

Introducing the
Equality Act 2010
Public Sector Equality Duties
Welsh Specific Equality Duties

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The Equality Act 2010

The Equality Act replaced 40 years of anti-discrimination law - 35 acts, 52 statutory instruments, 13 codes of practice and 16 EC directives - with a single piece of legislation.

Who Is Protected?

Protection from unlawful discrimination is provided by the Equality Act in relation to the following **Protected Characteristics**:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion and belief
- Sex
- Sexual orientation

We all have at least four of these characteristics, so we are all protected by The Equality Act.

Some people may have multiple Protected Characteristics, which can mean they face discrimination on many levels. This is called **intersectionality**.

Where Are We Protected?

We are protected in the following fields:

- employment
- provision of goods and services, incl. transport
- healthcare
- housing
- education
- public bodies

What Are We Protected From?

We are protected from the following behaviours:

- **Discrimination**
- **Harassment**
- **Victimisation**

What Is Meant by Discrimination?

There are 5 types of Discrimination:

- Direct Discrimination
- Indirect Discrimination
- Discrimination arising from disability
- Discrimination by association
- Discrimination by perception

Direct Discrimination

An employer or service provider must not treat anyone worse than any other because of a protected characteristic.

Examples

- An employer does not interview a job applicant because of the applicant's ethnic background.
- An employer bases their decision on whether to agree to a request to work flexibly on the worker's sex. The employer agrees a mother's request but refuses a father's request because he is a man and the employer believes it is less important for him. This is probably direct sex discrimination and would also be a breach of the right to request **flexible working**.

In the case of pregnancy and maternity, direct discrimination can occur simply if the person has the protected characteristic without needing to compare treatment to someone else.

Indirect Discrimination

An employer or service provider must not do something that may be intended for everyone but has (or would have) a worse impact on people who share a particular protected characteristic than on people who do not have that characteristic. 'Doing something' can include making a decision, or applying a rule or way of doing things.

Examples

- A shop only allows customers who work to pay by instalments. You're a pensioner and therefore you can't benefit from the instalment payment plan. The policy applies to all the shop's customers, but it has a worse effect on you because you're a pensioner. This could be indirect age discrimination.
- An employer only allows workers who work full-time to apply for promotion. This has a worse impact on women workers, who are more likely to work part-time, this is likely to be indirect discrimination because of sex.

Discrimination Arising from Disability

An employer or service provider must not treat a disabled person unfavourably because of something connected to their disability. In employment, this only applies if the employer knew or could reasonably have been expected to know that the worker or applicant is a disabled person.

Example

An employer tells a visually impaired person who uses an assistance dog that they are unsuitable for a job because the employer is nervous of dogs and would not allow it in the office. This is likely to be discrimination arising from disability. The refusal to consider the visually impaired person for the job is unfavourable treatment which is because of something connected to their disability (their use of an assistance dog).

Discrimination by Association

An employer or service provider must not treat someone worse than another because they are associated with a person who has a protected characteristic.

Example

An employer offers flexible working to all staff. Requests are supposed to be considered on the basis of the business needs of the organisation, but a manager decides that a man's request to work flexibly to care for his 90-year-old father is more important than another man's to care for his 50-year-old wife. If the manager's decision is based on the age of the person being cared for, this is almost certainly discrimination because of age by association. It would not be unlawful if the decision was objectively justified (see below), since direct discrimination because of age, unlike other protected characteristics, is allowed if justified.

Discrimination by Perception

An employer or service provider must not treat a someone worse than another because they incorrectly think they have a protected characteristic

Example

An employer does not give an applicant the job, even though they are the best-qualified person, because the employer incorrectly thinks the applicant is gay. This is still direct discrimination because of sexual orientation.

Exceptions to the Law

Sometimes there are situations where equality law applies differently. There are several exceptions which apply to all employers.

In addition to these exceptions, equality law allows an employer to:

- Treat disabled people better than non-disabled people
- Use voluntary positive action (see below)

Age is different from other protected characteristics. If an employer can show that it is objectively justified, they can make a decision based on someone's age, even if this would otherwise be direct discrimination.

However, it is very unusual to be able to objectively justify direct age discrimination of this kind. Employers should be careful not to use stereotypes about a person's age to make a judgement about their fitness or ability to do a job.

Examples

- An employer rejects an applicant for a management job because they are 25 years old and much younger than the people they would be managing.
- An employer only makes people over 50 do an aptitude test, because the employer believes that people over 50 do not have the mental agility to learn to do a job.

These are both examples of age discrimination that an employer would find it very difficult to objectively justify.

Genuine Occupational Requirements

If an employer can show that a particular protected characteristic is central to a particular job, they can insist that only someone who has that particular protected characteristic is suitable for the job. This would be an 'occupational requirement'.

Example

A women's refuge may want to say that it should be able to employ only women as counsellors. Its client base is only women who are experiencing domestic violence committed by men. This would probably be a genuine occupational requirement.

Obeying Another Law

An employer can take into account a protected characteristic where not doing this would mean they broke another law.

