



The Equality Act





➤ The following topics are covered in the next slides

- Equality Act 2010
- Part time Workers' act
- Immigration act
- Recruiting Foreign nationals
- Equal pay law
- Rehabilitation of Offenders
- GDPR in recruitment
- Rules for recruiting specific Faiths


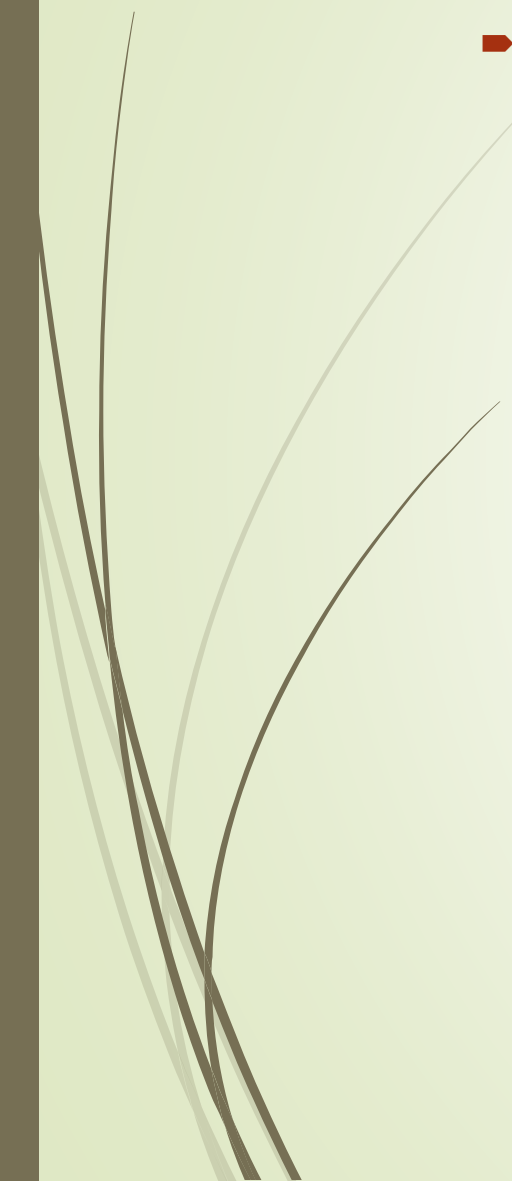
Equality Act 2010

- ▶ The Equality Act became law in 2010 and protects everyone in Britain from discrimination, harassment and victimisation.
- ▶ There are 4 types of discrimination;
 - ▶ Direct discrimination on the grounds of a protected characteristic
 - ▶ Indirect discrimination where the policies of a company discriminate against people with a protected characteristic
 - ▶ Harassment, which is bullying because someone has a protected characteristic
 - ▶ Victimisation as a result of complaining of discrimination because of a protected characteristic

(People can also be discriminated against because of their association to another person who has a protected characteristic. For example, discrimination because a relative is disabled, pregnant, transsexual etc)



Equality Act 2010

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- ▶ The Characteristics that are protected by the Equality Act 2010 are:
 - ▶ Age
 - ▶ Disability
 - ▶ Gender reassignment
 - ▶ Marriage and civil partnership
 - ▶ Pregnancy and maternity
 - ▶ Race
 - ▶ Religion or belief
 - ▶ Sex
 - ▶ Sexual orientation

Equality Act 2010

- ▶ It is unlawful to make decisions based on any of the protected characteristics. This would be considered less-favourable treatment and could give rise to a direct discrimination claim
- ▶ Certain policies or practices may also give rise to indirect discrimination for example where a policy applies equally to all candidates but creates a disadvantage for employees with a certain protected characteristic.
- ▶ You also have a proactive duty under Equality Act 2010 to make reasonable adjustments to address substantial disadvantages faced by disabled individuals, when compared to non-disabled individuals
 - ▶ This applies where you know, or can reasonably be expected to know, that the candidate is disabled.
 - ▶ In the Interview invitation you should ask candidates to identify whether they need **reasonable adjustments** to enable them to have a fair interview.
- ▶ If someone feels that you have discriminated against them during the recruitment process they have 6 months to make a claim against you.

