expected to know about the person's disability.
- Gender reassignment
- The process of moving from one gender to another provided that the person intends to live permanently in the gender opposite to the birth sex. The person is no longer required to be under medical supervision.
- Marriage and civil partnership
- Marriage is defined as a 'union between a man and a woman'. Same-sex couples can have their relationships legally recognised as 'civil partnerships'. Civil partners must be treated the same as married couples on a wide range of legal matters.
- Pregnancy and maternity
- Pregnancy is the condition of being pregnant. Maternity refers to the period of 26 weeks after the birth, which reflects the period of a woman's ordinary maternity leave entitlement in the employment context.
- Race
- Refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins.
- Religion and belief
- Religion has the meaning usually given to it. Belief includes religious and philosophical beliefs including lack of belief (e.g. atheism). Generally, a belief should affect life choices or the way people live for it to be included in the definition.
- Sex
- A man or a woman.
- Sexual orientation
- Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes

6. Positive Action

As with the previous legislation the Equality Act allows for positive action in circumstances where protected characteristics suffer a disadvantage connected to that characteristic or if their participation in an activity is disproportionately low.

7. Equality schemes

Schools, as public bodies, are required to have equality schemes which cover all aspects of their work, including their functions as employers. Guidance on such schemes is given.

8. Appointing staff – questions about health

New provisions in the Equality Act 2010 affect the questions asked about health in references or at any stage of the selection process before making a conditional offer of employment.

Section 60(1) of the Act provides that “A person (A) to whom an application for work is made must not ask about the health of the applicant (B) before offering work to B or, where A is not in a position to offer work to B, before including B in a pool of applicants from whom A intends (when in a position to do so) to select a person to whom to offer work.”

Other parts of Section 60 of the Act make exceptions and allow questions

- Where it is necessary to find out whether an applicant is able to participate in an assessment to test suitability for the role
- Establish whether there is a duty to make reasonable adjustments to enable an applicant to take part in the recruitment process
- Establish whether the applicant will be able to carry out a function intrinsic to the work
- Monitor the diversity of applicants
- Take positive action in supporting employment for disabled people
- Where a disability is a genuine occupational requirement

So, for example, when sending out letters inviting people to attend for interview it is still permissible to ask them all whether they need any special arrangements to participate in the interview.

It is permissible to enquire about a person’s health once that person has been selected for the job, provided that the employer does not unfairly discriminate against the successful applicant once medical information is revealed and makes all the adjustments that are reasonable in the circumstances to accommodate any disability. Therefore, schools should continue to ask successful applicants to complete a pre-employment medical questionnaire and the authority will continue to make offers of employment conditional on medical clearance.

The authority’s advice on [reference requests](#) has been revised in the light of legal advice. Questions about sickness absence have been replaced by a question as to whether the applicant’s attendance and/or absence has led to the initiation of any relevant school or company or organisation procedures.

9. Further guidance

The guidance on this website for appointing staff for [Support Staff](#) and [Teachers](#) has been prepared to comply with the Equality Act.

Guidance on other aspects of HR policies and procedures also reflects the law.

[The Equality and Human Rights Commission](#) has produced a series of detailed guides.

[The Department for Education](#) has also produced guidance specifically for schools. Much of this deals with pupils, but chapter 8 covers employees.