

Understanding equality, diversity and inclusion in the workplace

Equality and discrimination

The nine protected characteristics

The Equality Act 2010 defines nine protected characteristics:

- Age.
- Disability.
- Gender reassignment.
- Marriage and civil partnership.
- Pregnancy and maternity.
- Race.
- Religion or belief.
- Sex.
- Sexual orientation.

In the Equality Act, no one protected characteristic has a higher priority than any other.

Discrimination claims can be made on the grounds of:

1. **A single protected characteristic** – for example, because a customer is female.
2. **A number of single, but unrelated, characteristics** – for example, because a customer is female and also because she is of a particular age (in these situations, each characteristic would be considered separately).

Age

The Equality Act protects anyone from discrimination, harassment and victimisation on account of their age.

Disability

The Equality Act protects anyone from discrimination – direct (including by association and by perception) indirect, harassment and victimisation – because of disability.

Under the Act, a person is disabled if they have a physical or mental impairment which has a long-term (usually lasting more than a year) and substantial adverse effect on their ability to carry out normal day-to-day activities. A number of impairments, such as cancer, HIV and multiple sclerosis, are automatically considered disabilities; there are other progressive conditions that would also be considered a disability as soon as the symptoms start to have a discernible effect.

What constitutes a disability can be variable and difficult to define.

The Equality Act also protects anyone from what the law describes as ‘discrimination arising from a disability’ – this is where they are treated unfavourably because of something connected with their disability, e.g. a tendency to make spelling mistakes arising from dyslexia. Organisations should remember that:

- A reasonable adjustment is a change or adaptation to the physical environment that has the effect of removing or minimising the impact of the individual's impairment in the facility so they are able to undertake normal activities.
- Employers are accountable for deciding what (if any) reasonable adjustments are to be made. It is good practice for employers to seek advice in coming to this decision.

Reasonable adjustments

An organisation must make 'reasonable adjustments' to ensure that requirements or practices do not disadvantage anyone with a disability. Reasonable adjustments can often be simple and inexpensive. In law, adjustments have to be 'reasonable' and need not be excessive.

Gender reassignment

The Equality Act protects anyone from discrimination, harassment and victimisation relating to gender reassignment. In the Act, someone who proposes to, starts or has completed a process to change his or her gender is referred to as a 'transsexual'.

Previously, people reassigning their gender had to be under medical supervision to be covered, but this is no longer the case.

In law, cross-dressers are not regarded as transsexual people, as they do not intend to live permanently as the opposite gender to their sex at birth. While they are not specifically protected under the Act as cross-dressers, if they are harassed because they are perceived to be transsexual or to have a particular sexual orientation, they may be in a position to claim discrimination under the relevant protected characteristics.

Marriage and civil partnership

The Equality Act protects anyone from direct discrimination (although not the forms, by association or by perception), indirect discrimination and victimisation because of marriage or civil partnership. As well as direct discrimination by perception or association, harassment because of this characteristic is not covered by the Equality Act, but there are legal provisions where claims against some behaviours can be made.

Civil partnerships for same-sex couples have the same legal protection against discrimination as marriage. Same-sex marriages became legally recognised in England and Wales on 29/03/2014 and in Scotland on 16/12/2014.

Organisations should also ensure that no one in a same-sex marriage or civil partnership is subjected to behaviour that could amount to harassment because of sexual orientation.

Pregnancy and maternity

The Equality Act protects anyone from one type of direct discrimination and victimisation because of their pregnancy, or for taking/seeking to take maternity leave.

A particular aspect of the pregnancy and maternity protected characteristic is that a woman who is pregnant or on maternity leave must not be treated **unfavourably** because of pregnancy or maternity leave. That means there is no need for her to show that she has been treated **less favourably** than a man, or a woman who was not pregnant, just that she was in fact treated detrimentally because of pregnancy or maternity.

Race

The Equality Act protects anyone from discrimination, harassment and victimisation because of the protected characteristic of race, which can include different elements that often merge. 'Race' is an umbrella term for the other four aspects:

- Colour – like 'race' it tends to overlap, particularly with the concepts of 'ethnic origin' and 'national origin'. Examples include black and white.
- Ethnic origin – can include racial, religious and cultural factors which give a group of people a distinct social identity with a long and shared history. Examples include Sikhs, Jews, Romany Gypsies and Irish Travellers.
- National origin – birthplace, the geographical area and its history can be key factors. Examples include Welsh and English.
- Nationality – usually the recognised state of being a citizen, i.e. what it says in their passport if they have one. An example of this would be a British citizen.

