

Equality Act 2010 - Legislative Terminologies & Employment Changes

The following terminologies are from anti discrimination legislations:

Compliance notice: The Equality and Human Rights Commission (EHRC) can, if a public authority does not comply with its general or specific duties, serve a compliance notice on that authority under section 32 of the Equality Act 2006.

Direct discrimination: is less favourable treatment because of a person's protected characteristic. For the first time, this can also occur if a disabled person is treated unfavourably because of something arising in consequence of their disability. However, it is lawful to treat a disable person more favourably.

Equality Framework for Local Government (EFLG) is a framework, produced by the Local Government Association, which local authorities can use to assess their performance on equalities and their statutory duties of the Equality Act.

Engagement: the range of ways in which public authorities interact with their service users, their employees, and stakeholders over and above what they do in providing services or within a formal employment relationship. Engagement can also be an informal and instantaneous process, which is more conducive to the speedy pace of developments in the Council.

Equality Act 2006: established the Equality and Human Rights Commission, a non-departmental public body, on October 2007. It has the powers and responsibility for the promotion and enforcement of equality and non-discrimination laws.

Equality Act 2010: brings the majority of existing equality legislation into one place so that it is easier to understand and use. It also strengthens the legislation in some areas.

Equality analysis (EA): is a requirement placed upon public authorities to analyse the potential effect of its policies and practices on different protected groups and how they further the aims of the general duty.

Equality information: is qualitative and quantitative information held or collected about people with protected characteristics that will help public authorities to assess the impact of their decisions and policies on them, and to ensure it is complying with the equality duty.

Equality objectives: a requirement placed upon public authorities to prepare, set and publish equality objectives that it deems reasonable and achievable to meet one or more aims of the general equality duty. Public authorities will also be required to detail and publish any engagement that it undertook in developing these objectives.

Equality outcome: the results that individuals or groups actually achieve and are able to benefit from. For example equal pay between men and women.

Fostering good relations: having due regard to the need to fostering good relations involves having due regard, in particular, to the need to tackle prejudice and promote understanding between people who share a protected characteristic and those who do not.

Function: the full range of a public authority's activities, duties and powers.

Harassment: Unwanted conduct related to a protected characteristic that has the purpose or effect of violating a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment. It may also involve unwanted conduct of a sexual nature or be related to gender reassignment or sex.

NB: Employees can now complain of harassment even if it is not directed at them, if they can demonstrate that it creates an offensive environment for them.

Indirect discrimination: is when a provision, criterion or practice is applied to all, but puts people with a particular way that creates disproportionate disadvantage for a person with a protected characteristic as compared to those who do not share that characteristic. This is lawful if it is a proportionate means of achieving a legitimate aim. It now applies to disabled people.

Judicial review: is a claim that has been submitted to the High Court asking for a review on the way a public authority or certain other bodies carrying out public functions made a decision.

Mitigation: is a measure put in place that lessens the negative effects of a policy or policies on protected groups. For example, delivering a service by telephone alone may cause problems for those with a hearing impairment or language barrier. This could be mitigated by using a minicom or telephone interpreting services.

Positive action: lawful actions that seeks to alleviate disadvantages experienced by people who share a particular protected characteristic, or to meet their different needs (for example, providing mentoring to encourage staff from underrepresented groups to apply for promotion).

Proportionality: the weight given to equality should be proportionate to its relevance to a particular function. This may mean giving greater consideration and resources to functions or policies that have the most effect on the public or on employees.

Public authority: are organisations such as the NHS, Fire Service, Local Government, Criminal Justice, Police, Education bodies maintained by an English local authority, etc. It also applies to other organisations (i.e. private bodies or voluntary organisations) which are carrying out public functions on behalf of a public authority.

Public functions: is as a function that is of a public nature for the purposes of the Human Rights Act 1998.

Reasonable adjustment: is making adjustments to ones functions (i.e. policies, practices or procedures, premises, and the provision of auxiliary aids or services) so that disabled people are not disadvantaged by the way in which those functions are carried out.

Relevance: is whether a function or policy affects or is relevant to a small or large number of people, as members of the public, and as employees of the authority. Some functions may be more relevant to some protected groups than to others, and to one or more of the three elements of the general equality duty.

Stakeholders: people who are interested in an issue or subject and are likely to be affected by any decision relating to it and/or have responsibilities relating to it.

Trans: The terms 'trans people' and 'transgender people' are both often used as umbrella terms for people whose gender identity and/or gender expression differs from their sex at birth sex; including transsexual people; transvestite/cross-dressing people, androgyny/polygender people (those who have non-binary gender identities and do not identify as male or female), and others who define as gender variant.

Transgender: An umbrella term for people whose gender identity and/or gender expression differs from their birth sex. They may or may not seek to undergo gender reassignment hormonal treatment/surgery. This terminology is often used interchangeably with trans.

Transsexual: is a person who intends to undergo, is undergoing or has undergone gender reassignment (which may or may not involve hormone therapy or surgery). Transsexual people have the protected characteristic of gender reassignment under the Equality Act 2010.

Victimisation: is when someone is treated badly because they have made a complaint of discrimination, or have supported someone else who has made a complaint of discrimination/victimisation under the Equality Act 2010.

The following are new types of direct discrimination & harassment introduced by the Equality Act 2010:

- a) **Discrimination by Association** is when a person discriminates against another person because he/she is associated with a person who possesses a protected characteristic such as age, disability (e.g. a carer of disabled person), gender reassignment and sex as well as race, religion and belief and sexual orientation.
- b) **Discrimination by Perception** is when others treats someone less favourably, because others mistakenly thinks someone has a protected characteristic (e.g. wrongly thought to be gay or looks older/younger than their actual age)
- c) **Harassment by Third Party (section s.26 (1))** makes employers potentially liable for harassment of their employees by third parties (i.e. customers or clients) who are not employees of their company/organisation. This will involve arguing that the employer was aware that this harassment had taken place and did not take any action to address such conduct directed at a person with a protected characteristic, which has caused a hostile, intimidating or degrading environment.

Further basic information on discrimination can be obtained by clicking on this hyperlink by ACAS:

<http://www.acas.org.uk/media/pdf/d/8/Equality-and-discrimination-understand-the-basics.pdf>

Employment Rights (section 60)

Employers are restricted from asking job applicants questions about their health and or disability at a short-listing or interview stage. Some questions are permitted, for example asking an applicant whether reasonable adjustments need to be made to facilitate the recruitment process, or whether the applicant will be able to carry out a particular task intrinsic to the work. Having offered the candidate the job, employers will be able to ask about sickness after the event.

Genuine Occupational Requirement (Schedule 9, part 1) applies to all protect characteristics.