Example

A driving school must reject a 19-year-old who applies for a job as a driving instructor because to offer them a job – even if they are otherwise the best candidate – would involve breaking the law, because a driving instructor must be aged at least 21.

National Security

An employer can take a person's protected characteristic into account if there is a need to safeguard national security and the discrimination is proportionate.

Objective Justification

Direct and Indirect Age Discrimination can be lawful, provided the difference in treatment can be objectively justified. Regarding disabled people, an employer may be able to use the objective justification test in relation to claims of 'discrimination arising from disability' and 'indirect discrimination'. All such legislation relies on the development of case law and, as yet, there is little to go on.

For an Industrial Tribunal, the test of objective justification consists of two elements:

- Pursuing a legitimate aim, and
- Proportionality

Where an employer treats an employee less favourably than other persons on the basis of her/his age or apparent age, unless that treatment can be objectively justified.

Legitimate Aim

For an aim to be legitimate it must correspond with a real need on the part of the employer. Employers need to provide evidence of the legitimate aim and not merely make assertions about it. A legitimate aim can encompass:

- Health, welfare and safety (including protection of young or older people)
- Facilitation of employment planning
- Particular training requirements
- Encouraging and rewarding loyalty
- The need for a reasonable period of employment before retirement
- Recruiting or retaining older people

Proportionality

If the discriminatory treatment, provision, criteria or practice pursues a legitimate aim, it still needs to be proportionate. Although in general terms “proportionate” means that the method of pursuing the aim must be “appropriate and necessary” this is not an absolute test but involves balancing the discriminatory effects of a measure with the importance of the aim pursued.

The discriminatory treatment must actively contribute to the pursuit of the legitimate aim. For example, if the stated aim is to encourage loyalty then the employer must be satisfied that using an age related provision will actually encourage loyalty.

There must always be a balance between the importance of the legitimate aim and the adverse impact of the discriminatory practice. For example, if the legitimate aim is to protect health and safety then a more significant adverse discriminatory impact may be acceptable than when the legitimate aim is less important, for example it is simply rewarding loyalty.

Employers must always consider whether the legitimate aim can be achieved by other measures which do not have such a discriminatory effect. Evidence that an employer has considered other alternatives is key if the discrimination is to be justified.

Reasonable Adjustments

Equality law recognises that bringing about equality for disabled people may mean changing the way in which employment is structured, the removal of physical barriers and/or providing extra support for a disabled worker.

This is the duty to make reasonable adjustments.

The duty aims to make sure that, as far as is reasonable, a disabled worker has the same access to everything that is involved in doing and keeping a job as a non-disabled person.

The duty contains three requirements that apply in situations where a disabled person would otherwise be placed at a substantial disadvantage compared with people who are not disabled.

1. The first requirement involves changing the way things are done (equality law talks about where the disabled worker is put at a substantial disadvantage by a provision, criterion or practice of their employer).

Example

An employer has a policy that designated car parking spaces are only offered to senior managers. A worker who is not a manager, but has a mobility impairment and needs to park very close to the office, is given a designated parking space. This is likely to be a reasonable adjustment to the employer's parking policy.

2. The second requirement involves making changes to overcome barriers created by the physical features of your workplace.

Example

Clear glass doors at the end of a corridor in a particular workplace present a hazard for a visually impaired worker. Adding stick-on signs or other indicators to the doors so that they become more visible is likely to be a reasonable adjustment for the employer to make.

3. The third requirement involves providing extra equipment (which equality law calls an auxiliary aid) or getting someone to do something to assist the disabled person (which equality law calls an auxiliary service).

Example

An employer provides specialist software for a member of staff who develops a visual impairment and whose job involves using a computer.

When the duty arises, you are under a positive and proactive duty to take steps to remove or reduce or prevent the obstacles a disabled worker or job applicant faces.

You only have to make adjustments where you are aware – or should reasonably be aware – that a worker has a disability.

Many of the adjustments you can make will not be particularly expensive, and you are not required to do more than what is reasonable for you to do. What is reasonable for you to do depends (among other factors) on the size and nature of your organisation.

If, however, you do nothing, and a disabled worker can show that there were barriers you should have identified and reasonable adjustments you could have made, they can bring a claim against you in the Employment Tribunal, and you may be ordered to pay them compensation as well as make the reasonable adjustments.

In particular, the need to make adjustments for an individual worker:

- Must not be a reason not to promote a worker if they are the best person for the job with the adjustments in place
- Must not be a reason to dismiss a worker
- Must be considered in relation to every aspect of a workers job
- Must be considered, provided the adjustments are reasonable for you to make

Many factors will be involved in deciding what adjustments to make and they will depend on individual circumstances. Different people will need different changes, even if they appear to have similar impairments.

It is advisable for you to discuss the adjustments with the disabled worker, otherwise the adjustments may not be effective.

Regarding recruitment, when an employer assesses a disabled job applicant's suitability for a job, they must take account of any reasonable adjustments which are needed to enable them to do the job.

If, after taking reasonable adjustments into account, the disabled applicant would not be the best person for the job, the employer does not have to offer it to them.

