



UNDERSTANDING DISCRIMINATION



Workplace Diversity Solutions

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What is Discrimination?

Discrimination can occur if an individual is subjected to unfair or different treatment because of their circumstances or because they have a protected characteristic. Discrimination can be very damaging both to the individual and for the business. In this short guide, we will explore some of the possible forms that discrimination can take.

The Equality Act 2010

The purpose of the Equality Act was to simplify the legislation that existed previously, advance equality of opportunity and to protect an individual's rights. When the Equality Act was introduced it combined over 116 separate items of legislation into one single legal framework.

Some of the areas of legislation that merged into the Equality Act 2010 include:

1. Equal Pay Act 1970
2. Sex Discrimination Act 1975
3. Race Relations Act 1976
4. Disability Discrimination Act 1995

Protected Characteristics

The Equality Act offers protection to individuals and covers nine protected characteristics, this means it is against the law to discriminate against an individual based on the following:

Disability	Sexual Orientation	Gender
Age	Race	Pregnancy & Maternity
Marriage & Civil Partnership	Gender Reassignment	Religion or Belief

The Equality Act came into force on Friday, October 1st, 2010. [Find out more here](#)

Types of Discrimination

Discrimination by Association:

Occurs if you are subjected to discriminatory behaviour or unfair treatment because you are linked to or associated with an individual who has one of the protected characteristics. Discrimination by association can be a complicated area as it does not apply to all of the nine protected characteristics. (Pregnancy and maternity and marriage and civil partnership are not covered)

Discrimination by association was introduced into the Equality Act 2010 as a result of a landmark decision made by the European Court of justice. [Read about the case here.](#)

If you are unsure about discrimination by association, we would recommend contacting a legal professional for advice and further guidance. [You can visit the Solicitors Regulation Authority website to help you find a Solicitor here.](#)

Discrimination by Perception:

An individual can face discrimination or unfair treatment based upon a perception that they have one of the protected characteristics covered under the Equality Act 2010.

The concept of discrimination by perception existed before the introduction of the Equality Act and applied to age, race, religion or belief and sexual orientation.

The Equality Act 2010 extended the legislation to also cover the protected characteristics of disability, gender reassignment and sex. For example, Jack is a heterosexual man who works in a busy office environment, Jack is subjected to comments or jokes about his sexuality as his co-workers believe him to be gay.

Direct Discrimination:

Direct discrimination occurs if an individual suffers unfair treatment or is discriminated against because they have a protected characteristic.

For example: David applies for a position within an organisation. David has all the relevant experience and qualifications but is not offered the role as he is thought to be too young.

Harassment:

Harassment is considered as unwanted behaviour that causes an individual to be offended.

Examples of unwanted behaviour could include emails which are offensive, jokes, comments and verbal harassment.

For example: Making jokes about a person's gender or their capabilities may be considered as unwanted behaviour. It is important to be mindful of the impact of any jokes or comments may have upon an individual or groups of people within the workforce.

Types of Discrimination

Indirect Discrimination:

Indirect discrimination occurs if a policy, practice or procedure is implemented but subsequently places a person who has one of the protected characteristics at a disadvantage.

Often, it may be that the policy, practise or procedure is intended to treat everyone equally but, places someone with one of the nine protected characteristics at a disadvantage.

For example, If an organisation stipulates a dress code within their offices it is possible that the rule or policy can indirectly discriminate against an individual with certain religious beliefs and prevents them from wearing head coverings for instance.

Victimisation:

Victimisation can occur if an individual is subjected to a detriment or poor treatment because they have either made a complaint about discrimination themselves or they have supported another person in making a complaint.

For example, Emma has supported her colleague Sandeep by providing evidence of the discrimination that Sandeep has suffered in the workplace. As a result, Emma has been subjected to poor treatment by her manager seen as a troublemaker.

Disability Discrimination:

An individual is defined by the Equality Act 2010 as having a disability if: **They have a physical or mental impairment which has a substantial and adverse effect upon their ability to perform normal day to day activities.**

Disability discrimination applies in the work environment, in an educational context or when providing goods facilities or services. It is worth remembering that discrimination can still be unlawful even if it was unintentional

The Equality Act 2010 makes it unlawful to discriminate against an individual on the grounds of disability or to place that individual at a disadvantage. If an organisation can demonstrate a good reason for a particular policy being in place and that any discrimination is proportionate then it is possible that indirect discrimination can be considered as lawful, this is known as Objective Justification. You can read more about this on the [Equality and Human Rights Commission website here](#)

The number of disability discrimination claims brought before employment tribunals rose to 6,550 in 2018, a 37 per cent increase on the previous year, according to new figures. [Read more here.](#)

Protection from Discrimination

The Equality Act 2010 offers protection against discrimination. An individual is protected from discrimination in a wide range of situations and circumstances which can include:

- When using or visiting healthcare environments such as a doctor's surgery or hospital for example
- As a student in a school, university or educational establishment
- As an employee in the work environment
- As a client to a business that provides a service or product such as an energy supplier or bank for example
- When interacting with an estate agent or property management company if you seek a place to live
- When dealing with local authorities and emergency services

The list above shows just some of the instances where a person is protected but, it is not limited to only the above situations and circumstances.

Can Discrimination be Justified?

Perhaps surprisingly, yes. Both direct and indirect discrimination can be objectively justified if it can be shown that discrimination is a 'proportionate means of achieving a legitimate aim'

The test is harder to meet in instances of direct discrimination.

In some circumstances, it is possible to justify discrimination on the grounds of disability.

If a business can cite health and safety concerns or requirements or unavoidable business reasons, then discrimination may not be considered as unlawful.

If you are unsure or have a concern about discrimination, we would suggest seeking the advice of an appropriately qualified and experienced legal professional such as an employment solicitor.

You may wish to seek guidance from the [Equality and Human Rights Commission](#)

Tackling Discrimination

- Ensure that your business has a well-defined strategy to create an inclusive culture which is supported by senior leadership.

[Read more here](#)

- Conduct a Diversity Needs Analysis to gain an understanding of the current position for your business.

[Read more here](#)

- Try our free online diversity health check tool to get some ideas of the key things you should consider when embedding a culture of inclusion.

[Access the free online tool here](#)

- Provide regular awareness training and briefings to your staff to ensure they understand the importance of equality, diversity and inclusion.

[Read more here](#)

- Access eLearning as a way of delivering diversity training across your business and to increase awareness.

[Try our free eLearning demo here](#)

Click the text below to get in touch or send an email to
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