Equality Act 2010 – Age Discrimination

The Equality Act 2010 says that you must not discriminate against people because of their age, whether young or old.

- ▶ There are some exclusions to the act however:
 - ▶ If belonging to a particular age group is essential for the job: this is called an occupational requirement, for example, a film company making a film of Oliver Twist may lawfully hire a young boy to play Oliver
 - ▶ If you are taking positive action to encourage or develop people in an age group that is under-represented or disadvantaged in a role or activity within your organisation
 - ▶ You have a compulsory retirement age that you can clearly justify in respect of particular roles: this is known as objective justification, for example fire fighters, air traffic controllers and soldiers



Equality Act 2010 – Age Discrimination (Recruitment)

- ▶ Age discrimination can happen at any time during the hiring process - from the very beginning of working out what is required of an applicant, through to drafting the job application form, advertising the job and using social media to do this, the interview process and through to offering the job.
- ▶ Some examples of age discrimination are:
 - ▶ Asking for a specific number of years' experience rather than simply detailing the level of experience someone needs
 - ▶ Asking for Specific qualifications rather than accepting equivalent qualifications/experience (unless the role must have a specific degree to fulfil the role)
 - ▶ Advertising in places only one age group tend to use, such as social media. You should ensure your advert can easily be seen by all age groups
 - ▶ Using buzz words such as Youthful, Mature, Dynamic which indicate you are looking for a specific age group

Equality Act - Disability Discrimination

Disability discrimination is when you treat someone less well or put them at a disadvantage for a reason that relates to their disability

- ▶ Under the Equality Act a disability means a physical or a mental condition which has a substantial and long-term impact on a person's ability to do normal day to day activities. It should have lasted or be expected to last at least one year.
- ▶ It covers progressive conditions like HIV, cancer and multiple sclerosis as soon as the person is diagnosed with a progressive condition
- ▶ People are also covered by the Equality Act if they had a disability in the past but recovered, and it has now returned.
- ▶ This means that you should not refuse to employ someone who has a disability if you can put reasonable adjustments in place to allow them to work (More on reasonable adjustments on the next page)



Equality Act - Disability Discrimination

- ▶ It is always lawful to treat a disabled person more favourably than a non-disabled person
- ▶ You can actively seek to recruit someone who is disabled if it can be justified under the following reasons:
 - ▶ where having a particular disability is essential for the job
 - ▶ where an organisation is taking positive action to encourage or develop people with a particular disability
- ▶ What you cannot do during recruitment:
 - ▶ Ask health questions designed to screen out disabled job applicants in the application form
 - ▶ Ask job applicants about their health or disability until they have been offered a job. If the candidate discloses a medical condition, you can only explore what reasonable adjustments will need to enable them to fulfil the role.
- ▶ If you fail to make reasonable adjustments, then this amounts to disability discrimination. This can be at any stage of the recruitment process or during employment. Reasonable adjustments could be:
 - ▶ Removing physical or communication barriers (installing ramps, hearing loop systems)
 - ▶ Adjusting the job description slightly to accommodate them
 - ▶ Not requiring a driving license if the role requires some travel which can easily be undertaken on public transport and not significantly affect the amount of time the person takes to travel between destinations
 - ▶ Note that the word reasonable is important here. If the cost to implement these things is too high compared to the size of your organisation, then it is not a reasonable adjustment.
 - ▶ The employee may be able to get financial support for any adjustments through the Government's Access to Work Scheme

Equality Act – Gender reassignment

- ▶ The Equality Act 2010 says that you must not discriminate against someone because they are transsexual, which is when their gender identity is different from the gender assigned to them when they were born.
- ▶ Many people who are transsexual prefer the term transgender, trans-male, trans-female, however you must address them as Male or Female depending on what gender they identify as
- ▶ The person can be at any stage of the gender transition process, from proposing to reassign their gender, to undergoing a process to reassign their gender, or having completed it. This is because changing physiological or other gender attributes is a personal process rather than a medical one.
- ▶ Exemptions
 - ▶ Positive action to encourage or develop transsexual people in the workplace where they are currently under-represented or disadvantaged
 - ▶ Or where the specific circumstances fall under the exemptions in the equality act, some sporting events, some single sex services such as a womens refuge.

