

BUSINESS SERVICES

Company Commercial
 Commercial Property
 Dispute Resolution
 Employment
 Planning
 Pharmacy and Healthcare
 Insurance Litigation

We also offer a full range of personal legal services

EQUALITY ACT 2010 SHOULD EMPLOYERS BE CONCERNED?

Effective 1st October 2010

There has been a considerable amount of media coverage on the impact of the Equality Act 2010 in recent weeks, but what are the implications for employers?

From 1st October the Equality Act 2010 came into force with the intention of pulling together all of the fragmented discrimination legislation which has been passed over the last 30 years. There are a number of important changes implemented by the Act which employers need to be aware of. We discuss below those of particular concern.

Widening Definitions

The definition of Direct Discrimination has been widened to apply where someone is treated less favourably "because of a protected characteristic". The result is that Direct Discrimination will now extend to:

- Associative discrimination e.g. discriminating against someone because of their association with a member of a protected group such as caring for a disabled child.
- Perceptive Discrimination e.g. someone is treated less favourably as they are perceived to have a protected characteristic such as being homosexual regardless of whether that person actually has the protected characteristic.

The definition of harassment has also been widened. This will mean that employees will be able to complain about conduct they find offensive even if it is not directed at them e.g. the sexual harassment of a colleague.

Employers may also be liable for harassment by third parties in the workplace such as customers or suppliers.

There have been changes in respect of protected groups. The most notable changes are that the definition of disability has been simplified so it is easier for an employee to show they are disabled. It is now also unlawful to treat a disabled person unfavourably because of something connected with their disability e.g. penalising an employee for disability related sick days.



Employers should review and update policies concerning Equal Opportunities, Diversity and Bullying and Harassment to ensure they conform with the new Equality Act Definitions. All policies should cover the nine protected characteristics in the Equality Act 2010 which are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Employers should review sickness monitoring and absence procedures to ensure disability related absences are excluded.

Pre Employment health Checks

The Equality Act limits the circumstances in which employers can use pre-employment health questionnaires. Employers can only ask health related questions:

- To decide whether any reasonable adjustments are required for the interview process;

continued...

EQUALITY ACT 2010 SHOULD EMPLOYERS BE CONCERNED?

CONTINUED

- To decide whether the applicant can carry out a function “intrinsic” to the role;
- To monitor diversity;
- To take positive action to assist disabled people get a job;
- To confirm an applicant has a disability where the job genuinely requires the individual to have that disability.

Once a formal offer of employment has been made, health related questions can be asked. However, if an employer were to withdraw an offer on health related grounds, they could be exposed to a disability discrimination claim.



Employers should review all application forms used in the recruitment process and standard interview questions to ensure compliance. Offer letters and other standard paperwork should be reviewed to ensure that offers are not made subject to health related criteria.

Pay Secrecy

It is now unlawful to prevent or restrict employees from discussing their remuneration with fellow employees where the motive of the discussion is to identify unlawful discrimination. The result is that employees will find it easier to obtain information about differences in pay. It is unlawful to victimise an employee for making such disclosures.



Employers may wish to review employee salaries to ensure any disparity in pay between similar level employees can be justified on non discriminatory grounds. The Equality Act will now make it even more difficult to police pay secrecy clauses so employers may consider they should be removed from their documentation.

Debenhams Ottaway can carry out Audits of all your Employment documentation and procedures to ensure compliance with current laws and best practice. We offer businesses a free review of contracts and policies as part of the Employer Support Service which fully protects your business against the financial exposure of an employment dispute for an agreed monthly fee.

For further details please contact

Louise Attrup
la@dolegal.co.uk
01727 735 663

www.dolegal.co.uk

HEAD OFFICE

Ivy House
107 St Peter's Street
St Albans
Hertfordshire
AL1 3EW

DX 6105 St Albans
Tel: 01727 837161
Fax: 01727 830506

ALSO AT
RADLETT
01923 857171



DEBENHAMS ♦ OTTAWAY

SOLICITORS

Regulated by Solicitors Regulation Authority

This information has been prepared by Debenhams Ottaway as a general guide only and does not constitute advice on any specific matter. We recommend that you seek professional advice before taking action. No liability can be accepted by us for any action taken or not taken as a result of this information.