

Anti-Discrimination Legislation

CHAPTER 11



CS449-Professional Issues in Information Technology

Chapter Outcome

After reading this chapter you should understand:

- ▶ *in general terms what anti-discrimination laws are trying to do and how they will affect you as an information systems engineer;*
- ▶ *why your employer has codes of practice that you are expected to follow in order to avoid breaching the legislation;*
- ▶ *that if you become involved with discrimination issues at any deeper level, you should seek advice from a professional in the field, sooner rather than later.*

Introduction

About Three hundred years ago, the laws of England contained many specific laws imposing discrimination on grounds of gender, religion and wealth.



- 1: To vote, you had to be male and own property
- 2: In order to be admitted in the universities, you had to be male and a member of the England
- 3: If a woman marries all her personal property became the property of the husband

From 1700 to the 1950s, almost all these explicit examples of discrimination in the law were slowly abolished.

Introduction

With a very few exceptions, men and women, whatever their religion and however rich or poor they might be, were treated by the law the same way.

This did not, however, eliminate discrimination. There were golf clubs that would not admit Jews.

Medical schools were very reluctant to admit female students, and in many professions, it was difficult to enter for anyone who was not wealthy.

Introduction

In the past 65 years steady stream of legislation were passed making such discrimination unlawful.

It gave women the right to vote, but did nothing to ensure that they are treated equal with men in all matters of employment, or getting a mortgage.

Furthermore, even if effective legislation can be framed itself it is not enough; time is required to bring about the changes of attitude that are necessary if discrimination is to be eliminated.

Introduction....

Information systems engineers need to have an appreciation of anti-discrimination legislation for two reasons.

First, as professionals who may work in managerial and supervisory positions are required by law to prevent the people they supervise from behaving in a discriminatory manner and to avoid such behavior themselves.

Secondly, in order to avoid certain kinds of discrimination particularly on grounds of disability, shouldn't effect the way in which information systems are designed.

WHAT IS DISCRIMINATION?

Discrimination means treating one person or one group of people less favorably than another on the grounds of personal characteristics. The law in Europe, the USA and other countries prohibits discrimination on grounds of:

- ▶ gender;
- ▶ race, color, ethnic origin;
- ▶ nationality;
- ▶ disability;
- ▶ religion;
- ▶ age.



WHAT IS DISCRIMINATION?....

Much of the law focus on discrimination issues relates to employment and related matters. However, the law relates to discrimination in other contexts as well.

Discrimination can be direct or indirect. Direct discrimination is when a person is treated less favorably than another because of their gender or race, and so on.

Here are some examples that would constitute direct discrimination:

- ▶ A woman does exactly the same job as a man but is paid less than he is.

WHAT IS DISCRIMINATION?....

- ▶ A doctor refuses to treat a Chinese patient on the grounds that he has no room for any more patients but then accepts an English patient.
- ▶ A company advertises for a secretary and automatically rejects all the male applicants.
- ▶ A company advertises for a mature woman to act as the Chief Executive's personal assistant or a strong young man to work as a trainee zoo-keeper'.

WHAT IS DISCRIMINATION?....

Industrial tribunals have the view that racial or sexual harassment is direct discrimination.

Harassment is defined as 'engaging in unwanted conduct which will violate another person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment'.

However, harassment is, anyway, unlawful under the Harassment Act 1996.

Indirect discrimination occurs when an employer imposes conditions that apply to all employees or all applicants but have a disproportionate effect on one group.

WHAT IS DISCRIMINATION?....

- ▶ An employer insisting that all employees work on Saturdays. This might be indirect discrimination against those who practice Judaism, since Saturday is their Sabbath. This would be discrimination on grounds of religion but, since the practitioners of Judaism are overwhelmingly of the Jewish race, it might also be regarded as racial discrimination.

Where it is associated with jobs, indirect discrimination can be justified if the employer proves that there is a genuine occupational requirement that the offending condition be satisfied.

WHAT IS DISCRIMINATION?....

Here are a few examples that might constitute indirect discrimination:

- ▶ Advertising a job with the requirement that applicants must be at least 180 cm tall. In the UK, there are many men over 180 cm tall but very few women. The result is that few women can apply for the job.
- ▶ When allocating public housing, a local authority has a policy of giving priority to the children of existing tenants.

DISCRIMINATION ON GROUNDS OF GENDER

The position of women workers in the 1960s was worst, there would either be separate, lower scales for women or there would be additional allowances for men, especially for married men.

Female employee who got married might lose her job or might be transferred to the 'temporary' staff, making her ineligible for bonuses or additional holiday entitlement for long service.

Women who had babies, would have to resign from work.

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Other than few professions such as nursing and teaching, promotions were very unlikely and there were few women in senior positions.

It was very difficult for women to gain entry to academic and professional courses in the fields of medicine or the law that would have qualified them for senior positions.