Equality Act – Marriage and Civil Partnerships

- The Equality Act says you must not discriminate against anyone in employment because they are married or in a civil partnership
- This is regardless of whether the couple is male and female, or both are of the same sex.
- This doesn't cover people who are:
 - single
 - living with someone as a couple but not married,
 - engaged to be married but not married yet
 - Divorced, or a person whose civil partnership has been dissolved
- The harassment provisions that apply to other protected characteristics don't apply to Marriage and Civil partnerships, and should be tackled under your company grievance procedure
- The exception to this is where there is a real and lawful reason to discriminate, such as when recruiting a Catholic priest

Equality Act - Pregnancy and Maternity

- ▶ Employees are protected against unfavourable treatment because of pregnancy or maternity.
- ▶ This means an employee or job applicant must not be disadvantaged because of their pregnancy or maternity leave, which includes where the organisations policies and procedures discriminate against them.
- ▶ Recruitment NO's!
 - ▶ If candidate is visibly pregnant at interview stage, you must not ask her anything about the pregnancy. She can tell you about it, but you cannot let it influence your decision to recruit her.
 - ▶ You must never ask anyone if they are planning on starting a family.
 - ▶ Not offering the job because of pregnancy - If a candidate is the most qualified to do the role, then you must offer them the job if they are pregnant. It is unlawful if you do not. You would need to arrange temporary cover for their maternity leave instead.
 - ▶ Changing the terms of the role - You have to offer the job on the original terms that it was advertised. You cannot make the job a fixed term or temporary position in order to re-recruit for her role
 - ▶ If the woman tells you that she is pregnant after you have offered her the job, but before starting work, you cannot withdraw the job offer
 - ▶ If the woman has already started working for you, you cannot dismiss her for not telling you about being pregnant prior to joining.



Equality Act - Race

- The Equality Act 2010 says you must not discriminate against others because of their race
- Race can mean:
 - Colour
 - Nationality (including citizenship)
 - ethnic or national origins, which may not be the same as their current nationality (For example, they may have Chinese national origins and be living in Britain with a British passport)
 - ethnic and racial groups - this means a group of people who all share the same protected characteristic of ethnicity or race (A racial group can be made up of two or more distinct racial groups, for example Black Britons, British Asians, British Sikhs, etc).

People can be discriminated against because of one or more aspects of their race, for example people born in Britain to Jamaican parents could be discriminated against because they are British citizens, or because of their Jamaican national origins.

- Exceptions to the Act
 - Where it is an occupational requirement to be a specific race. E.g, a domestic violence organisation for South Asian women, may need a South Asian woman to make the clients feel at ease.
 - Positive discrimination, to encourage or develop those people of a particular race who are under-represented or disadvantaged in your workplace.

Equality Act – Religion or belief

- ▶ The Equality Act 2010 says you must not discriminate against others because of their religion or belief system
- ▶ Religion or belief can mean any religion (Christianity, Judaism, Islam or Buddhism, smaller religions like Rastafarianism or Paganism, as long as it has a clear structure and belief system)
- ▶ It also covers non-belief or a lack of religion or belief.
- ▶ It covers philosophical beliefs that must be genuine and more than an opinion. It must be clear, logical, convincing, serious and apply to an important aspect of human life or behaviour.
- ▶ The Equality Act also says that a belief must also be worthy of respect in a democratic society and not affect other people's fundamental rights.
- ▶ Direct Discrimination can occur with people of the same faith or belief for example a Christian manager employing a Hindu applicant rather than a Christian applicant because they believe their clients would prefer a Hindu.
- ▶ Indirect Discrimination for example Not allowing breaks outside of lunch time to Muslim employees who need to pray 5 times a day, not agreeing annual leave for religious holidays without a valid business reason etc
- ▶ Exceptions to the Act
 - ▶ If belonging to a particular faith or denomination is essential to do the job. This is classed as an occupational requirement (Schedule 9 part 1 of the Equality Act 2010)
 - ▶ If you are taking positive action to encourage or develop a group of people with a religion or belief that is under-represented or disadvantaged in a role or activity
 - ▶ an organisation with an ethos based on a particular religion or belief, where the religion or belief is required to understand the role

Rules for recruiting specific faiths

- ▶ Schedule 9 (part 1) of the Equality act states that in certain circumstances it is lawful for an employer to apply a requirement to have a particular protected characteristic if due to the nature or context of the work:
 - ▶ there is an occupational requirement
 - ▶ the application of the requirement is a proportionate means of achieving a legitimate aim and the applicant does not meet the requirement
 - ▶ or (except in the case of sex) the employer has reasonable grounds for not being satisfied that the person meets the requirement
 - ▶ There must be a link between the requirement to be a particular faith and the role that you are advertising.

