



Bulletin 142

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The Equality Bill

The long-awaited Equality Bill was published on 27 April 2009. Following Parliamentary debate, the Bill is expected to receive Royal Assent in spring 2010 and to come into force in Autumn of that year. The main features of the Bill that employers should be aware of are highlighted below.

The Bill has two aims:

1. to harmonise complex discrimination legislation into a single act; and
2. to strengthen the law to support progress on equality.

Protected characteristics

The Bill introduces a new concept of “protected characteristics” (i.e. a ground on which discrimination can be deemed unlawful) to which the substantive provisions of the Bill apply. These are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Direct discrimination

The Bill introduces a new definition of direct discrimination: less favourable treatment because of a protected characteristic. The Bill does not make reference to the protected characteristic of any particular person. Discrimination by association is therefore made unlawful because it removes the need to consider whether it is the victim’s (for example) age that is the reason for the treatment being complained of.

The Bill also makes discrimination because of a person’s *perceived* characteristic unlawful (except for on the basis of marriage or civil partnership).

Disability discrimination

The concept of indirect discrimination (where an apparently neutral provision, criterion or practice has a disproportionate effect on a certain group) applies to all protected characteristics. The protection therefore extends to disability –related discrimination for the first time.

The Bill proposes to overturn the House of Lords decision in *Malcolm*, which made it more difficult for disabled people to show that they had been treated less favourably (due to a restrictive comparator test). Under the Bill, a person (A) discriminates against a disabled person (B) if:

1. A treats B in a particular way;
2. because of B's disability, this treatment amounts to a detriment; and
3. A cannot show the treatment is a proportionate means of achieving a legitimate aim.

The Bill also abolishes the list of areas in which a disability must impact (e.g. mobility, manual dexterity).

Harassment by third parties

The Bill introduces liability for employers for persistent harassment by third parties if related to age, disability, gender reassignment, race, religion or belief, sex or sexual orientation.

Positive action

Positive action will enable employers to select a candidate from an underrepresented minority for recruitment or promotion, where two candidates are otherwise equally qualified. The employer can not, however, operate a wider policy of treating individuals who share that protected characteristic more favourably.

Pay secrecy clauses

The Bill outlaws clauses in employment contracts which seek to restrict employees from discussing their pay packages (in an attempt to find out if there is a connection between a difference in pay and a particular protected characteristic).

Gender gap reporting

The Bill contains a power to order employers with more than 250 employees to publish information about disparities in pay between male and female employees.

Equality duties on public authorities

The Bill introduces a duty on key public bodies to tackle inequalities that result from socio-economic disadvantage when making strategic decisions.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

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