Discrimination was also present outside the employment field. Some hotels would refuse rooms to unaccompanied women.

Mortgage companies had much stricter criteria for a single woman than to a single man.

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This situation was dramatically changed by two Acts of Parliament in UK: the Equal Pay Act of 1970 and the gender Discrimination Act of 1975.

Although these acts have been repeatedly amended to extend their scope and to clarify what constitutes gender discrimination, they form the cornerstone of the present position.

The most recent amendment was the gender Discrimination Regulations 2001. The 1975 Act has been used as a model, and is summarized as follows:

DISCRIMINATION ON GROUNDS OF GENDER....

Employment

It is unlawful for an employer to discriminate against a person on grounds of gender or marital status :

- ▶ in regard to opportunities for promotion, transfer or training or to any other benefits.
- ▶ in regard to dismissal or victimization for bringing a complaint of gender discrimination.
- ▶ In regard to a trade union, a professional body, an employment agency or a provider of vocational training.

Contract workers are covered by the legislation.

DISCRIMINATION ON GROUNDS OF GENDER....

Education

It is unlawful for a provider of education (public or private, school, college or university) to discriminate against a person on the basis of their gender, in offering admission to the establishment or to specific courses, and in providing access to the other benefits and facilities it offers.

The main exceptions to this are that allowance is made for single-gender establishments and that provision for physical education may be different for the two genders. (Bacha posh + Roman)

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Provision of services

It is unlawful to discriminate on grounds of gender:

- ▶ In the provision of goods, facilities or services. For example in accommodation in a hotel, facilities for entertainment, recreation or refreshment, banking and insurance services, and so on.
- ▶ in selling or letting property. The main exception to these provisions are for charities that have been founded with the purpose of helping a specific group of people who are all of the same gender, for example, single mothers.

DISCRIMINATION ON GROUNDS OF GENDER....

Remedies

A person who believes that they have been discriminated against in their employment because of their gender by being refused a job, refused promotion, paid less, not given training opportunities or anything else, can bring the matter to an employment tribunal/court.

If the tribunal finds in favor of the complainant, it can award damages and make recommendations to the respondent. If the respondent fails to act on the recommendations, the amount of the damages may be increased.

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Remedies

- ▶ An individual who feels that they have been the victim of gender discrimination in other areas covered by the legislation, can take action in the civil courts for damages.
- ▶ The Equal Opportunities Commission is a government body set up to promote the cause of equality between the genders. Anyone considering a formal complaint of gender discrimination is well advised to start by consulting the Commission.

DISCRIMINATION ON RACIAL GROUNDS

The first act in the UK was the Race Relations Act 1965, which made it unlawful to discriminate on grounds of race or color by banning people from using public services or entering places such as bars, cinemas or theatres.

It made racial hatred a criminal offence by inflammatory publications or speeches. It made unlawful to refuse housing, employment or public services to people because of their ethnic background.

This act also established, the Race Relations Board, and the Community Relations Commission.

DISCRIMINATION ON RACIAL GROUNDS....

The present law based on the Race Relations Act 1976 makes it unlawful to discriminate on grounds of race, color, ethnic origin or nationality.

There is one major difference, however, that makes the implementation of racial discrimination legislation much more problematic than that of gender discrimination legislation.

The human race is divided into two genders; a person can only belong to one gender at one time; and it is clear to which gender any given person belongs.

DISCRIMINATION ON RACIAL GROUNDS....

The same is very much not true of race, color, ethnic origin or nationality. The Act attempts to define these terms but the definitions are imprecise and ambiguous.

Are the English, the Irish, the Scots and the Welsh to be regarded as different racial groups?

Is a person whose parents were Afro-Caribbean, but who was born in Cardiff to be regarded as belonging to the Welsh, British, or Afro-Caribbean racial groups, or perhaps to all three? These illustrate the difficulty of legislation in this area.

DISCRIMINATION ON GROUNDS OF DISABILITY

From 1970s governments had been encouraging the recruitment of disabled employees into the Civil Service and withholding contracts to employers who do not encourage the disabled. (Arshad Abbasi CSS Qualified)

In 1995 the Disability Discrimination Act was passed. This was followed in 2001 by the Special Educational Needs and Disability Act, which extends the provisions of the earlier act to cover education.

The Disability Rights Commission has been established, similar to the Equal Opportunities Commission and the Commission for Racial Equality.

DISCRIMINATION ON GROUNDS OF DISABILITY...

The Act makes it unlawful to treat a disabled employee or applicant less favorably because of their disability without justification. The justification must be serious. Thus it would be justified to reject a blind applicant for a job as a bus driver or a paraplegic for a job as a lifeguard.