If you are unsure, please contact the HR Advisor who will be able to advise you

Equality Act – Sex

- ▶ The Equality Act 2010 says you must not discriminate against others because of their sex
- ▶ Sex can mean either male or female, or a group of people like men or boys, or women or girls.
- ▶ Exclusions
 - ▶ Being a particular sex is a requirement of the job for example a female room attendant for female bathrooms
 - ▶ Positive action to encourage or develop a particular sex that is under-represented or disadvantaged in a role or activity
 - ▶ Certain religious orders
 - ▶ Armed forces and sporting events



Equality Act – Sexual orientation

- ▶ The Equality Act 2010 says you must not discriminate against others because of their actual or perceived sexual orientation, or because they are connected to someone who has a particular sexual orientation
- ▶ This includes how people choose to express their sexual orientation, such as through their appearance or the places they visit.
- ▶ Exclusions to the Act
 - Belonging to a particular sexual orientation is essential for a job.
 - Positive action to encourage or develop gay, lesbian or bisexual people to participate in a role or activity
 - the treatment falls within one of the exceptions that permits people to be treated differently based on their sexual orientation.
 - Religion or belief
 - a religious or belief organisation can exclude persons of a particular sexual orientation from its membership or participation in its activities, or its provision of goods, facilities and services.
 - This only applies to organisations whose purpose is to practice, promote or teach a religion or belief, whose sole or main purpose is not commercial.
 - The restrictions they impose must be necessary either to comply with the doctrine of the organisation, or to avoid conflict with the 'strongly held religious convictions' of the religion's followers

The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000

- ▶ The Regulations make it unlawful for part-time workers to be treated less favourably than full-time workers which means they should:
 - ▶ receive the same hourly rate and overtime rate as full-time employees (A lower hourly rate should only be given if it can be justified on objective grounds)
 - ▶ not be excluded from training
 - ▶ have the same entitlement as full-timers to maternity / parental leave and annual leave on a pro-rata basis.
 - ▶ Have the same entitlements to pensions, perks and sick pay on a pro rata basis
- ▶ This regulation applies to all workers and all businesses, including small businesses
- ▶ The exception to this is where less favourable treatment of a part-time worker can be justified on objective grounds if it can be shown it is necessary and appropriate to achieve a legitimate business objective.

Immigration Act 2016

- The Immigration Act 2016 introduced new sanctions on illegal working, which prevents illegal migrants accessing services and introduced new measures to enforce immigration laws.
 - It introduced new sanctions on illegal workers and rogue employers which means that employers who hire illegal migrants and the workers themselves face criminal sanctions.
 - It provides better co-ordination of regulators that enforce workers' rights such as investigations into work-places such as restaurants and off licenses
 - It prevents illegal migrants in the UK from accessing housing, driving licenses and bank accounts (Migrants who do not have permission to be in the UK can have certain privileges revoked, their bank accounts can be frozen, and their driver's license can be seized).
 - It also introduced new measures to make it easier to enforce immigration laws and remove illegal migrants (Deport first, then appeal later. Previously this was only for criminals)

