

HR Performance

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HR Performance: January 2011 Article for IAM manager



The following article first appeared in the January 2011 edition of the manager Magazine which is the British Journal of Administrative Management.

James Turner is the Managing Director of HR Consultancy The Performance Group Limited and has over 25 years commercial HR experience working with National and International Companies in designing developmental; training; recruitment and HR strategic solutions. He works across more than a dozen different business sectors including sports, substance misuse, education, retail, manufacturing, catering, professional bodies & institutes, as well national and local government. Clients include every premiership football clubs community sports team as well as a diverse range of small and medium sized businesses through to billion pound turnover organisations.

James will now be writing a regular feature for manager offering timely and practical advice about impending employment legislation and issues affecting all businesses.

The Single Equality Act came into effect on 1st October 2010 and replaces previous legislation covering areas of discrimination. This new legislation encompasses all the groups that were previously protected but provides additional protection for characteristic not previously covered.

What is a Protected Characteristic? Under this new legislation, direct discrimination is defined as less favourable treatment of a person because of protected characteristics rather than the discrimination terminology previously used. Therefore, in simple terms, a person who may have complained of racial discrimination previously would now complain that they had been treated less favourably because of their race i.e. a person's race is a protected characteristic about them.

Types of Discrimination Covered by the Equality Act

- * **Direct Discrimination** is when a person is treated less favourably than another person because of a protected characteristic.
- * **Discrimination by Association** happens when direct discrimination occurs against another person because they associate with someone who possesses a protected characteristic.
- * **Discrimination by Perception** is when direct discrimination takes place against a person because others think they possess a protected characteristic.
- * **Indirect Discrimination** is where a rule or policy that applies to everyone disadvantages a particular protected characteristic.
- * **Harassment** is a complaint made by an employee about behaviour they find offensive regardless of whether that behaviour was directed at them.
- * **Harassment** by a Third Party makes employers potentially liable for harassment of their employees by people they don't employ.
- * **Victimisation** is where a person is treated badly because they have made or supported a complaint or grievance relevant to the Act

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Under the legislation there are nine protected characteristic. Whilst most employers will hopefully now be adept at not making mistakes with all the key areas of discrimination that have been in place previously, it will be the new and extended areas that will cause most problems so I will try to sum these up as succinctly as possible. **There are nine protected characteristics as follows...**

- 1. Age:** Now includes discrimination by association and harassment – and it is still lawful to have a default retirement age of 65 – until April 2011 anyway!
- 2. Disability:** New definitions and changes which include discrimination by association, by perception and indirect, as well as harassment by a third party.
- 3. Gender Reassignment:** New definition and one which specifically no longer requires the person to be under medical supervision to be protected. It is also unlawful to treat transsexual people less favourably when they are absent from work because they are ill or injured. It now offers protection as a result of discrimination by association, by perception and indirect, as well as harassment by a third party.
- 4. Marriage & Civil Partnership:** No changes - but still no protection for single people!
- 5. Pregnancy & Maternity:** No changes and covers the period of pregnancy and any statutory maternity leave.
- 6. Race:** Encompasses colour, nationality and ethnic or national origins and now includes protection against harassment by a third party.
- 7. Religion or Belief:** Now includes protection against harassment by a third party and this protected characteristic includes any religion, as well as a lack of religion.
- 8. Sex:** Now includes protection from discrimination by association and perception and protects both men and women equally.
- 9. Sexual Orientation:** Protects bisexual, gay, heterosexual and lesbian people. It also offers protection from harassment by a third party.

Some key points that may need action by employers to comply with the new legislation:

A. There are now only limited circumstances when asking pre-employment health-related questions are lawful. *This will mean that applications form will need to be reviewed to potentially remove health questions and those relating to sickness and attendance where they would fall foul of the new legislation.*

B. It is now unlawful to prevent or restrict employees from discussing their pay where those discussions are to identify pay differences related to protected characteristics. It is acceptable to require confidentiality of pay rates outside of the workplace e.g. with regard to a competitor organisation. *You are urged to review policies and amend where necessary clauses about pay secrecy.*

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C. Because of the new definition relating to gender reassignment it is possible that sickness and absence polices will be still be written so that they treat this group of employees less favourably. *Review this policy and amend as required by the Act.*

D. *Finally, many Employee Handbooks and Contracts of Employment will refer to anti-discriminatory behaviours and these will now need to encompass all elements of the new Equality Act - as will your Equal Opportunities Statement.*

ACAS have a superb electronic publication which goes into more detail about this important new piece of legislation with many practical examples. If you would like to receive this free publication please send an email to James using the email address on the website.

James can be contacted by visiting www.tpgl.co.uk or calling 0845 880 2255

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