

Equality Act 2010: Summary guidance on employment



**Equality and
Human Rights**
Commission

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Introduction

This summary guide is part of a series written by the Equality and Human Rights Commission (the Commission) to explain equality rights and duties. These guides support the implementation of the Equality Act 2010.

The full list of guides on employment covers the following, for employers and, separately, for workers:

1. Recruitment
2. Working hours, flexible working and time off
3. Pay and benefits
4. Career development – training, promotion and transfer
5. Management issues
6. Dismissal, redundancy, retirement and after a worker has left
7. Equality policies, equality training and monitoring.

If you need this guide in an alternative format and/or language please contact the relevant helpline to discuss your needs:

England

Equality and Human Rights Commission Helpline
FREEPOST RRLG-GHUX-CTR
Arndale House,
The Arndale Centre,
Manchester M4 3AQ

Telephone: 0845 604 6610
Textphone: 0845 604 6620
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Scotland

Equality and Human Rights Commission Helpline
FREEPOST RSAB-YJEJ-EXUJ
The Optima Building,
58 Robertson Street,
Glasgow G2 8DU

Telephone: 0845 604 5510
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Wales

Equality and Human Rights Commission Helpline
FREEPOST RRLR-UEYB-UYZL
3rd Floor,
3 Callaghan Square,
Cardiff CF10 5BT

Telephone: 0845 604 8810
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The legal status of this guidance

This guidance applies to England, Scotland and Wales. It draws on the Code of Practice on Employment.

The guide is based on equality law as it was at 31 March 2011. You should check with the Commission in case it has been replaced by a more recent version.

At the end of this guide we have provided a list of words and key ideas to help you understand this guide – all words highlighted in **bold** are included in this list.

Who is protected by the Equality Act?

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.

What is meant by discrimination?

Unlawful discrimination can take a number of different forms:

- An **employer** must not treat a job applicant, employee or former employee worse than any other because of a **protected characteristic** (this is called **direct discrimination**).

Example

- 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 just 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.

- An employer must not do something which has (or would have) a worse impact on a job applicant, employee or former employee and on other people who share a particular protected

characteristic than on people who do not have that characteristic. Unless they can show that what they have done, or intend to do, is **objectively justified**, this will be **indirect discrimination**. ‘Doing something’ can include making a decision, or applying a rule or way of doing things.

Example

- An employer only offers applicants for a job one time for interview. One applicant is an observant Muslim who cannot attend at midday on Friday. Unfortunately, this is the only time they are offered for their interview. Unless the employer can **objectively justify** the lack of flexibility, this may be indirect discrimination because of **religion or belief**.
- 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. Unless the employer can **objectively justify** the requirement to work full-time, this is very likely to be indirect discrimination because of sex.

- An employer must not treat a disabled job applicant, employee or former employee **unfavourably** because of something connected to their disability where they cannot show that what they are doing is objectively justified. This only applies if the employer knew or could reasonably have been expected to know that the applicant is a disabled person. This is called **discrimination arising from disability**.

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. Unless the employer can **objectively justify** what they have done, 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). It may also be a failure to make a **reasonable adjustment**.
- An employer must not treat a job applicant, employee or former employee 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**, since direct discrimination because of age, unlike other protected characteristics, is allowed if justified.)

- An employer must not treat a job applicant, employee or former employee worse than another because they incorrectly think they have a protected characteristic (**perception**).

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

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.

In addition, to make sure that a disabled person has the same access, as far as is **reasonable**, to everything that is involved in getting and doing a job as a non-disabled person, an employer must make **reasonable adjustments**.

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.

Example

- A disabled worker has to eat at set times to manage their blood sugar for their diabetes, which is only possible by taking their breaks at slightly different times (and therefore working slightly different hours) from those that usually apply within an organisation. This does not have a negative impact on the worker’s ability to do the job; quite the opposite, it removes a barrier which would otherwise stop them doing the job. If this is a **reasonable adjustment**, the employer must allow the change in hours.

For employment, the Government provides help for the extra costs of reasonable adjustments through the Access to Work scheme.

Exceptions

Sometimes there are situations where equality law applies differently. This guide refers to these as **exceptions**. There are several exceptions which apply to all employers. There are others that only apply to particular types of employer.

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

- Treat disabled people better than non-disabled people.
- Use voluntary **positive action**.

Age

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.

Example

- 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 which an employer would find it very difficult to **objectively justify**.

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.

Exceptions that only apply to some employers

If an employer is a **religion or belief organisation**, they may be able to say that a job requires a person doing the job to hold a particular religion or belief.

If the job is for the purposes of an organised religion, an employer may be able to say that a job or role requires a person to have or not have a particular protected characteristic or to behave or not behave in a particular way.

If:

- a job or role exists for the purposes of an organised religion, such as being a **minister** or otherwise promoting or representing the religion, and
- because of the nature or context of the employment, it is necessary to avoid conflict with the strongly held religious convictions of a significant number of the religion's followers or to conform to the doctrines of the religion by applying a requirement to the job or role, then an employer may be able to refuse to employ a person because:
 - they are male or female
 - they are a **transsexual** person
 - they are married or in a civil partnership, including taking into account who they are married to or in a civil partnership with (such as someone who marries a divorced person whose former spouse is still alive)

- they manifest a particular sexual orientation, for example, a gay or lesbian or bisexual person who is in a relationship with a same-sex partner.

This exception should only be used for a limited number of posts, eg ministers of religion, and a small number of posts outside the clergy, eg those which exist to promote or represent the religion. The requirement must be a **proportionate** way of meeting the aims stated above.

- **An employment service provider** may be able to say that a person must have a particular protected characteristic to do **vocational training**, if the training leads to work for which having that characteristic is an occupational requirement.
- An **educational establishment** like a school or college may be able to say that someone has to be of a particular religion or belief, or must be a woman.
- Recruitment to the civil, diplomatic, armed or security and intelligence services and some other **public bodies**, can specify what nationality a person has to be.
- Recruitment for service in the **armed forces** may be able to exclude women and transsexual people if this is a proportionate way to ensure the combat effectiveness of the armed forces. In addition, age and disability are, in effect, not protected characteristics in relation to service in the armed forces. Disability can also be a reason to refuse someone work experience in the armed forces.

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 fire service identifies from its monitoring data that women are under-represented as firefighters. 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 firefighters. However, the fire 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.

Fuller guidance about the provisions of the Equality Act, including the **Employment Code of Practice**, is available from the Commission.

To which organisations does equality law apply?

This guide calls someone an **employer** if they are the person making decisions about what happens in a work situation. Most situations are covered, even if the employer doesn't give their worker a written **contract of employment** or if they are a **contract worker** rather than a **worker** directly employed. Recruiting people to other positions like trainees, apprentices and business partners is also covered.

An employer can be held legally responsible for something that is unlawful discrimination, harassment or victimisation by another person who is:

- employed by the employer, or
- carrying out their instructions to do something (who the law calls the employer's agent).

An employer must not instruct, cause or induce a worker employed by them or their **agent** to discriminate against, harass or victimise a job applicant, **employee** or former employee. This applies whether or not the instruction is carried out.

How your organisation should treat volunteers

Some volunteers have a contract to personally do work for an organisation and receive more than just their out-of-pocket expenses in exchange. In this case they may be protected as if they were the organisation's employees.

In some cases an organisation may be providing a volunteering opportunity for someone and this counts as providing them with a service.

The Commission provides a number of guides to what equality law means for service providers.

The public sector equality duties

Public sector organisations and others who deliver services for them or carry out **public functions** on their behalf may have to have what the law calls ‘due regard to the need to advance equality of opportunity’ between people who have protected characteristics and people who don't. This applies to all protected characteristics except **marriage and civil partnership**.

In addition, when someone is receiving services from (or are on the receiving end of public functions carried out by) a public sector organisation or others who deliver services or carry out public functions on their behalf, they may also have rights under the Human Rights Act 1998.

Further information about the public sector equality duties and the Human Rights Act is available from the Commission.

