



## EQUALITY ACT 2010

The Equality Act becomes law on 1 October 2010. It replaces all discrimination related legislation. The Act covers discriminatory acts that occur before October 1 2010 and continue after the date. The protected characteristics along with any changes to existing legislation under the Act are:

- **Age**

This is the only area where direct discrimination can potentially be justified as long as it can be demonstrated that it is a proportionate means of achieving a legitimate aim.

- **Disability**

Indirect discrimination has now been introduced and justifiable only if employer can show that it is a proportionate means of achieving a legitimate aim. It is also unlawful to use pre-employment medical questionnaires. Questions about health before making an offer of employment can be asked only if they are specifically relevant and crucial to the job and where the prospective employer needs to check if any reasonable adjustment is required for the applicant to attend the interview.

- **Gender Reassignment**

It is no longer a requirement to be under medical supervision to be able to be protected under the Act.

- **Race**

- **Religion or belief**

- **Sex**

- **Sexual orientation**

- **Marriage and civil partnership**

- **Pregnancy and maternity**

There are seven types of discrimination covered by the Equality Act 2010. Highlighted below are any changes or additions to existing legislation:

1. Direct Discrimination – Genuine Occupational Requirements are extended to all aspects of discrimination.
2. Indirect Discrimination – The definition now applies to all areas of discrimination as a result of the Act.
3. Perceptive Discrimination – It now covers disability, gender reassignment and sex (earlier, it only applied to age, race,

religion or belief and sexual orientation). If an individual is discriminated against because it is perceived they are disabled or any of the above, even if they are not, then the individual is protected by the Act.

4. Associative Discrimination – This has been extended to apply to age, disability, gender reassignment and sex (earlier applied only to race, religion or belief and sexual orientation). This type of discrimination covers those individuals who are discriminated because they are associated with someone with a protected characteristic (for example carer of a disabled person).
5. Harassment – The Act covers harassment for all protected characteristics and harassment because of perception or association. Even if the unwanted conduct related to a relevant protected characteristic but is not directed at an individual, he / she would still be able to complain. Third party harassment (applied earlier only to sex) is now extended to cover age, disability, gender reassignment, race, religion or belief and sexual orientation.
6. Victimisation – There is no longer a need to have a comparator when making a claim of victimisation.
7. Positive discrimination – This is still under consideration by the government.

One other development is that under the new Act, employment tribunals can now make recommendations relating to discrimination in the organization as a whole (previously it was limited to only the claimant). The recommendations are not binding on the organization, but a failure to comply could be used in evidence in any future claims and damage its reputation.





## BRIBERY ACT 2010

**The Bribery Act 2010 will become law in April 2011. There are four offences covered by the Act:**

1. Bribing - offering, promising or giving an advantage or reward to induce an improper return
2. Being bribed - requesting, agreeing or taking a reward in return for an improper act
3. Bribing a foreign official
4. Failure of organizations to stop their employees or individuals associated with them from offering bribes or being bribed. This amounts to a corporate offence.

Guidelines on adequate procedures from the government to be made available in early 2011.

### Still in consultation about:

- Compulsory pay audits and reporting of pay gaps by organization over 250 employees initially.
- Equal Pay - No longer a disciplinary offence for employees to discuss their pay and any such action by an employer will be unlawful victimisation.

- Combined discrimination - where an employee can claim discrimination on more than one protected characteristic (example both for disability and race).
- Default Retirement Age that is to be phased out from April 2011 and will come into force from October 2011.
- Independent Safeguarding Authority - proposal that all those who currently work with children or vulnerable adults would have to apply to be put on an 'approved list'.
- Agency Workers Regulations 2010 - Agency workers will be entitled to equal treatment as permanent staff in terms of certain rights including pay for work done, basic working and employment conditions. This will come into force in October 2011.
- Time off for training - This currently applies to organisations with 250 or more staff and is expected to be applied to all organizations in April 2011. The procedure to make such requests will be similar to that followed in flexible working requests.

## NATIONAL MINIMUM WAGE TO INCREASE

- For those 21 years and above, the NMW will be £5.93
- For those between 18 and 20 years, the NMW will be £4.92.
- For those between 16 and 17 years, the NMW will be £3.64.
- Apprentices aged under 19 years and those over 19 but in their first year of apprenticeship, the apprentice rate would be £2.50.



Over the last couple of years the number of cases reaching Tribunal has hugely increased, it is thought to be by more than 50%. Many of you may have experienced this for yourselves, the increases being driven by disputes about equal pay, unfair dismissal, age, sex, race and disability discrimination.

With this being high on the agenda, we are able to offer our clients with not only hands on consultancy but also, an insured/legal expenses cover of up to £75,000 per claim.

**For further information please contact Michelle Brinklow at BBi Alternative Solutions:**

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