



PrivateEdge

Discrimination and the law – what do businesses need to know?

This guidance sets out the duties and obligations of businesses towards their staff under the Equality Act 2010. It sets out best practice guidance to help reduce the risk of successful claims and help foster a fair working environment for all.

Businesses must not discriminate against their employees, workers, and users of their services. This duty applies to job applicants as well as existing staff, and continues after the staff member leaves. It is important to understand that businesses are highly likely to be held liable for any acts of discrimination committed by their employees in the course of their employment, even if the business had no knowledge that the discrimination took place. Individuals can also be personally liable for acts of discrimination and ordered to pay compensation alongside the business itself.

To ensure that your business and your staff comply with the Equality Act, and to reduce the risk of successful claims for unlawful discrimination, it is crucial to introduce and implement an Equality Policy. AIG provides PrivateEdge policyholders with access to a free template Equality Policy. It can be downloaded [<here>](#).

What are “protected characteristics”?

Discrimination based on the following “protected characteristics” is unlawful under the Equality Act:

- **Age** – includes people of all ages
- **Disability** - a physical or mental impairment which has a substantial (more than minor or trivial) and long term (lasts or is expected to last over 12 months) adverse effect on a person’s ability to carry out normal day-to-day activities
- **Gender Reassignment** – covers people who live as another gender as well as people who propose to, starts or has completed a process to change their gender
- **Marriage and Civil Partnership**
- **Pregnancy and Maternity**
- **Race** – includes colour, nationality and ethnic or national origins
- **Religion or Philosophical Belief** – includes any religion with a clear structure and belief system, a lack of religion (e.g. atheism, agnosticism), and philosophical beliefs that are a weighty and substantial aspect of human life and behaviour (e.g. a belief in climate change).
- **Sex** – includes male, female or non-gendered people
- **Sexual Orientation** – includes gay, lesbian, straight, bisexual and asexual people



What forms of discrimination are unlawful?

The Equality Act makes unlawful the following forms of discrimination:

DIRECT DISCRIMINATION

Direct discrimination occurs when someone is treated less favourably than another person because of a protected characteristic they have or are thought to have (see perception discrimination below), or because they associate with someone who has a protected characteristic (see discrimination by association below).

DISCRIMINATION BY ASSOCIATION

This is direct discrimination against someone because they associate with another person who possesses a protected characteristic.

PERCEPTION DISCRIMINATION

This is direct discrimination against an individual because others think they possess a particular protected characteristic. It applies even if the person does not actually possess that characteristic.

INDIRECT DISCRIMINATION

Indirect discrimination can occur when you have a condition, rule, policy or a practice in your business that applies to everyone but particularly disadvantages people who share a protected characteristic.

Indirect discrimination can be justified if you can show that you acted reasonably in managing your business - i.e. that it is "a proportionate means of achieving a legitimate aim". A legitimate aim is a sound and lawful business decision you make in running your organisation. Note that a sole aim of reducing costs is likely to be legitimate. Being proportionate means being fair and reasonable, including showing that you've looked at all possible less discriminatory alternatives to any decision you make.

HARASSMENT

Harassment is unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual. Employees can complain of behaviour that they find offensive even if it is not directed at them, and the complainant need not possess the relevant characteristic themselves. Employees are also protected from harassment because of perception and association.

VICTIMISATION

Victimisation occurs when an employee is treated badly because they have made or supported a complaint or raised a grievance under the Equality Act; or because they are suspected of doing so. An employee is not protected from victimisation if they have maliciously made or supported an untrue complaint.

DISCRIMINATION ARISING FROM DISABILITY

This occurs where a disabled person is treated unfavourably not because of the disability itself, but because of something linked with their disability (e.g. they are dismissed because of a high level of sickness absence which is caused by their disability).

Discrimination arising from disability can also be justified if you can show that the unfavourable treatment is a proportionate means of achieving a legitimate aim.



DUTY TO MAKE REASONABLE ADJUSTMENTS

Where a disabled person is put to a disadvantage because of a:

- workplace condition, rule, policy or practice
- physical feature of the premises where they work
- lack of auxiliary aid

you are under a duty to make adjustments that are reasonable to remove that disadvantage.

There is no set list of potential adjustments that can be made – it is whatever is reasonable to do in the circumstances. To determine whether a potential adjustment would be reasonable, you should consider:

- the extent to which the adjustment would remove the disadvantage suffered
- the extent to which it is practicable to make the adjustment
- the financial and other costs which would be incurred
- the extent to which the adjustment would disrupt business activities
- the extent of financial and other resources available (grants from the government's Access to Work scheme should be explored)
- the size of your business – the larger your business, the more is expected of you

To what aspects of employment does the Equality Act apply?

The Equality Act applies to:

- The recruitment and selection process, including:
 - The arrangements made for determining who should be offered the employment
 - The terms on which the employment is offered
 - By refusing or deliberately omitting to offer an individual the employment
- Existing employees, including:
 - Terms of employment (pay and contractual benefits)
 - access to opportunities for promotion, transfer or training
 - opportunities to receive any other benefit, facility or service
 - Termination of employment
 - any other detriment on grounds of a protected characteristic
- Former employees, including:
 - The provision of references
 - Any other unlawful act that arises out of and is closely connected to the former employment relationship



What should my organisation do if a complaint of discrimination is received?

- Let employees know that complaints of discrimination, bullying and/or harassment, or information from staff relating to such complaints, will be dealt with fairly and sensitively. Employees will be reluctant to come forward if they feel they may be treated unsympathetically or are likely to be confronted aggressively by the person whose behaviour they are complaining about.
- For less serious discrimination, sometimes it may be appropriate to try to resolve matters informally. The staff member involved may not be aware that their behaviour is unwelcome and an informal discussion may lead to greater understanding and an agreement that the behaviour will cease. It may be that the individual will choose to modify their behaviour themselves, or they may need additional training, support from a manager, or counselling.
- Take all complaints seriously and carry out an objective, independent and confidential investigation as soon as possible. Refer to your Equal Opportunities policy. Follow your Grievance Procedure if the complaint is raised as a grievance.
- It is important to follow a fair procedure. There must be fairness to both the complainant and the person accused. You must conduct an even-handed investigation that looks for evidence that might support or go against both parties' versions of events.
- If the evidence from the investigation supports a reasonable suspicion that discrimination has taken place, and it is not appropriate to deal with the issue informally, you should implement and follow your disciplinary procedure. The employee suspected should be charged with misconduct or gross misconduct depending on the seriousness of the offence. They must be given the opportunity to state their case at a disciplinary hearing at which they have the right to be represented by a colleague or trade union representative. They must be given the chance to appeal any disciplinary penalty.
- It may be that the allegations of discrimination are considered to be unfounded. However, just because an allegation is unfounded does not necessarily mean it is made maliciously – the employee making the complaint might have a genuine but mistaken belief that they have been discriminated against. If you suspect the complaint might have been made maliciously, this should be investigated and dealt with fairly and objectively under your disciplinary procedure.

Before determining any disciplinary penalty make you sure you take in to consideration all of the relevant circumstances and potential mitigating factors, even for serious acts of discrimination. Factors to consider include: the seriousness of the offence, the employee's previous disciplinary record (taking care not to take into account any "spent" warnings), action taken in similar cases previously, and any explanations and circumstances that ought to be taken in to consideration.