

THE EQUALITY ACT 2010

Introduction

This bulletin should be read with EQA/003 that provided representatives with information about the historical development of discrimination law and the provisions then planned for the Equality Act 2010.

Following the general election the newly formed coalition government became responsible for determining which of the original Labour provisions would be brought into force on 1 October 2010, which would be dropped or which are subject to further consideration.

Not immediately enforced

The coalition government has decided not to bring the socio-economic duty into operation and therefore there will be no extension of protection on the grounds of social disadvantage.

The proposed provisions on dual discrimination, gender pay reporting requirements and positive action in recruitment and promotion are to be subject to further consideration before decisions are made about whether they are brought into force.

Protected Characteristics

As detailed in EQA/003 the protected characteristics are:

- ❑ Age
- ❑ Disability
- ❑ Gender reassignment

- ❑ Marriage and Civil Partnership
- ❑ Pregnancy and maternity
- ❑ Race
- ❑ Religion or belief
- ❑ Sex
- ❑ Sexual orientation

Future reps' bulletins will expand on the principles associated with each of these characteristics.

Generally speaking all of the above characteristics attract protection against the four types of discrimination explained fully in EQA/003, being:

- direct discrimination
- indirect discrimination
- harassment
- victimisation.

Harassment by third parties – eg customers or contractors – now covers all protected characteristics and is not solely on the grounds of sex.

Disability discrimination has an additional element – discrimination arising from disability. There are other special disability provisions which will be explained in a later bulletin.

Remedies

A successful employment tribunal claim has always meant that an award of financial compensation may be awarded. While the level of compensation is unlikely ever to be of a life changing sum – despite the headline grabbing assertions of the

press - there may be considerable sums involved.

Any award will make good any actual financial loss that has resulted from the discriminatory act. It can also include an amount for injury to feelings, but the tribunal is bound by limits set in higher courts. If a personal injury has been caused by the discrimination then costs associated with that injury can be reimbursed.

Employment tribunals (ET) have always had the power to recommend actions to the employer in relation to the individual claimant.

The Equality Act has extended that power and ETs can, for discriminatory events that occurred after 1 October 2010, now make company-wide recommendations to ensure other employees are not subjected to other acts of discrimination.

A company that has been the subject of such a recommendation but has not followed it and is again sued may be penalised with an additional award.

Scope of the Equality Act 2010

All workers are covered by the Act, not just employees.

The Act applies to all employers irrespective of their size or industry.

Other organisations can discriminate and therefore the provisions apply to them equally. These include:

- trade unions
- providers of goods, facilities and services to the public
- organisations that provide premises
- bodies conferring professional and trade qualifications
- training providers
- employment agencies

- further and higher education institutions
- public authorities in the exercise of their functions.

Since trade unions are specifically identified it is important that all TSSA representatives bear the provisions of the Equality Act in mind in their dealings with all members.

Qualifying conditions

There is no length of service required for an employee or worker – or indeed a trade union member - to bring a claim for unlawful discrimination to an ET.

Time limits

With the exception of equal pay claims, the time limit for making a claim for any type of discrimination is calendar three months, less one day from the last discriminatory act. If no claim is made within that period it is only in very exceptional circumstances that a claim can be pursued.

TSSA procedures for claims

A representative who believes a member has suffered a detriment because of their protected status must advise their regional organiser or senior regional organiser of the facts of the case and outline what type of discrimination they believe has occurred. This should be done at an early stage because of the time limit detailed above.

After forming an initial judgement that the case needs further evaluation the file will be referred to the union's employment rights adviser (ERA) for a more thorough examination of the case and of its prospects of success at an ET.

In cases where the prospects of success are believed to be reasonable

the ERA will arrange for a referral to our solicitors.

In cases where the prospects of success are poor the ERA will provide a full explanation for the decision not to refer the matter to solicitors. In such circumstances the method for making a final appeal to the executive committee will be explained, as will the relevant time limits for making an ET claim in case the individual member wishes to represent themselves or to appoint an alternative representative.

Further Information

More information on this and other equality matters is available from:

- Kerry Abel, Equality and Diversity Organiser, at abelk@tssa.org.uk or 020 7529 8031
- Val Stansfield, Employment Rights Adviser at stansfieldV@tssa.org.uk or 020 7529 8046