Recruitment

Employers must avoid direct and indirect discrimination, discrimination arising from a disability, harassment and victimisation in all aspects of recruitment. They must also make reasonable adjustments for disabled people.

Employers are able to take ‘positive action’ before or at the application stage to encourage people from groups with a track record of disadvantage or low participation to apply for jobs.

Questions about health or disability

Except in very restricted circumstances or for very restricted purposes, an employer is not allowed to ask a job applicant about their health or any disability until the person has been:

- offered a job either outright or on a conditional basis, or
- included in a pool of successful candidates to be offered a job when a position becomes available.

This includes asking such a question as part of the application process or during an interview. It also includes sending a questionnaire about health to fill in before a job offer. Questions relating to previous sickness absence count as questions that relate to health or disability.

No one else can ask these questions on behalf of the employer either. An employer cannot refer an applicant to an **occupational health practitioner** or ask an applicant to fill in a questionnaire provided by an occupational health practitioner before the offer of a job is made (or before inclusion in a pool of successful applicants) except in very limited circumstances.

The point of stopping employers asking questions about health or disability is to make sure that all job applicants are looked at properly to see if they can do the job in question, and not ruled out just because of issues related to or arising from their health or disability, such as previous sickness absence, which may well say nothing about whether they can do the job now.

An employer can ask questions once they have made a job offer or included someone in a group of successful candidates. At that stage, they could make sure that someone's health or disability would not prevent them from doing the job. But they must consider whether there are reasonable adjustments that would enable them to do the job.

If an employer asks questions about health or disability which are not allowed by equality law, the Commission can take legal action.

An employer can ask questions about health or disability when:

- They are asking the questions to find out if any applicant needs reasonable adjustments for the recruitment process, such as for an assessment or an interview.
- They are asking the questions to find out if a person (whether they are a disabled person or not) can take part in an assessment as part of the recruitment process, including questions about reasonable adjustments for this purpose.
- They are asking the questions for **monitoring** purposes to check the diversity of applicants (although this information should be collected separately and must not form part of the recruitment process).
- They want to make sure that an applicant who is a disabled person can benefit from any measures aimed at improving disabled people's employment rates. For example, the **guaranteed interview scheme**. Employers should make clear to job applicants that this is why they are asking the question.
- They are asking the question because having a specific **impairment** is an **occupational requirement** for a particular job.

Example

- An employer wants to recruit a Deafblind project worker who has personal experience of Deafblindness. This is an occupational requirement of the job and the job advert states this. The employer can ask on the application form or at interview about the applicant's disability.
- The questions relate to a requirement to vet applicants for the purposes of national security.
- The questions relate to a person's ability to carry out a function that is intrinsic (or absolutely fundamental) to that job. Where a health- or disability-related question would mean an employer would know if a person can carry out that function with reasonable adjustments in place, then they can ask the question.

Example

- A construction company is recruiting scaffolders. The company can ask about health or disability on the application form or at interview if the questions relate specifically to an applicant's ability to climb ladders and scaffolding to a significant height. The ability to climb ladders and scaffolding is a function that is intrinsic or fundamental to the job.

In practice, even if a function is intrinsic to the job, an employer should ask a question about a disabled person's ability to do the job with reasonable adjustments in place. There will therefore be very few situations where a question about a person's health or disability needs to be asked.

Recruiting women who are pregnant or on maternity leave

An employer must not refuse to employ a woman because she is pregnant, on **maternity leave** or because she has (or has had) an illness related to her pregnancy.

Equality law does not say that a woman applying for a job has to tell the employer that she is pregnant. This is because the employer must not base their decision about whether or not to employ her on whether she is pregnant but on whether she has the skills to do the job.

If a woman does not tell an employer that she is pregnant and is given the job, the employer must not dismiss her when she tells them about her pregnancy.

More help with this situation is available in the Commission's guide 'New and expectant parents toolkit'.

An employer also cannot ask a woman whether she intends to have children, whatever her age or marital status or even if it thinks she might be pregnant. This is not something that should be taken into account in deciding whether a person has the skills needed for a particular job.

Fuller guidance about recruitment and the Equality Act is available from the Commission.

Working hours, flexible working and time off

Employers must avoid direct and indirect discrimination, discrimination arising from a disability, harassment and victimisation in making decisions about what hours an employee should work, whether to allow them to work flexibly and when to allow them time off. They must also make reasonable adjustments for disabled people.

What is ‘flexible working’?

By ‘flexible working’, this guide means any change from the usual working week of 35 or more hours worked between set times and at a set place. In practice, this might mean a worker:

- working part-time, working only during term time, or working from home some of the time
- adjusting their start and finish times
- adopting a particular shift pattern or working extended hours on some days with time off on others.

This guide is only about equality law. There are other laws giving many employees with caring responsibilities for children or particular adults the right to have a request for flexible working considered according to set procedures (this is the ‘right to request’).

You can find more information on the right to request at Directgov.

For more information on flexible working see the Commission’s ‘Working Better’ report.

Requests for changes to hours of work or flexible working on the basis of association with a protected characteristic

The duty to make reasonable adjustments to remove barriers for disabled people does not apply to non-disabled workers who require adjustments to take care of a disabled person with whom they are associated.

People in this position, and those assisting children or older relatives (whether or not they are disabled) with their day-to-day care needs, are often referred to as carers.

Most carers will qualify for the right to request flexible working once they have worked for their employer for at least 26 weeks.

The protected characteristic of the person with whom a worker is associated may be relevant if an employer makes a decision based on that protected characteristic.

Requests for changes to hours of work or flexible working relating to religion or belief

Some religions or beliefs may require their followers to pray at certain times of the day, or to have finished work by a particular time.

If an employer applies a rule that conflicts with this, such as refusing to allow a worker to take particular rest breaks or to finish work by a particular time, they

need to objectively justify what they are doing, as otherwise this may be indirect discrimination because of religion or belief.

Requests for changes to hours of work or flexible working relating to gender reassignment

If a request to work flexibly is because someone proposes to undergo, is undergoing or has undergone gender reassignment, the employer should consider the request on the same basis as they would consider any similar request which was not made under the right to request flexible working.

Employers should not refuse a request or treat it less seriously because it is being made by a transsexual person.

A helpful approach for employers to take

An effective way for an employer to avoid discrimination when deciding who can change their working hours or work flexibly is to set up a process that does not start by looking at the reason for the worker’s request, but first considers whether the organisation would still be able to carry out its purpose if they agreed the request.

Decisions relating to time off

How employment law and equality law interact

Employment law (rather than the equality law, which is explained in this guide) sets out people’s rights to:

- a minimum number of days of paid time off
- paid and unpaid maternity leave
- paid paternity leave
- paid and unpaid adoption leave
- unpaid parental leave
- unpaid family emergency leave in certain circumstances (for example, if a worker’s usual childcare or care for other family members who depend on them is not available at short notice)
- paid or unpaid time off for public duties and trade union responsibilities.

More information about these rights is available at Directgov.

In general, equality law applies not to whether someone has a right to time off, but how their employer makes decisions about:

- who gets to take time off, when and how much
- whether the time off should be paid or unpaid
- how the employer records different types of absence.

Exceptions to this, where equality law does affect whether someone has a right to time off, are:

- time off as a reasonable adjustment to remove barriers for disabled people
- gender reassignment leave
- pregnancy-related absence.

Time off for sickness

Employers sometimes use workers’ sickness absence records to help them make decisions about things like:

- promotion
- bonuses
- redundancy
- references.

If an employer treats time off taken by a disabled person which relates to their disability in exactly the same way as they treat sickness absence taken by a worker who is not disabled, this may result in the disabled person being treated worse than another worker because of something arising from their disability.

Once an employer knows that someone comes within the definition of a 'disabled person', they must avoid:

- direct or indirect discrimination because of disability, or
- discrimination arising from disability.

They must also make sure that they have complied with the duty to make reasonable adjustments.

