

**COMMERCIAL ALERT**

**17 May 2010**

## **Discrimination Checklist**

The New Equality Act comes into force in October this year. It will have a number of effects for businesses on their employment practices and procedures.

### **Checklist: Equality Act 2010 – what it means for your business**

This checklist highlights the key changes to discrimination law that the Equality Act 2010 will introduce. It also provides some practical steps for businesses to take before the Act comes into force in October 2010.

### **Why has the Equality Act 2010 been introduced?**

The Equality Act 2010 was introduced to harmonise discrimination law and to strengthen it. It brings together nine existing major pieces of discrimination legislation into a single act and creates a number of new rights and remedies to protect employees from discrimination.

### **What areas of employment are covered by discrimination law?**

Discrimination laws cover all areas of employment including job adverts, job interviews, conduct during employment, social events at work, dismissal and giving job references. A business must not discriminate against or harass employees on the basis of: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex or sexual orientation.

### **What are the key changes to discrimination law made by the Equality Act 2010?**

#### **Pre-employment health questions**

- Pre-employment health enquiries will be prohibited except in limited circumstances (for example, establishing whether the applicant will be able to “carry out a function that is intrinsic to the work concerned”). The Equality and Human Rights Commission (EHRC) will have the power to investigate the use of prohibited questions and take enforcement action.
- Simply asking pre-employment health questions will not amount to discrimination against an applicant, but acting on the answers may well do. If an unsuccessful job applicant brings a direct disability discrimination claim against your business, and a

pre-employment health question was asked for a non-prescribed reason, the onus will be on you to show that no discrimination took place.

### **Secrecy clauses**

- Secrecy clauses require employees to keep details of their pay secret and prevent them discussing their pay with their colleagues. Although secrecy clauses will not be banned, they will be unenforceable against employees who make or request a “relevant pay disclosure”. The disclosure must be made with the possibility of pay discrimination in mind. For example, a female employee thinks she is underpaid compared with a male colleague. She therefore asks him what he is paid, and he tells her.
- Victimising an employee because they make, seek or receive a “relevant pay disclosure” will be unlawful.

### **Harassment at work**

- Harassment occurs when an individual engages in unwanted conduct that has the purpose or effect of violating another individual’s dignity or creates a hostile, degrading, humiliating or offensive environment for that individual.
- Businesses will be made liable, in some circumstances, for the harassment of an employee by a third party in the workplace (for example, where a restaurant failed to take reasonable steps to prevent a waitress being harassed by customers, despite knowing that the same type of harassment had occurred at least twice before).
- The definition of harassment will be widened to include harassment based on perception or association (for example, a person who is harassed because they are wrongly perceived to be gay, would have a claim).

### **Positive action**

- Positive action is currently limited to “training and encouragement” for under-represented groups. Its scope will be broadened to allow businesses to provide more help to encourage under-represented groups to apply for jobs (for example, by providing free English language lessons to non-English-speaking employees).
- In addition, businesses will be permitted (but not required) to take under-representation of particular groups into account when selecting between two job applicants who are “as qualified as” each other. However, neither automatic selection of under-represented groups nor quotas will be allowed.

## **Enforcement by employment tribunals**

- Employment tribunals will have the power to make recommendations that benefit the wider workforce, not just the claimant, in a successful discrimination claim. A tribunal will be able to recommend the steps that a business should take to reduce the adverse affect of discrimination in the workplace. For example, that the business:
  - Introduces an equal opportunities policy.
  - Ensures its harassment policy is more effectively implemented.
  - Makes public the selection criteria for staff transfers or promotion.
- Although recommendations will not be binding, the failure by a business to comply with a recommendation could be used as evidence to support subsequent similar discrimination claims.

## **Practical steps for businesses to take before the Equality Act 2010 comes into force**

- Review any existing policies and procedures that your business has on discrimination and harassment and decide whether they should be updated.
- Make sure that all directors and managers within your business are aware of the changes. Consider providing training where necessary.
- Keep track of any relevant new statutory codes of practice that are issued by the EHRC.

## **More information**

If you have any queries about the content of this checklist, please contact Robert Hill, partner, Reynolds Parry Jones, tel: 01494 525941.