However, the Act requires the employer to make reasonable adjustments to meet the needs of disabled employees. This could be providing a work station with special hardware and software to make it suitable for use by a partially sighted employee.

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The requirement for reasonable adjustments could be adapting information systems so that they can be used by a blind or partially sighted employee, provided this can be done at reasonable cost.

The requirement for service providers for adjustments requires that reasonable adjustments should be made to the way that services are provided over the web.

Thus the Disability Discrimination Act effect directly on information system professionals and it directly influences the way in which ISs are designed.

DISCRIMINATION ON GROUNDS OF DISABILITY...

In practice, for the ordinary information systems developer this translates into the need to make systems usable by the blind, those whose vision is impaired, those whose hearing is impaired, those suffering from lack of manual dexterity (and so unable to use a mouse, for example), and those suffering from dyslexia.

This need is most apparent, and likely to be enforced, when the system has publicly accessible web pages.

The most reasons why disabled users experienced difficulty were:

DISCRIMINATION ON GROUNDS OF DISABILITY...

- ▶ page layout was unclear and confusing;
- ▶ the navigation mechanisms were confusing and disorienting;
- ▶ there was poor contrast between the text and the background and colors were used inappropriately;
- ▶ graphics and text were too small;
- ▶ links and images were poorly labelled;
- ▶ the web pages were incompatible with the software designed to assist disabled users (screen readers, magnification software).

DISCRIMINATION ON GROUNDS OF DISABILITY...

It is striking that the first four of these, and possibly the fifth, are a source of difficulty for all web users.

Eliminating these faults would not only improve the accessibility of the web to disabled users, but would also enhance its usability for everyone.

It is clear from the report that a great deal needs to be done before there is widespread compliance with the requirements of the Disability Discrimination Act, as it applies to access to the web. The most urgent of it is on education.

DISCRIMINATION ON GROUNDS OF RELIGION

In 2000, the EU's Equal Treatment Framework Directive (No.2000/78) was issued.

It required member states to legislate to make discrimination in employment matters on grounds of disability, religion, or age unlawful.

These regulations follow the pattern established by the gender Discrimination Act 1975 and the Race Relations Act 1976.

DISCRIMINATION ON GROUNDS OF RELIGION

They differ in certain important respects, however:

- ▶ They are limited to discrimination in employment, education, and related matters, and do not address discrimination in the provision of services or accommodation.
- ▶ They explicitly make harassment unlawful, defining it as 'unwanted conduct which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.'

DISCRIMINATION ON GROUNDS OF RELIGION

They do not make the Commission for Racial Equality, responsible for promoting the implementation of the legislation nor do they create any new body for this purpose.

However, in October 2003, the government announced its plans for a single equality body for the UK to take over the responsibilities of the Equal Opportunities Commission, the Commission for Racial Equality, and the Disability Rights Commission.

DISCRIMINATION ON GROUNDS OF AGE

Regulations making it unlawful to discriminate on grounds of age.

They could, for example, mean the end of compulsory retirement ages.

This could mean that it is unlawful for employers to seek specifically to recruit new graduates. (This would be indirect age discrimination because a much smaller proportion of over-50s fall into the category of 'new graduates' than of the under-25s.)

DISCRIMINATION ON GROUNDS OF AGE

The Equal Treatment Directive is careful to be quite explicit in allowing for discrimination on the grounds of age in a number of important cases. It allows, for example:

- ▶ special treatment of different age groups in order to protect them (e.g. not allowing children under a certain age to be employed);
- ▶ different premiums for life insurance policies, depending on the age of the person at the time the policy is taken out, and different pension rates depending on the age of retirement

DISCRIMINATION ON GROUNDS OF AGE

- ▶ fixing a maximum age for recruitment based on the need for a reasonable period of employment after training and before retirement;
- ▶ fixing a minimum age, a minimum amount of professional experience or a minimum number of years with the company before a person will be regarded as eligible for a given post or eligible for certain employment benefits (e.g. additional annual leave).

AVOIDING DISCRIMINATION

In an organization of any size, it is necessary to ensure that all members of the organization are treated equally.

Even after, this organizations may have to deal with unlawful harassment from its customers or unjustified accusations of discrimination.

Effective compliance with anti-discrimination legislation in the workplace requires three things:

- ▶ a suitable written policy, well publicized, and freely and easily available;
- ▶ a training program for new and existing staff, to ensure that they are all aware of the policy and its importance;

AVOIDING DISCRIMINATION....

- ▶ effective procedures for implementing the policy.

It is a sad fact that an employer's ability to tackle a accusation of unlawful discrimination will often depend as much on their ability to demonstrate that proper procedures have been followed as on whether any discrimination took place.

The three bodies charged with responsibility for tackling discrimination (the Commission for Racial Equality, the Equal Opportunities Commission, and the Disability Rights Commission) all provide extensive guidance to employers discrimination.