The employer should:

- Record disability-related time off separately from general sick leave.
- Stay in touch if someone is absent for a long period to find out how they are and to tell them what's happening at work (though they should make it clear they don't expect the person to come back to work before they are ready).
- Think about a plan for return to work, for example, arranging for the person to start work again gradually or to do some work at home before they come into the workplace, if this is possible in the particular job.
- Consider reasonable adjustments with the person and, if necessary, use expert advice to work out what adjustments can be made for when the person is ready to return to work. If a change is reasonable, the employer must make it.

Employers do not have to pay sick pay beyond what they normally pay just because

time off is disability-related. But it may be a reasonable adjustment to:

- extend sick pay, or
- offer unpaid disability leave, or
- allow someone to take the extra time off as annual leave.

If the reason someone is absent is because of a delay by their employer in implementing a reasonable adjustment that would enable the person to return to the workplace, maintaining full pay may well be a further reasonable adjustment for the employer to make.

The employer could also change the targets expected of someone so that that person has an equal chance of earning bonuses.

Pregnancy-related absences

Special rules apply to sickness absence which is related to a woman's pregnancy or to her having given birth. Employers should record pregnancy-related illness separately from other kinds of illness and should not count it towards someone's total sickness record.

An employer should not pay a woman who is absent for a pregnancy-related illness less than the contractual sick pay she would receive if she was absent for any other illness with a statement of fitness to work ('fit note').

An employer must not take into account a period of absence due to pregnancy-related illness, or maternity leave, when making a decision about a woman's employment, for example, for disciplinary purposes or if they are selecting workers for redundancy. Sickness absence associated with a miscarriage should be treated as pregnancy-related illness.

More information about what employers should do in this situation can be found in the Commission's 'Guidance on managing new and expectant parents' and 'Your rights to equality at work: pay and benefits'.

An employer must give a pregnant employee time off for ante-natal care. Ante-natal care can include medical examinations, relaxation and parenting classes.

The right for paid time off does not extend to the partners of pregnant women, although an employer could choose, as a matter of good practice, to allow someone to take annual leave or unpaid leave or to work flexibly to support their partner.

Maternity, paternity, adoption and parental leave

When dealing with workers who request or take maternity, paternity, adoption or parental leave, an employer must make sure they do not discriminate against a person because of a protected characteristic.

Example

- A lesbian has asked her employer for unpaid parental leave. She and her partner adopted a child two years ago and she wants to be able to look after her child for part of the summer holidays. The worker made sure the time she has requested does not conflict with parental leave being taken by other workers. In exercising their discretion whether to grant parental leave, the woman's line manager refuses her request because they do not agree with same-sex couples being allowed to adopt children. This is likely to be direct discrimination because of sexual orientation.

Neither equality law nor employment law gives a woman a right to paid time off for in vitro fertilisation (IVF) or other fertility treatment. But in responding to any request, the employer must not treat a woman worse than they would treat a man making an equivalent request for time off.

Fuller guidance about working hours, flexible working, time off and the Equality Act is available from the Commission.

Pay and benefits

Employers must avoid direct and indirect discrimination, discrimination arising from a disability, harassment and victimisation in pay and benefits. They must also make reasonable adjustments for disabled people.

There are different ways in which an employer might decide what to pay a person and what benefits to provide, such as:

- the going rate for the job in the relevant sector and/or area
- the skills and qualifications needed by someone when they do the job
- their performance in the job.

Employers must make sure that the way they work out and apply these criteria does not **discriminate unlawfully**.

Specific rules apply where pay or benefits are part of the worker's contract of employment and women and men are being paid differently.

To help avoid discrimination, employers can:

- Make sure they know why they are paying people differently.
- Check that people who share a particular protected characteristic do not generally do worse than people who do not share it.
- Use an **equal pay audit** to check the impact of decisions on pay and benefits.
- Implement a transparent, structured pay system based on a sound **job evaluation scheme**, which is more likely to be free of bias than one that relies primarily on managerial discretion.

Employers should consider all aspects of pay and benefits in ensuring that they are complying with equality law, including:

- any service they give their workers as a benefit, such as group insurance
- the pay rate for men and women
- bonus payments
- occupational pension schemes
- health insurance.

The Commission has produced an **equal pay audit** toolkit, including a version especially for small businesses. There is also a Code of Practice on Equal Pay.

Fuller guidance about pay, benefits and the Equality Act is available from the Commission.

Career development – training, promotion and transfer

Employers must avoid direct and indirect discrimination, discrimination arising from a disability, harassment and victimisation in all aspects of career development. They must also make reasonable adjustments for disabled people.

Training

Employers can generally decide whether to offer training and, if they do offer it, who needs it. However, they must do this without unlawful discrimination, making reasonable adjustments if necessary.

Employers should consider all aspects of training, including:

- learning ‘on the job’
- coaching
- e-learning
- workshops
- induction programmes
- job shadowing
- mentoring
- networking and seminars
- formal classes on day release or out of work hours
- project work
- ‘buddying’
- secondments and sabbaticals.

Employers must not stop someone doing training because they are pregnant, on maternity leave or due to take maternity leave, or on pregnancy or maternity-related sickness absence, unless a specific risk to health and safety has been identified.

Promotion or transfer

An employer must offer opportunities for promotion, transfer or other career development without unlawful discrimination. Where necessary they must make adjustments for disabled people.

Promoting or transferring a worker is very similar to recruiting them in the first place.

An employer must not deny someone promotion opportunities because they are pregnant or on maternity leave. Employers should tell women about promotion opportunities when they are on maternity leave.

If a disabled person might be eligible for promotion, transfer or other development opportunity their employer should:

- not make assumptions about the person’s abilities or willingness to take on a new role
- consider whether particular qualifications are actually required or whether what they really need is a particular skill level
- not say or imply that it is unsuitable for a disabled person unless there is a clear role-related reason for this
- tell everyone, including workers who have a disability, about any promotion or transfer or other development opportunity, including giving them the information in the format they usually use at work, for example, large print or electronically
- make any reasonable adjustments needed to participate in an interview
- take account of how reasonable adjustments could enable someone to meet the new requirements when assessing their suitability for a new role.

If after working out how reasonable adjustments could enable the disabled person to meet the new requirements of a role to which they are considering promoting them, the employer decides they are not the best person for the promotion, they do not have to offer it to them.

Management issues

Employers must avoid direct and indirect discrimination, discrimination arising from disability, harassment and victimisation in all aspects of the management of employees. They must also make reasonable adjustments for disabled people.

Facilities

Facilities can be space or equipment necessary for a person or group of workers to carry out their work. They can include:

- access to computers, mobile phones and other technology
- toilet and washing facilities
- sleeping facilities
- kitchen or tea and coffee making facilities
- changing/locker rooms
- showers
- canteens
- parking for cars or bicycles
- prayer and quiet rooms
- facilities for breastfeeding mothers
- crèches and childcare
- social clubs
- sport and exercise facilities
- health clinics and occupational health services.

There are some particular circumstances where employers should take care to avoid unlawful discrimination.

Sleeping accommodation

In certain circumstances, employers are allowed to **discriminate against men or women** in providing communal accommodation or benefits, facilities or services linked to that accommodation. For reasons of privacy or because of sanitary arrangements, communal accommodation should be used only by workers of the same sex.

An employer is allowed to discriminate in the above circumstances against workers who are undergoing, have undergone or intend to undergo gender reassignment, but only if the employer can objectively justify doing so. The employer must consider on a case by case basis whether it is appropriate and necessary to exclude the transsexual person.

Where the transsexual person is post-operative and visually and for all practical purposes indistinguishable from a non-transsexual person of that gender, they should be treated in their acquired gender unless there are compelling reasons not to.

Where someone has a **Gender Recognition Certificate** they should be treated in their acquired gender for all purposes and therefore should not be excluded from single-sex communal accommodation.

Single-sex facilities and workers' religion or belief

If workers are provided with changing facilities or showers, their employer must

provide these in a way that avoids unlawful discrimination because of religion or belief.

Facilities provided because of workers' religion or belief

It is not a legal requirement for an employer to provide facilities because of workers' religion or belief, although in some circumstances it may be indirect discrimination if the employer fails to do so.