Additionally, a racial group can be made up of two or more of these aspects, such as black Britons. Welsh, Scottish, Northern Irish/Irish and English are all recognised under this protected characteristic, as is British. The race protected characteristic does not cover more local or regional distinctions. However, there could be circumstances where such behaviour might be argued to be because of national identity, while other legislation may still offer other protections. In addition, such behaviour should be considered unacceptable, as it damages morale and an individual's dignity.

Caste discrimination

Caste usually refers to the social levels in certain cultures and racial groups, such as India, where people's positions in society are fixed by birth or occupation, and are hereditary.

There are moves to have 'caste' recognised specifically as part of the race protected characteristic. While it is possible that the Equality Act 2010 may be amended in the future, some legal opinions and cases consider caste to be already covered because they say it coincides with ethnic origin.

Religion or belief

The Equality Act protects anyone from discrimination, harassment and victimisation because of religion or belief.

For example, a manager should ensure that religiously offensive graffiti in a toilet is removed, and that the matter is thoroughly investigated and handled.

In the Act, 'religion' describes any religion with a clear structure and belief system. 'Belief' describes any religious or philosophical belief. Denominations or sects within a religion can be considered a protected religion or religious belief.

A belief must satisfy various criteria, including that it is a weighty and substantial aspect of human life and behaviour, worthy of respect in a democratic society, and does not conflict with the fundamental rights of others.

Sex (Gender)

The Equality Act protects both males and females from discrimination, harassment and victimisation because of sex (gender).

Protection from sexual harassment

Everyone is protected against sexual harassment, which is unwanted conduct that is of a sexual nature and/or relates to the protected characteristics of sex and/or gender reassignment. Examples can be either verbal or physical, and can include staring or leering, or a display of explicit material.

It would have the purpose or effect of violating dignity, or creating an environment which is intimidating, hostile, degrading, humiliating or offensive. It also applies where anyone is treated 'less favourably' because they have rejected sexual harassment or been the victim of it. An employer should understand what sort of behaviour would be considered sexual harassment and make this distinction clear to employees.

Sexual orientation

The Equality Act protects anyone from discrimination, harassment and victimisation because of sexual orientation. It applies equally to bisexual, gay, heterosexual and lesbian orientations.

Types of discrimination

Under the Equality Act, there are four main types of discrimination:

- Direct discrimination.
- Indirect discrimination.
- Harassment.
- Victimisation.

Direct discrimination

Direct discrimination occurs when someone is treated less favourably directly on account of:

- A protected characteristic they possess – this is direct discrimination.
- A protected characteristic of someone they are associated with, such as a friend, family member or colleague – this is direct discrimination by association.
- A protected characteristic they are thought to have, regardless of whether this perception by others is actually correct or not – this is direct discrimination by perception.

Harassment

Harassment is defined as 'unwanted conduct' and must be related to a relevant protected characteristic or be 'of a sexual nature'. It must also have the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

Generally, harassment includes bullying, nicknames, threats, jokes, 'banter', gossip, inappropriate questions, excluding a customer, insults or unwanted physical contact. Harassment can be verbal, written or physical and is based on the victim's perception of the unwanted behaviour rather than that of the harasser, and whether it is reasonable for the victim to feel that way. It can also apply to a customer who is harassed because they are perceived to have a protected characteristic, whether they actually have it or not, or to someone who is harassed because they are associated with someone with a protected characteristic. Harassment can also apply when someone witnesses harassment because of a protected characteristic and which has a negative impact on their dignity.

While the Equality Act 2010 protects against harassment related to most protected characteristics, other legislation, such as the Protection from Harassment Act 1997 may also apply. This legislation is not limited to circumstances where harassment relates to a protected characteristic. Harassment under the Protection from Harassment Act must amount to criminal conduct.

Victimisation

Victimisation is when someone is treated less favourably than others for:

- Making an allegation of discrimination.
- Supporting a complaint of discrimination.
- Giving evidence relating to a complaint about discrimination.
- Raising a grievance concerning equality or discrimination.
- Doing anything else for the purposes of (or in connection to) the Equality Act 2010.

ACAS Guidance – Equality and discrimination: Understand the basics. Published August 2015.
<http://www.acas.org.uk/media/pdf/d/8/Equality-and-discrimination-understand-the-basics.pdf>