



Equality Act 2010

August 2010

What is the risk to my Organisation from 1 October 2010?

From the 1 October 2010 key parts of the Equality Act will be enforced against public bodies that provide public services or exercise public functions. There will be one law applying to protect people from discrimination on the basis of a series of protected characteristics.

The relevant characteristics for those providing services and exercising public functions are:

- Disability
- Gender reassignment
- Pregnancy/maternity
- Race: including ethnic or national origin, colour and nationality
- Religion or belief
- Sex
- Sexual orientation.

An individual who believes either you or your employee has wrongly discriminated against him or her or has harassed or victimised them can:

- Bring a claim in the County Court
- Make a claim for judicial review against your organisation.

Damages can be awarded against you or one of your employees. Further, both the County Court and the Public Administrative Court may in certain circumstances intervene to prevent you continuing to provide the services in a way which may discriminate.

It is important to note that an individual can claim victimisation if a complaint of discrimination has been handled badly.

The new law is different from previous legislation because it is stronger. Further, there are much wider definitions of disability and gender reassignment so the cohorts of individuals who are rigorously protected by the law is significantly increased.

You are at risk of legal challenge if:

1. It can be shown you directly discriminated against an individual in the provision of your services or in the exercise of your functions, i.e. if you have treated the individual worse than someone else just because of one or more protected characteristics.
2. You take action, including making a rule or applying a policy, which can be demonstrated to have a worst impact on those who share a particular protected characteristic than on those who do not. This will amount to indirect discrimination unless you can prove that what you have done is objectively justified. At a time of cost cutting, providers of public services need to make sure that where they restrict, reduce or entirely cut services then in so doing they do not inadvertently indirectly discriminate against the cohort of individuals with a protected characteristic.
3. You treat a disabled person unfavourably because of something connected to their disability where you cannot show what you have done is objectively justified.
4. You have failed to make reasonable adjustments to make a disabled person can use or access a service as far as is reasonable to the same standard as a non-disabled person. This will be a particularly key issue for you to consider when you are reducing or changing the availability of services to reduce costs.

5. It can be demonstrated that you can make no advanced planning about what a disabled person might reasonably need in terms of reasonable adjustments. This means that you cannot wait for a disabled person to complain. Your obligation is to proactively plan in advance to take into account what reasonable adjustments you should be expected to make.

From the 1 October 2010, to avoid complaints or Court action, you will have to take into account the rights of those with protected characteristics, not simply in the day to day delivery of your services, but in the way you plan and arrange for their provision, particularly for those with a disability.

This means that not only front line operational staff, but also those responsible for those planning the provision of public services or the development of policies affecting those services, needs to have an idea of the following:

- The nature of each protected characteristic
- The specific rights of those with a disability
- The definitions of disability and gender reassignment.
- The wide extent of those individuals who may claim to have a disability.
- What a reasonable adjustment is
- The definition of direct, discrimination, indirect discrimination, victimisation and harassment.

Those responsible for the planning of services of any kind need to know that business plans and policies should be screened and assessed to determine the impact on those with a protected characteristic.

Decision makers are obliged, in accordance with public law principles, to demonstrate that in making any decision they have taken into account any appropriate impact assessment which has been carried out prior to making their decision and to show that this has been done.

Key issues to consider are:

- Has your Equality Policy been updated?
- Do you have a comprehensive process for screening for equality issues and assessing impact?
- Do your Officers know the extent of their duty and when they need to start assessing impact?
- Are you rolling out appropriate training at sufficient levels of seniority, so that Business Managers and Planners can cascade the requirements down to operational staff?
- Have you assessed the risk to your potential vulnerability to claims being made against you from the 1 October 2010?

More information

To discuss your individual requirements, please contact:



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