Many employers recognise that it is good practice to provide facilities which cater for the needs of staff with a particular religion or belief. These might include making a room available for prayer, providing separate fridge shelves for food that needs to be kept separate and, if an organisation provides refreshments or meals for staff, meeting dietary requirements.

Breastfeeding

An employer has a legal duty to provide suitable rest facilities for breastfeeding women. Although there is no legal right for workers to take time off to breastfeed, employers should try to accommodate women who wish to do this, bearing in mind that:

- they have a legal duty of care to remove any hazards for a worker who is breastfeeding and this can include stress and fatigue, and
- a refusal to allow a woman to express milk or to adjust her working conditions to enable her to continue to breastfeed may amount to unlawful sex discrimination.

Reasonable adjustments for disabled workers

When an employer provides facilities for its workers, they must make reasonable adjustments if they are needed by a disabled person.

Dress codes

An employer must avoid unlawful discrimination in requiring workers to dress or modify their personal appearance in a particular way. This doesn't stop an employer having a dress code but they must be careful that the code and the way it is applied does not discriminate. This is particularly relevant in relation to sex, disability and religion or belief.

Management and appraisal

Every organisation manages the performance of its workers to make sure that they are getting their job done in the way the employer wants them to. This can be formally through an appraisal scheme, with regular line management meetings and annual reports or it may be done informally, by talking over performance as the job is carried out.

Employers must avoid unlawful discrimination in the way that they manage and appraise performance and must make any adjustments that are reasonable to enable a disabled person to do their job.

Disciplinary procedures

Employers must avoid unlawful discrimination in the way that they discipline their workers (or tell them they need to improve something about their work).

The disciplinary process must be fair and reasonable adjustments must be made to it if necessary, for example:

- documents in different formats
- holding meetings in accessible rooms
- providing an interpreter for someone who is Deaf
- providing someone to complete a form if the person has severe dyslexia
- changes to the process such as more breaks to ask for an explanation from an official companion.

Fuller guidance about management issues and the Equality Act is available from the Commission.

Dismissal, redundancy, retirement and after a worker has left

Employers must avoid direct and indirect discrimination, discrimination arising from a disability, harassment and victimisation in all aspects of dismissal, redundancy, retirement and after a worker has left. They must also make reasonable adjustments for disabled people.

Dismissal

This guide is only about equality law. There are other laws that employers need to follow to make sure that dismissal is fair, in the sense that proper procedures have been followed. More information is available from Acas.

Employers must take extra steps if they want to dismiss someone who is disabled. If they wish to do this because they believe that the disabled person can no longer do the job, they need to:

- consider if there are reasonable adjustments that would mean a return to work (even if not in exactly the same job), and
- make sure that they can objectively justify doing so.

Reasonable adjustments vary enormously but could include:

- a phased return to work for someone who has been off for a while
- part-time or flexible hours
- changes to premises
- provision of additional equipment
- additional support, such as a part-time reader for someone with a visual impairment
- reassigning some elements of the job to another member of staff or transferring the person to another role in the organisation.

If they cannot retain the disabled person, a dismissal can be a ‘medical retirement’ or a ‘retirement on ill health grounds’ if there are benefits for them in retiring, such as a pension.

Redundancy

This guide is only about equality law. There are other laws which employers must follow to make sure redundancy dismissal is fair, in the sense that the proper procedures have been followed. More information about this is available from Acas.

Employers must make sure that the redundancy procedures they follow and the criteria they use do not unlawfully discriminate. Failing to make reasonable adjustments to redundancy criteria and procedures for a disabled person is a form of unlawful discrimination. This applies to voluntary or compulsory redundancy.

Retirement

Making someone retire at a particular age is, on the face of it, discrimination because of age. Equality law no longer makes an exception for retirement (except if an employer served a retirement notice on a worker before 6 April 2011 and the necessary procedures are followed). Under the new law, it is direct age discrimination to require a worker to retire unless the decision can be objectively justified. This is a two-stage test where you would need to show that you are trying to achieve a legitimate aim by using forced retirement, and that the retirement policy you are using for the jobs in question is a proportionate means of achieving this aim.

After someone has left a job

Sometimes an employer’s responsibilities continue after a worker has stopped working for them. They must still not discriminate unlawfully against the worker.

Apart from references, other situations where someone might have a continuing relationship with an employer include if they are receiving continuing benefits.

Fuller guidance about dismissal, redundancy, retirement, after a worker has left and the Equality Act is available from the Commission.

Equality policies, equality training and monitoring

Equality policies

An **equality policy** is the name people give to a written document used to set out an organisation’s commitment to tackling discrimination and promoting equality and diversity.

Equality law does not say that an employer has to have an equality policy. However, implementing good equality practices, guided by an equality policy, should greatly reduce the likelihood of acting unlawfully.

A policy might include:

- statements outlining the organisation’s commitment to equality
- identification of the types of discrimination that an employer (and, if this applies, a **service provider**) is required to combat
- statements outlining the type of work environment the organisation aims to create, including what is and is not acceptable behaviour at work (also referring to conduct near the workplace and at work-related social functions where relevant)
- information about how policy will be put into action, including how the employer will deal with any breaches of the policy by its workers, and how concerns and complaints will be dealt with, whether these come from workers or customers, clients or service users
- who is responsible for the policy
- how the employer will monitor the policy and when they will review it

- details covering how the policy is linked in with other policies.

Equality training

Equality training can be an important part of showing that an employer is preventing discrimination, harassment and victimisation. Organisations might choose to provide equality training:

- as part of the induction process
- during regular team meetings
- by asking staff to attend specific courses
- by asking staff to complete an online training package.

Monitoring

Organisations should be monitoring and reporting on a whole range of aspects of their activities, such as:

- income and expenditure
- health and safety
- sickness absence
- training
- environmental issues.

To fulfil their public sector equality duties, **public authority** employers may have to monitor recruitment, promotion, training, pay, grievances and disciplinary action by reference to the protected characteristics of their workers.

There is currently no legal requirement for most organisations, such as private sector businesses, small public bodies, voluntary and community sector organisations, to monitor and report on their staff profile.

However, doing so can help organisations to:

- recruit under-represented or disadvantaged groups
- promote people fairly
- check that women and men’s pay is comparable in similar or equivalent jobs
- make progress towards aims set out in their equality policy, if they have one.

Things to monitor include:

- How many people with a particular protected characteristic apply for each job, are shortlisted and are recruited or promoted.
- How many people in the workforce have a particular protected characteristic and at what levels within the organisation are they employed.
- The satisfaction levels of staff with a particular protected characteristic.
- Whether disciplinary action is disproportionately taken against workers with a particular protected characteristic.

Fuller guidance about equality policies, equality training, monitoring and the Equality Act is available from the Commission

What happens if someone says they’ve been discriminated against?

If a job applicant, employee or former employee believes an employer has **unlawfully discriminated** against them, **harassed** or **victimised them**, or failed to make **reasonable adjustments** in relation to their employment relationship, they may:

- complain informally to the employer
- bring a grievance using the employer’s grievance procedures
- make a claim to the Employment Tribunal.

The person does not have to choose only one of these. They could try them in turn. If they cannot get their employer to put things right, they can make a claim to the Employment Tribunal. To make a claim to the Employment Tribunal, the claimant needs to tell the tribunal about their claim (by filling in a form) within three months (less one day) of what happened. They do not have to go first to their employer before making a claim to the Employment Tribunal, although there are advantages in doing so.

Good practice tips on solving complaints

Defending or taking a claim in a tribunal can be lengthy, expensive and draining. It can also have a damaging impact on the reputation of an organisation. It is likely to be in everyone’s interest to try to put things right before a claim is made to a tribunal.

Sometimes simply **apologising** to the person who has complained for the way they were treated or the way something was done is sufficient. Employers should also consider **changing the way they do things** so the same thing does not happen again. They can consider **equality training** for their staff and think about having an **equality policy**.