Recruiting Foreign Nationals

- ▶ Right to work checks **must** be carried out to ensure all employees have the right to work in the UK
- ▶ They must be done on or before the employee's first day of work with you
- ▶ They can be carried out as:
 - ▶ Documentary Checks
 - ▶ For a standard documentary check, documents need to be the original and you will need to check that they look and feel authentic and are a true representation of the person who you are employing. Speak to the HR Advisor if you are unsure which documents you need to see.
 - ▶ Online Checks
 - ▶ The Home Office's Right to Work Checking portal can be used for certain applicants.
 - ▶ Individuals can't be forced to use the online check if they do not wish to do so. Instead, a standard documentary check would be used in these circumstances.
- ▶ The civil penalty if you do not perform right to work checks is up to £20,000 per illegal worker
- ▶ it is a criminal offense if you employ someone who you knew or had reasonable knowledge to suggest that the person didn't have the right to work in the UK.
- ▶ Right to work checks must be applied to all candidates to avoid discrimination, even if you "know" the person is British, you still have to do the check
- ▶ The UKVI is the department for UK Visa's and Immigration. If you have a migrant worker apply for a post with you, please speak to the HR Advisor who will be able to offer guidance on what to do.

Equal Pay Law



- Equal pay law is covered by the Equality Act
- This means someone must not get less pay compared to someone who is the opposite sex and doing “equal work” for the same employer
- Equal work is work that is:
 - either the exact same job, or a job that is very similar in tasks and responsibilities (Some jobs can be classed as equal work, even if the roles seem different. For example, a clerical job and a warehouse job might be classed as equal work)
 - where the job is not similar but is of equivalent or equal value. This could be because the level of skill, training, responsibility or demands of the working conditions are of equal value
- By law, employers must not pay an employee less, or give them terms and conditions that put them at a disadvantage, because of their disability, race, religion, sexual orientation or another 'protected characteristic'.
- Equal pay law applies to both pay and terms and conditions of employment
- Differences in pay and other terms and conditions might be allowed in some circumstances. For example, it might be possible for someone to be paid more than someone of the opposite sex who does similar work because:
 - they're better qualified, if their skills are crucial to the job and hard to recruit
 - of where they are located – for example, in London where the cost of living is higher
 - they do night shifts, and the employer can prove that they can only cover night shifts by paying staff more

The Rehabilitation of Offenders Act (1974)

- ▶ The Rehabilitation of Offenders Act (1974) is a piece of legislation introduced to help ex-offenders re-enter the workforce. It enables some minor offences to become 'spent', or disregarded, after a set rehabilitation period has been completed. Generally, once a conviction is spent, a candidate can legally 'lie' about their past convictions by answering 'no' to a question about convictions.
- ▶ Spent convictions are previous convictions which can now be ignored. Once the offence has been spent, the offender is considered fully rehabilitated, and treated as if they have never been cautioned or committed a crime. The time length for each convictions are:
 - ▶ Simple/youth caution – Immediately spent
 - ▶ Conditional caution – 3 months
 - ▶ Prison sentences under 6 months – Length of sentence + 2 years
 - ▶ More than 6 months and under 30 months – Length of sentence + 4 years
 - ▶ More than 30 months and under 4 years – Length of sentence + 7 years
 - ▶ More than 4 years – Never
- ▶ There are some roles that are exempt from this act, so the candidate must disclose their criminal history regardless whether their conviction is spent, such as solicitors, teachers, accountants, locksmiths, social workers, NHS workers and many more. Lists can be found online.

GDPR in recruitment



- Starting from May 2018, organisations that collect personal data of EU residents must become compliant with the General Data Protection Regulation (GDPR.) The GDPR is a new law that aims to strengthen people's rights to privacy and protect their personal data. GDPR places the burden of ensuring compliance on organisations, especially when recruiting as you are collecting candidates' personal data in their application form
- If you don't follow the GDPR rules, then you risk being fined up to 4% of your revenue or €20 million, whichever is greater
- What does this mean in practice?
 - Application forms
 - You should only use the candidate data for a "specified, explicit and legitimate purpose, ie to shortlist and/or interview the candidate
 - You need to be transparent about what you do with the data on the application form. There is a privacy statement at the end of the application form which details this information
 - By the candidate signing the last page of the application form this is their agreement for you to use their data.
 - You should not keep the application forms on file for longer than is necessary – for recruitment this is 6 months, which is the maximum length of time a candidate could take you to a tribunal if they feel that they were not offered a job with you because of a protected characteristic. Once the 6 months have passed, all application forms should be shredded and deleted from your email and network systems.
 - Accountability - You must assume responsibility for compliance. And if needed, in an audit for example, be able to prove that you have operated under the GDPR law