But if they would be the best person with the reasonable adjustments in place, the employer must offer them the job. Of course, it makes sense to do this, as an employer will want the best person for the job anyway.

Reasonable adjustments should also be put in place if someone becomes disabled while in work or if their needs change or they move to a different role.

Positive Action

Positive action means the steps that an employer can take to encourage people from groups experiencing disadvantage or low participation to take up employment opportunities, including jobs, training, promotion, transfer or other development opportunities. Equality law allows an employer to target opportunities at particular groups. This is not the same as 'positive discrimination', which equality law does not allow.

Example

A local service identifies from its monitoring data that women are under-represented. The service makes clear in its next recruitment exercise that applications from women are welcome and holds an open day for potential women applicants at which they can meet women workers. However, the service must not guarantee that all women will get through the initial stages of the application process, regardless of their suitability.

In a situation where candidates are equally qualified, it is possible to appoint an applicant from a group sharing a protected characteristic if you reasonably believe this group to be disadvantaged or under-represented in the workforce or if their participation in an activity is disproportionately low.

Example

A housing advice service has no Muslim employees, even though it is located in an area where there is a high Muslim population. When a vacancy arises, there are two candidates of equal merit. One candidate is Muslim and the other is not. The advice service could choose to offer the job to the Muslim candidate under the positive action provisions, so that the non-Muslim candidate could not claim religious discrimination.

Equality law additionally allows an employer to treat a disabled person better, or more favourably, than a non-disabled person. This recognises the additional barriers to work that disabled people face.

What Is Meant by Harassment?

An employer must not **harass** a job applicant, employee or former employee.

The Act defines Harassment as:

Unwanted conduct or behaviour that relates to one or more of the protected characteristics and has the effect or purpose of violating a person's dignity or creating a hostile, intimidating, degrading, humiliating or offensive environment for the person receiving it.

Example

An employer makes a job applicant feel humiliated by telling jokes about their religion or belief during the interview. This may amount to harassment.

What Is Meant by Victimisation?

An employer must not treat a job applicant, employee or former employee badly or victimise them because they have complained about discrimination or helped someone else complain or have done anything to uphold their own or someone else's equality law rights.

The provisions relating to association, perception and victimisation can apply to anyone, even if they do not have one of the protected characteristics themselves.

Example

An employer does not shortlist a person for interview, even though they are well-qualified for the job, because last year the job applicant said they thought the employer had discriminated against them in not shortlisting them for another job.

The Public Sector Equality Duties

The Equality Act 2010 also created The Public Sector Equality Duties, replacing the race, disability and gender equality duties. The first of these duties, the race equality duty in 2001, came out of the Macpherson Report on the murder of the black teenager, Stephen Lawrence. Following failures of the investigation of Lawrence's murder, the report revealed institutional racism in the Metropolitan Police. It was clear that a radical rethink was needed in the approach that public sector organisations were taking towards addressing discrimination and racism.

Prior to the introduction of the race equality duty, the emphasis of equality legislation was on rectifying cases of discrimination and harassment after they occurred, not preventing them happening in the first place. The race equality duty was designed to shift the onus from individuals to organisations, placing for the first time an obligation on public authorities to positively promote equality, not merely to avoid discrimination.

It consists of a general equality duty, supported by specific duties which are imposed by secondary legislation. In Wales, the secondary legislation is devolved, which is why it has its own Welsh

General Duties

In summary, those subject to the equality duty (all public authorities) must, in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

These are sometimes referred to as the three aims or arms of the general equality duty. The Act explains that having due regard for advancing equality involves:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

The Act states that meeting different needs involves taking steps to take account of disabled people's disabilities. It describes fostering good relations as tackling prejudice and promoting understanding between people from different groups. It states that compliance with the duty may involve treating some people more favourably than others.

The equality duty covers the nine protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Public authorities also need to have due regard to the need to eliminate unlawful discrimination against someone because of their marriage or civil partnership status. This means that the first aim of the duty applies to this characteristic but that the other aims (advancing equality and fostering good relations) do not apply.

The Welsh Specific Equality Duties

The Specific Equality Duties have the purpose of guiding public authorities in the detail of how to implement the General Duties.

Specific Equality Duties (Wales)

Public authorities must:

- Set and publish **Equality Objectives**
- Develop a **Strategic Equality Plan** and publish an **Annual Equality Report** which assesses the effectiveness of the Equality Plan.
- **Engage** with people who represent the interests of persons who share one or more of the protected characteristics.
- **Assess the Impact** of its proposed policies and practices on its ability to comply with the general duty (Equality Impact Assessment).

- Gather and publish **Equality Information**, including workforce data, customer surveys and any feedback from engagement.
- Collect and publish information on **Pay Differences** between employees with any protected characteristics and those who do not share a protected characteristic.
- Ensure that **Staff training** enables employees to comply with the general duty.
- Consider Equality and Diversity in all aspects of **Procurement**.

Further Information



**Equality and
Human Rights
Commission**

[Equality and Human Rights Commission](#)



Equality Advisory Support Service

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