There is a process for people who think they may have been treated unlawfully to obtain information about possible discrimination, harassment, victimisation or other prohibited conduct and about equality of terms (equal pay) complaints. This works through two sets of forms, one for discrimination or other prohibited conduct complaints and the other for complaints about equality of terms.

Time limits

The time limit for making a claim to the Employment Tribunal is within three months (less one day) of what happened.

In certain circumstances, the period may be longer, for example, if the employer has kept something relevant from the complainant or the complainant was under 18 years of age (16 in Scotland) or lacked capacity (as within the meaning of the Mental Capacity Act 2005) at the relevant time or the case involves equal pay claims.

The standard and burden of proof

The standard of proof in discrimination cases is the usual one in civil (non-criminal) cases. Each side must try to prove the facts of their case are true on the balance of probabilities; in other words, that it is more likely than not in the view of the court or tribunal that their version of events is true.

If someone is claiming unlawful discrimination, harassment or victimisation, then the burden of proof begins with them. They must prove enough facts from which the tribunal can decide, without any other explanation, that the discrimination, harassment or victimisation has taken place.

Once they have done this, then, in the absence of any other explanation, the burden shifts onto the employer to show that they or someone whose actions or omissions they were responsible for did not discriminate, harass or victimise the person making the claim.

What the tribunal can order if someone wins an equality law employment case

The orders that the tribunal can make are called ‘remedies’. The main remedies available to the Employment Tribunal are to:

- make a declaration that the employer has discriminated
- award compensation to be paid for the financial loss the person has suffered (for example, loss of earnings), and damages for injury to feelings
- make a recommendation requiring the employer to do something specific within a certain time to remove or reduce the bad effects which the claim has shown to exist on the individual; for example providing a reference or reinstating someone to their job, if the tribunal thinks this would work despite the previous history
- make a recommendation requiring the employer to do something specific within a certain time to remove or reduce the bad effects which the claim has shown to exist on the wider workforce (although not in equal pay cases).

The tribunal can also order an employer to pay the person’s legal costs and expenses, although this does not often happen in Employment Tribunal cases.

For information about how to take a discrimination case, contact the Commission.

Further sources of information and advice

Equality law and employment law advice and information

Equality and Human Rights Commission:

The Equality and Human Rights Commission is the independent advocate for equality and human rights in Britain. It aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights. The Equality and Human Rights Commission helplines advise both individuals and organisations such as employers and service providers.
Website: www.equalityhumanrights.com

Helpline – England

Email: info@equalityhumanrights.com
Telephone: 0845 604 6610
Textphone: 0845 604 6620
Fax: 0845 604 6630
08:00–18:00 Monday to Friday

Helpline – Wales

Email: wales@equalityhumanrights.com
Telephone: 0845 604 8810
Textphone: 0845 604 8820
Fax: 0845 604 8830
08:00–18:00 Monday to Friday

Helpline – Scotland

Email: scotland@equalityhumanrights.com
Telephone: 0845 604 5510
Textphone: 0845 604 5520
Fax: 0845 604 5530
08:00–18:00 Monday to Friday

Acas – The Independent Advisory, Conciliation and Arbitration Service:

Acas aims to improve organisations and working life through better employment relations. It provides impartial advice, training, information and a range of problem resolution services.

Website: www.acas.org.uk
Telephone: 08457 47 47 47 (Monday–Friday: 08:00–20:00; Saturday: 09:00–13:00)

Access to Work:

Access to Work can help disabled people or their employers if their condition or disability affects the ease by which they can carry out their job or gain employment. It gives advice and support with extra costs which may arise because of certain needs.

Website: www.direct.gov.uk/en/disabledpeople/employmentsupport/workscchemesandprogrammes

London, East England and South East England:

Telephone: 020 8426 3110
Email: atwosu.london@jobcentreplus.gsi.gov.uk

Wales, South West England, West Midlands and East Midlands:

Telephone: 0292 042 329
Email: atwosu.cardiff@jobcentreplus.gsi.gov.uk

Scotland, North West England, North East England and Yorkshire and Humberside:

Telephone: 0141 950 5327
Email: atwosu.glasgow@jobcentreplus.gsi.gov.uk

Advicenow:

An independent, not-for-profit website providing accurate, up-to-date information on rights and legal issues.

Website: www.advicenow.org.uk

Advice UK:

A UK network of advice-providing organisations. They do not give out advice themselves, but the website has a directory of advice-giving agencies.

Website: www.adviceuk.org.uk
Email: mail@adviceuk.org.uk
Telephone: 020 7469 5700
Fax: 020 7469 5701

Citizens Advice:

Citizens Advice Bureaux provide free, confidential and independent advice in England and Wales. Advice is available face-to-face and by telephone. Most bureaux offer home visits and some also provide email advice. To receive advice, contact your local Citizens Advice Bureau, which you can find by visiting the website.

Website: www.citizensadvice.org.uk
Telephone: 020 7833 2181
Fax: 020 7833 4371

The Adviceguide website is the main public information service of Citizens Advice. It covers England, Scotland and Wales.

Website: www.adviceguide.org.uk

Citizens Advice Scotland:

Citizens Advice Scotland is the umbrella organisation for bureaux in Scotland. They do not offer advice directly but can provide information on Scottish bureaux.

Website: www.cas.org.uk

Community Legal Service (CLS):

The CLS can help you find legal advice and information from a range of sources, including Citizens Advice Bureaux, law centres, independent advice centres and high street solicitors across England and Wales. You can also find out more about legal aid and whether you might be entitled to financial help with your case. The CLS helpline can give you free advice about benefits, tax credits, debt, education, employment or housing if you qualify for legal aid.

Website: www.clsdirect.org.uk
Tel: 0845 345 4345

Directgov:

Directgov is the UK government's digital service for people in England and Wales. It delivers information and practical advice about public services, bringing them all together in one place.

Website: www.direct.gov.uk

Government Equalities Office (GEO):

The GEO is the Government department responsible for equalities legislation and policy in the UK.

Website: www.equalities.gov.uk
Telephone: 0303 444 0000

Law Centres Federation:

The Law Centres Federation is the national co-ordinating organisation for a network of community-based law centres. Law centres provide free and independent specialist legal advice and representation to people who live or work in their catchment areas. The Federation does not itself provide legal advice, but can provide details of your nearest law centre.

Website: www.lawcentres.org.uk
 Telephone: 020 7842 0720
 Fax: 020 7842 0721
 Email: info@lawcentres.org.uk

The Law Society:

The Law Society is the representative organisation for solicitors in England and Wales. Their website has an online directory of law firms and solicitors. You can also call their enquiry line for help in finding a solicitor. They do not provide legal advice.

Website: www.lawsociety.org.uk
 Telephone: 020 7242 1222 (general enquiries)

They also have a Wales office:
 Telephone: 029 2064 5254
 Fax: 029 2022 5944
 Email: wales@lawsociety.org.uk

Scottish Association of Law Centres (SALC):

SALC represents law centres across Scotland.

Website: www.scotlawcentres.blogspot.com
 Telephone: 0141 561 7266

Advice on specific issues**Age UK:**

Age UK aims to improve later life for everyone by providing information and advice, campaigns, products, training and research.

Website: www.ageuk.org.uk
 Telephone: 0800 169 6565
 Email: contact@ageuk.org.uk

Carers.org:

The Princess Royal Trust for Carers is the largest provider of comprehensive carers' support services in the UK through its unique network of 144 independently managed Carers' Centres, 85 young carers' services and interactive websites. The Trust currently provides quality information, advice and support services to over 400,000 carers, including approximately 25,000 young carers.

Website: www.carers.org/
www.youngcarers.net
 Telephone: 0844 800 4361
 Fax: 0844 800 4362
 Email: info@carers.org

Carers UK:

The voice of carers. Carers provide unpaid care by looking after an ill, frail or disabled family member, friend or partner.

