

Podcast Script: Equality Act 2010

Speaker: Nikki Allen & Lara Kennedy

Practice Area: Employment



“Welcome to iLegal.info where we at FJG keep an eye on the law for you.

“The Equality Act 2010 aims to simplify existing equality and discrimination legislation into one coherent and stronger framework. The majority of the Act’s provisions will become law on 1 October 2010 with other parts hopefully coming into effect later. As a result of the above changes employers should start reviewing the policies and practices to ensure compliance with the new Act. Listen here while we talk to Lara Kennedy at Fisher Jones Greenwood LLP to tell us more.

“What effects does the Equality Act 2010 have?”

“The Equality Act aims to simply existing equality and discrimination legislation into one coherent and stronger framework. It will also aim to tidy up any inconsistencies. There are also some new rights being added such as dual discrimination, pay secrecy clauses which I will come to shortly.”

“When does the Act come into force?”

“Well the Act actually received royal assent on 8 April 2010 although the main parts will not come into effect until October 2010. Certain element, however, such as combined discrimination will come into effect in April 2011 and onwards.”

“Who does that cover and is there any difference to what existing discrimination legislation covers?”

“The Act will protect people because of a specific characteristic. This includes sex, age, disability, race, colour and nationality, belief and religion, sexual orientation, pregnancy, maternity and marriage and civil partnership. This is roughly the same as the old law although there is an added power to include caste into the Race Discrimination Act.”

“What are the key changes then?”

“There are six key changes. These are number one, protection is extended to associative and perception discrimination. Disability discrimination has undergone a Re-haul, victimisation, harassment, pre-employment health sex and lastly dual discrimination.”

“So how have the definitions changed?”

“There are still discriminations on the grounds of direct, indirect, harassment and victimisation, however, a combined or also known as dual discrimination has been added.”

“What is dual discrimination?”

“This is where a person, ‘A’ discriminates against another person, here classed as ‘B’ if because of a combination of two relevant characteristics ‘A’ treats ‘B’ less favourably than a would treat another person who does not share either of those characteristics. However, it must be remembered that not all characteristics can be

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combined. The only ones here covered are age, disability, gender reassignment, race, religion or belief, sex or sexual orientation.”

“What is the change to victimisation?”

“Well victimisation occurs when an employee is treated badly because they have made or supported their complaint or raised a grievance under the Equality Act or because they are suspected of doing so. The Equality Act changes the test here in that an individual no longer has to establish that he is being treated less favourably in comparison to someone who has not performed a protected act.”

“How does this change harassment?”

“Under harassment employers must also be aware that they can be liable for employee harassment by a third party if it has happened at least twice before, they were aware of it and they took no measures to prevent it continuing. This extends to harassment by people outside the employer’s organisation, such as customers or suppliers.”

“What then is an employer allowed to ask on a pre-employment health check?”

“The Equality Act will limit what is allowed to be asked. This can be put into five categories of questions. Firstly, it can be asked to decide whether or not reasonable adjustments need to be made. Secondly, whether or not the applicant can carry out a function that is essential to the job. Thirdly, to monitor diversity. Fourthly to take positive action to assist a disabled person and lastly to check whether or not that person has a disability where it is a requirement of the job.”

“One of the key changes you have stated I am told that the change to disability discrimination is controversial and significant. What is the difference?”

“Discrimination on the grounds of disability will undergo a RE-haul in the new Act in that the test as to what constitutes a disability will vary slightly. This will make it easier for someone to say that their disability impairs their ability to carry out day to day activities. Another key change on disability discrimination is the justification test. Here an organisation such as an employer or service provider will have to establish the conduct is a proportionate means of achieving a legitimate aim. Importantly this protection extends to people treated unfairly because they are perceived or associated with someone with a protected characteristic.”

“Are there any other changes that employers or service providers should be aware of?”

“Yes, the Act will also allow employers to take positive action if an employee or job applicant has a protected characteristic which causes them to suffer a disadvantage. This could include encouraging or training people to apply for jobs, increasing participation in activities and recruiting or promoting someone from an under represented group. However, this is only where there are two or more candidates and they are equally suited. Also, positive action is only voluntary.”

“What is the Pay Secrecy Ban?”

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“There will also be a ban on pay secrecy in that employees can now also discuss pay differences to establish whether or not a difference in pay is related to a protected characteristic, although pay rates can remain confidential to third parties.”

“Do employers need to take any action?”

“Whilst the Act has not yet come into force, employers should start reviewing their policies and practices to ensure compliance with the new Equality Act.”

“Who can we contact at Fisher Jones Greenwood LLP for more information?”

“If you require further assistance you can contact myself, Lara Kennedy on 01206 835230 or alternatively email us at employment@fjg.co.uk.”

“Thank you for listening to iLegal. For further information contact us at Fisher Jones Greenwood LLP on 01206 578282 or email us at info@fjg.co.uk or visit our website on www.fjg.co.uk.”