England

Website: www.carersuk.org
 Telephone: 020 7378 4999
 Email: info@carersuk.org

Scotland

Website: www.carersuk.org/scotland
 Telephone: 0141 445 3070
 Email: info@carerscotland.org

Wales

Website: www.carersuk.org/wales
 Telephone: 029 2081 1370
 Email: info@carerswales.org

ChildLine:

ChildLine is the UK's free, confidential helpline dedicated to children and young people. Advice can also be found on its website.

Website: www.childline.org.uk
 Telephone: 0800 1111

The Children's Legal Centre (CLC):

The CLC provides legal advice, information and representation for children and young people.

Website: www.childrenslegalcentre.com
 Telephone: 01206 877 910
 Fax: 01206 877 963
 Email: clc@essex.ac.uk

Children's Rights Alliance England (CRAE):

CRAE provides free legal information and advice, raises awareness of children's human rights, and undertakes research about children's access to their rights.

Website: www.crae.org.uk
 Telephone: 020 7278 8222
 Advice line (Tues to Thurs 3.30-5.30pm): 0800 328 8759
 Email: info@crae.org.uk
 Advice email: advice@crae.org.uk

Disability Law Service (DLS):

The DLS is a national charity providing information and advice to disabled and Deaf people. It covers a wide range of topics including discrimination, consumer issues, education and employment.

Website: www.dls.org.uk
 Telephone: 020 7791 9800
 Minicom: 020 7791 9801

Mencap:

Mencap is the leading UK charity for people with a learning disability and their families. It provides a range of services including advice and information.

Website: www.mencap.org.uk
 Telephone: 0808 808 1111
 Fax: 020 7608 3254
 Email: information@mencap.org.uk

Mind:

Mind is the leading mental health charity for England and Wales. It provides information to help promote understanding of mental health and campaigns to promote and protect good mental health. It has an infoline and a legal services line, and also provides online advice.

Website: www.mind.org.uk
 Infoline: 0845 766 0163
 Legal Advice Service: 0845 2259393
 Email: legal@mind.org.uk

RADAR:

RADAR is a national umbrella organisation with around 500 member groups. It campaigns for equal rights for disabled people and gives information and advice on disability issues.

Website: www.radar.org.uk
 Telephone: 020 7250 3222
 Fax: 020 7250 0212
 Minicom: 020 7250 4119
 Email: radar@radar.org.uk

Rethink:

Rethink helps over 48,000 people every year through its services, support groups and by providing information on mental health conditions.

Website: www.rethink.org
 Telephone: 020 7840 3188 or 0845 456 0455 (10:00 to 14:00 Monday–Friday)
 Email: advice@rethink.org

Royal National Institute for the Blind (RNIB):

The RNIB is the UK's leading charity offering information, support and advice to over two million people with sight loss.

Website: www.rnib.org.uk
 Helpline: 0303 123 9999
 Email: helpline@rnib.org.uk

Royal National Institute for Deaf People (RNID):

The RNID offers a range of services for Deaf and hard of hearing people and provides information and support on all aspects of deafness, hearing loss and tinnitus.

Website: www.rnid.org.uk
 Telephone: 0808 808 0123
 Textphone: 0808 808 9000
 Fax: 020 7296 8199
 Email: informationline@rnid.org.uk / tinnitushelpline@rnid.org.uk

SCOPE:

Scope is the leading UK disability charity for children and adults with cerebral palsy. It provides information, help, support and advice on disability issues.

Website: www.scope.org.uk
 Helpline: 0808 800 3333
 Text SCOPE, plus your message to 80039
 Email: cphelpline@scope.org.uk

Terrence Higgins Trust:

Terrence Higgins Trust is the leading and largest HIV and sexual health charity in the UK. It offers a range of services including advice and information for people affected by HIV.

Website: www.tht.org.uk
 Telephone: 0845 1221 200 (10:00–22:00 Monday–Friday, 12:00–18:00 Saturday and Sunday)
 Email: info@tht.org.uk

Gingerbread:

Gingerbread is a national and local charity working for, and with, single parent families, to improve their lives. It lobbies and campaigns to raise awareness and provides advice and information for single parents.

Website: www.gingerbread.org.uk
 Telephone: 0808 802 0925 (single parent helpline)
 Email: info@gingerbread.org.uk

Maternity Action:

Maternity Action works to end inequality and promote the health and wellbeing of all pregnant women, their partners and children from before conception through to the child's early years. It provides information sheets but cannot provide advice on individual cases.

Website: www.maternityaction.org.uk
 Telephone: 020 7253 2288

Rights of Women (RoW):

RoW is a UK voluntary organisation working to attain justice and equality by informing, educating and empowering women on their legal rights. It provides free, confidential advice on a range of issues.

Website: www.row.org.uk
 Telephone: 020 7251 6577
 Email: info@row.org.uk

Women's Aid:

Women's Aid is the key national charity working to end domestic violence against women and children. It supports a network of over 500 domestic and sexual violence services across the UK and provides a free 24-hour helpline.

Website: www.womensaid.org.uk
 Telephone: 0808 2000 247
 Email: info@womensaid.org.uk
 Helpline: helpline@womensaid.org.uk

Gender Identity Research and Education Society (GIRES):

GIRES provides a wide range of information for Trans people, their families and professionals who care for them.

Website: www.gires.org.uk
 Telephone: 01372 801 554
 Fax: 01372 272 297
 Email: info@gires.org.uk

The Gender Trust:

The Gender Trust is the UK's largest charity working to support transsexual, gender dysphoric and transgender people or those who are affected by gender identity issues. It has a helpline and provides training and information for employers and organisations.

Website: www.gendertrust.org.uk
 Telephone: 0845 231 0505

Press for Change (Pfc):

PfC is a political lobbying and educational organisation. It campaigns to achieve equality and human rights for all Trans people in the UK through legislation and social change. It provides legal advice, training and consultancy for employers and organisations as well as undertaking commissioned research.

Website: www.transequality.co.uk / www.pfc.org.uk
 Telephone: 0161 432 1915 (10:00–17:00, Thursdays only until further notice)
 Email: transequality@pfc.org.uk

Trans Youth Network:

Run by and for young Trans people aged 11–26, Trans Youth Network is a new UK-wide project to provide advocacy, support, signposting and training opportunities to young trans people and young people unsure of, questioning, and generally exploring their biological sex, gender or gender identity in any way at all.

Website: www.transyouth.org
 Email: transyouthnet@yahoo.co.uk

Inter Faith Network:

The Inter Faith Network for the UK promotes good relations between people of different faiths. It has a list of contact details for faith groups and organisations across the UK.

Website: www.interfaith.org.uk
 Telephone: 020 7931 7766
 Fax: 020 7931 7722
 Email: ifnet@interfaith.org.uk

The Albert Kennedy Trust:

The Albert Kennedy Trust provides information and support to lesbian, gay, bisexual and trans homeless young people.

Website: www.akt.org.uk

Telephone: 020 7831 6562 (London)

Telephone: 0161 228 3308

Email: contact@akt.org.uk

Equality Network:

The Equality Network works for lesbian, gay, bisexual and transgender equality and human rights in Scotland. It provides information, and carries out campaigning and policy work.

Website: www.equality-network.org

Telephone: 07020 933 952

Fax: 07080 933 954

Email: en@equality-network.org

Galop:

Galop works to prevent and challenge homophobic and transphobic hate crime in Greater London. It aims to reduce crimes against lesbian, gay, bisexual and transgender people, and campaigns for an improved criminal justice system.

Website: www.galop.org.uk

Helpline: 020 7704 2040

Admin: 020 7704 6767

Fax: 020 7704 6707

Email: info@galop.org.uk

The Lesbian and Gay Foundation (LGF):

The LGF is a North-West based charity working to support lesbian, gay and bisexual people. It provides advice and information, counselling, and support groups.

Website: www.lgf.org.uk

Telephone: 0845 3 30 30 30

Email: info@lgf.org.uk

Queer Youth Network (QYN):

QYN is a national organisation providing advocacy, support, signposting and training opportunities to young lesbian, gay and bisexual people.

Website: www.queeryouth.org.uk

Email: info@queeryouth.net

Stonewall:

Stonewall is the UK's leading lesbian, gay and bisexual charity and carries out campaigning, lobbying and research work as well as providing a free information service for individuals, organisations and employers.

Website: www.stonewall.org.uk

Telephone: 08000 50 20 20

Email: info@stonewall.org.uk

Stonewall Housing:

Stonewall Housing provides supported housing, advice and advocacy for the lesbian, gay, bisexual and transgender communities in London.

Website: www.stonewallhousing.org

Telephone: 020 7359 5767

Email: info@stonewallhousing.org

Glossary

Act

A law or piece of legislation passed by both Houses of Parliament and agreed to by the Crown, which then becomes part of statutory law (ie is enacted).

affirmative action

Positive steps taken to increase the participation of under-represented groups in the workplace. It may encompass such terms as positive action and positive discrimination. The term, which originates from the United States of America, is not used in the Equality Act.

age

This refers to a person belonging to a particular age group, which can mean people of the same age (e.g. 32-year-olds) or range of ages (e.g. 18–30-year-olds, or people over 50).

agent

A person who has authority to act on behalf of another ('the principal') but who is not an employee.

all reasonable steps

In relation to harassment by an employee, all the things which the employer could reasonably have done to stop it; in relation to reasonable adjustments, 'reasonable steps' is another term for the things that the employer could reasonably have done to remove the disadvantage.

alternative format

Media formats which are accessible to disabled people with specific impairments, for example Braille, audio description, subtitles and Easy Read.

armed forces

Refers to military service personnel.

associated with

Where a victim of discrimination does not have a protected characteristic but is discriminated against because of their association with someone who does e.g. the parent of a disabled child.

auxiliary aid

Usually a special piece of equipment to improve accessibility.

auxiliary service

A service to improve access to something often involving the provision of a helper/assistant.

Bill

A draft Act, not passed or in force.

breastfeeding

When a woman feeds her baby with breast milk. Breastfeeding is specifically protected for the first 26 weeks after birth by the pregnancy and maternity discrimination provisions in relation to non-work cases.

by association

In the Act, this refers to discrimination against a person who does not have a protected characteristic but because of their association with someone who has a protected characteristic.

Code of Practice

A statutory guidance document which must be taken into account by the Courts when applying the law and which may assist people to comply with the law.

comparator

A person with whom a claimant compares themselves to establish less favourable treatment in a discrimination case.

different needs

Refers to the different requirements that people with protected characteristics may have which either must or should be met to provide equality, including equality of opportunity and access.

direct discrimination

Less favourable treatment of a person compared with another person because of a protected characteristic.

disability

A person has a disability if he or she 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.

disabled person

Someone who has a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities.

disadvantage

A detriment or impediment – something that the individual affected might reasonably consider changes their position for the worse.

disadvantaged

When someone suffers a detriment or finds an impediment to enjoying a benefit in comparison with others because of a characteristic of theirs; encountering a pre-existing barrier which is inherent in their workplace but which doesn't have the same effect on others.

discriminate unlawfully

See unlawful discrimination.

discriminating directly or indirectly

Refers to discrimination because of a person's protected characteristic (direct); or discrimination that occurs when a provision, criteria or practice is applied that creates disproportionate disadvantage for a person with a protected characteristic as compared to those who do not share that characteristic (indirect).

discrimination arising from disability

When a person is treated unfavourably because of something arising in consequence of their disability.

disproportionately low

Refers to situations where people with a protected characteristic are under-represented (e.g. in the workforce or among service users) compared to their numbers in the population.

diversity

Where many different types of people are included.

duty to make reasonable adjustments

Where a disabled person is at a substantial disadvantage in comparison with people who are not disabled, there is a duty to take reasonable steps to remove that disadvantage by (i) changing provisions, criteria or practices, (ii) altering, removing or providing a reasonable alternative means of avoiding physical features, and (iii) providing auxiliary aids.

employee

A person who carries out work for a person under a contract of service, a contract of apprenticeship, or a contract personally to do work; or a person who carries out work for the Crown or a relevant member of the Houses of Parliament staff. See also worker.

employer

A person who makes work available under a contract of service, a contract of apprenticeship, the Crown or a relevant member of the Houses of Parliament staff.

employment service provider

A person who provides vocational training and guidance, careers services and may supply employers with workers.

employment services

Vocational training and guidance, finding employment for people, supplying employers with workers.

equal pay audit

Comparing the pay of women and men who are doing equal work in an organisation, and investigating the causes of any pay gaps by gender or working pattern. The provisions in the Act directly relating to equal pay refer to sex equality but an equal pay audit could be applied to other protected characteristics to help an employer equality proof their business.

equal work

A woman's work is equal to a man's in the same employment (and vice versa) if it is the same or broadly similar (like work); rated as equivalent to his work under a job evaluation scheme or if she can show that her work is of equal value to his in terms of the demands made of her.

equality clause

A sex equality clause is read into a person's contract of employment so that where there is a term which is less favourable than that enjoyed by someone of the opposite sex doing equal work, that term will be modified to provide equal terms.

equality policy

A statement of an organisation's commitment to the principle of equality of opportunity in the workplace.

equality training

Training on equality law and effective equality practice.

exceptions

Where, in specified circumstances, a provision of the Act does not apply.

flexible working

Working different hours or at home, including to accommodate disability or childcare commitments.

gender reassignment

The process of changing or transitioning from one gender to another. See also transsexual person.

Gender Recognition Certificate

A certificate issued under the Gender Recognition Act to a transsexual person who has, or has had gender dysphoria, has lived in the acquired gender throughout the preceding two years, and intends to continue to live in the acquired gender until death.

goods, facilities or services

Goods refer to moveable property; facilities to opportunities to enjoy a benefit or do something; and services to provisions for meeting people's needs. Goods, facilities and services are available to the public or any part of it.

guaranteed interview scheme

This is a scheme for disabled people which means that an applicant will be invited for interview if they meet the essential specified requirements of the job.

harass

To behave towards someone in a way that violates their dignity, or creates a degrading, humiliating, hostile, intimidating or offensive environment.

harassment

Unwanted behaviour that has the purpose or effect of violating a person's dignity or creates a degrading, humiliating, hostile, intimidating or offensive environment.
See also sexual harassment.

impairment

A functional limitation which may lead to a person being defined as disabled according to the definition under the Act.
See also disability.

indirect discrimination

The use of an apparently neutral practice, provision or criterion which puts people with a particular protected characteristic at a disadvantage compared with others who do not share that characteristic, and applying the practice, provision or criterion cannot be objectively justified.

instruction to discriminate

When someone who is in a position to do so instructs another to discriminate against a third party. For example, if a GP instructed her receptionist not to register anyone who might need help from an interpreter, this would amount to an instruction to discriminate.

job evaluation study

This is a study undertaken to evaluate jobs in terms of the demands made on a person, using factors such as effort, skill and decision-making. This can establish whether the work done by a woman and a man is equal, for equal pay purposes.
See also equal work.

less favourably

Worse, not as well as.

like work

See equal work.

manifest

Refers to the appearance or expression of a protected characteristic. For example manifestations of sexual orientation can include the person's appearance, the places they visit or the people they mix with.

manifestation

Appearance or expression. *See* manifest.

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 not be treated less favourably than married couples.

maternity

See pregnancy and maternity.

maternity leave

Leave that a woman can take whilst she is pregnant and after the birth of her child divided into compulsory, ordinary and additional maternity leave. How much leave a woman is entitled to will vary, but all women employees are entitled to 26 weeks.

minister

Someone who is authorised to perform religious functions, such as weddings.

monitoring

Monitoring for equality data to check if people with protected characteristics are participating and being treated equally. For example, monitoring the representation of women, or disabled people, in the workforce or at senior levels within organisations.

monitoring form

A form that organisations use to collect equality monitoring data – from, for example, job applicants or service users. It records information about a person's sex, age, disability, race, religion, or sexual orientation. It is kept separately from any identifying information about the person.

more favourably

To treat somebody better than someone else. This is unlawful under the Act if it is because of a protected characteristic except in very limited circumstances e.g. the duty to make reasonable adjustments for a disabled person. The law can require pregnant workers to be treated more favourably in some circumstances.

national security

The security of the nation and its protection from external and internal threats, particularly from activities such as terrorism and threats from other nations.

needs that are different

See different needs.

normal retirement age

This is the retirement age at which, in practice, employees in a particular job and workplace would normally expect to retire. Normal retirement age can differ from the contractual retirement age. If it is under 65, it must be objectively justified.

objective justification

When something (e.g. an otherwise discriminatory action) can be objectively justified. *See also* objectively justified.

objectively justified

When something can be shown to be a proportionate means of achieving a legitimate aim – that is, the way of achieving the aim is appropriate and necessary.

occupational health

Occupational health can be defined as the ongoing maintenance and promotion of physical, mental and social wellbeing for all workers.

occupational health practitioner

A health professional providing occupational health services.

occupational pension

A pension which an employee may receive after retirement as a contractual benefit.

occupational requirement

Where having a protected characteristic is an occupational requirement, certain jobs can be reserved for people with that protected characteristic (e.g. Women support workers in women's refuges; ministers of religion).

organised religion

Refers to a religion which manifests its beliefs through organised worship.

past disability

A person who has had a disability as defined by the Equality Act.

perception

In the Equality Act, the belief that someone has a protected characteristic, whether or not they do have it.

physical barriers

A physical feature of a building or premises which places disabled people at a substantial disadvantage compared to non-disabled people when accessing goods, facilities and services or employment. See also physical features.

physical features

Anything that forms part of the design or construction of a place of work, including any fixtures, such as doors, stairs etc. Physical features do not include furniture, furnishings, materials, equipment or other chattels in or on the premises.

positive action

Refers to a range of lawful actions that seek to overcome or minimise disadvantages (e.g. in employment opportunities) that people who share a protected characteristic have experienced, or to meet their different needs.

positive discrimination

Treating someone with a protected characteristic more favourably to counteract the effects of past discrimination. It is generally not lawful although the duty to make reasonable adjustments is an exception where treating a disabled person more favourably may be required by law.

practicable

Capable of being carried out or put into effect.

pregnancy and maternity

Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.

procurement

The term used in relation to the range of goods and services a public body or authority requires and delivers. It includes sourcing and appointment of a service provider and the subsequent management of the goods and services being provided.

proportionate

This refers to measures or actions that are appropriate and necessary. Whether something is proportionate in the circumstances will be a question of fact and will involve weighing up the discriminatory impact of the action against the reasons for it, and asking if there is any other way of achieving the aim.

protected characteristics

These are the grounds upon which discrimination is unlawful. The characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

protected period

This refers to the time in a work context when the specific prohibition against unfavourable treatment of expectant and new mothers

applies. The period begins at the start of a woman's pregnancy and continues until the end of her maternity leave.

provision, criterion or practice

Identifying a provision, criterion or practice is key to establishing indirect discrimination. It can include, for example, any formal or informal policies, decisions, rules, practices, arrangements, criteria, conditions, prerequisites or qualifications.

public authority

Organisations and individuals that carry out public functions – this would include, for example, government departments, local authorities, health authorities and hospitals, schools, prisons, and police.

public bodies

Public bodies are defined as bodies which have a role in the processes of national Government but are not a Government department or part of one. They operate to a greater or lesser extent at arm's length from Ministers.

public functions

Any act or activity undertaken by a public authority in relation to delivery of a public service or carrying out duties or functions of a public nature e.g. the provision of policing and prison services, healthcare, including residential care of the elderly, government policy-making or local authority planning services.

public sector equality duty

The duty on a public authority when carrying out its functions to have due regard to the need to eliminate unlawful discrimination and harassment, foster good relations and advance equality of opportunity.

qualifications bodies

An authority or body which can confer qualifications.

race

Refers to the protected characteristic of race. It refers to a group of people defined by their race, colour, nationality (including citizenship), ethnic or national origins.

rated as equivalent

An equal pay concept – see equal work.

reasonable

What is considered reasonable will depend on all the circumstances of the case including the size of an organisation and its resources, what is practicable, the effectiveness of what is being proposed and the likely disruption that would be caused by taking the measure in question as well as the availability of financial assistance.

reasonable adjustment

See duty to make reasonable adjustments.

reasonable steps

See the duty to make reasonable adjustments.

reasonably

See reasonable.

reasonably believe

This refers to a belief based on objective grounds.

regulations

Secondary legislation made under an Act of Parliament (or European legislation) setting out subsidiary matters which assist in the Act's implementation.

religion or belief

Religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief (e.g. atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition.

religion or belief organisations

An organisation founded on an ethos based on a religion or belief. Faith schools are one example of a religion or belief organisation. *See also* religion or belief.

retirement age

The age at which an employee retires. This may be the national default retirement age, if there is one, or an age which is set in the contract of employment but which must be capable of being objectively justified.

right to request flexible working

The legal right that qualifying employees, e.g. carers of children have, to request flexible working, e.g. a change in the way you work or the hours you work.

same employment

An equal pay concept (see equal work). Generally, women and men can compare their pay and other conditions with those employed by the same or an associated employer.

sex

This is a protected characteristic. It refers to whether a person is a man or a woman (of any age).

sexual harassment

Any conduct of a sexual nature that is unwanted by the recipient, including verbal, non-verbal and physical behaviours, and

which violates the victim's dignity or creates an intimidating, hostile, degrading or offensive environment for them.

sexual orientation

Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.

single-sex facilities

Facilities which are only available to men or to women, the provision of which may be lawful under the Equality Act.

stakeholders

People with an interest in a subject or issue who are likely to be affected by any decision relating to it and/or have responsibilities relating to it.

substantial disadvantage

A disadvantage which is more than minor or trivial.

terms of employment

The provisions of a person's contract of employment, whether provided for expressly in the contract itself or incorporated by statute, custom and practice or common law etc.

transsexual person

Refers to a person who has the protected characteristic of gender reassignment. This may be a woman who has transitioned or is transitioning to be a man, or a man who has transitioned or is transitioning to be a woman. The law does not require a person to undergo a medical procedure to be recognised as a transsexual person.

unfavourably

The term is used (instead of less favourable) where a comparator is not required to

show that someone has been subjected to a detriment or disadvantage because of a protected characteristic – for example in relation to pregnancy and maternity discrimination.

unlawful

Not permitted by law (as distinct from illegal which means 'forbidden by law'). On occasions, unlawful and illegal may be synonymous, but unlawful is more correctly applied in relation to civil (as opposed to criminal) wrongs.

unlawful disability discrimination

See unlawful discrimination and discrimination arising from disability.

unlawful discrimination

When an employer or service provider has engaged in prohibited conduct against someone with a protected characteristic (discriminated against them) and does not have a valid defence.

unlawful discrimination because of disability

See unlawful discrimination and discrimination arising from disability.

unlawful indirect discrimination

See indirect discrimination.

unreasonable

Not reasonable, beyond what's practicable. *See also* reasonable.

victimisation

Subjecting a person to a detriment because they have done a protected act or there is a belief that they have done a protected act i.e. bringing proceedings under the Equality Act; giving evidence or information in connection with proceedings under the Act; doing any

other thing for the purposes or in connection with the Act; making an allegation that a person has contravened the Act.

victimise

The act of victimisation.

vocational service

A range of services to enable people to retain and gain paid employment and mainstream education.

vocational training

Training to do a particular job or task.

work of equal value

See equal work.

work situation

Refers to the employment and workplace context – if disputes or discrimination complaints arise in relation to work they will be heard in the Employment Tribunal.

WORKSTEP

The WORKSTEP employment programme provides support to disabled people facing complex barriers to getting and keeping a job. It also offers practical assistance to employers.

worker

The definition of 'employee' given above also encompasses that of 'worker'. However, in employment law, worker is generally a wider category than employee and includes a contract personally to do work.

worse

When someone is treated less favourably they are treated worse than someone else, literally something which is not as good as someone or something else.

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