

## ***The Employment Rights Act 1996, Employment Acts 2002 & 2008***

Subject to certain qualifications, employees have a number of statutory minimum rights (such as the right to a minimum wage). The main vehicle for employment legislation is the Employment Rights Act 1996 – Chapter 18. If you did not agree certain matters at the time of commencing employment, your legal rights will apply automatically. The Employment Rights Act 1996 deals with many matters such as:

- right to statement of employment
- right to pay statement
- minimum pay
- minimum holidays
- maximum working hours
- right to maternity/paternity leave.

The Employment Act 2002 amended the 1996 Act to make provision for statutory rights to paternity and adoption leave and pay. The Employment Act 2008 makes provision for the resolutions of employment dispute including compensation for financial loss, enforcement of minimum wage and of offences under the Employment Agencies Act 1973 and the right of Trade Unions to expel members due to membership of political parties.

## ***The Sex Discrimination Act***

The Sex Discrimination Act 1975 makes discrimination unlawful on the grounds of sex and marital status and, to a certain degree, gender reassignment. The Act originated out of the Equal Treatment Directive, which made provisions for equality between men and women in terms of access to employment, vocational training, promotion and other terms and conditions of work.

The Equal Opportunities Commission (EOC) has since published a Code of Practice. While this is not a legally binding document, it does give guidance on best practice in the promotion of equality of opportunity in employment, and failure to follow it may be taken into account by the courts.

The Sex Discrimination Act was amended to ensure compliance with the Equal Treatment Directive, with all changes being effective from April 2008. The definition of harassment is extended so that if, for example, a male supervisor makes disparaging comments about women, it is no longer a defence to show that he makes similar comments about men. In addition if someone witnesses sexual harassment of a colleague, they can bring a claim of harassment themselves if they felt it made their work environment intimidating.

Employer liability has also been extended to make organisations liable if they haven't taken reasonable steps to prevent harassment by a third party such as a visitor or customer.

## ***Employment Relations Act 1999 & 2004***

The 1999 Act is based on the measures proposed in the White Paper: Fairness at Work (1998), which was part of the Government's programme to replace the notion of conflict between employers and employees with the promotion of partnership.

As such it comprises changes to the law on trade union membership, to prevent discrimination by omission and the blacklisting of people on grounds of trade union membership or activities; new rights and changes in family-related employment rights, aimed at making it easier for workers to balance the demands of work and the family and a new right for workers to be accompanied in certain disciplinary and grievance hearings.

The Employment Relations Act 2004 is mainly concerned with collective labour law and trade union rights. It implements the findings of the review of the Employment Relations Act 1999, announced by the Secretary of State in July 2002, with measures to tackle the intimidation of workers during recognition and de-recognition ballots and provisions to increase the protections against the dismissal of employees taking official, lawfully organised industrial action.

## ***The Human Rights Act 1998***

The Human Rights Act 1998 covers many different types of discrimination – including some not covered by other discrimination laws. However, it can be used only when one of the other 'articles' (the specific principles) of the Act applies, such as the right to 'respect for private and family life'.

Rights under this Act can only be used against a public authority (such as the police or a local council) and not a private company. However, court decisions on discrimination will generally have to take into account what the Human Rights Act says.

The main articles within this Act are: right to life, prohibition of torture, prohibition of slavery and forced labour, right to liberty and security, right to a fair trial, no punishment without law, right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, right to marry, prohibition of discrimination, restrictions on political activity of aliens, prohibition of abuse of rights, limitation on use of restrictions on rights.



### ***The Race Relations Act 1976 and Amendment Act 2000***

When originally passed, the Race Relations Act 1976 made it unlawful to discriminate on racial grounds in relation to employment, training and education, the provision of goods, facilities and services, and certain other specified activities. The 1976 Act applied to race discrimination by public authorities in these areas, but not all functions of public authorities were covered.

The 1976 Act also made employers vicariously (explicitly) liable for acts of race discrimination committed by their employees in the course of their employment, subject to a defence that the employer took all reasonable steps to prevent the employee discriminating.

The Commission for Racial Equality (CRE) proposed that the Act should be extended to all public services and that vicarious liability should be extended to the police. The main purposes of the 2000 Act were to:

- extend further the 1976 Act in relation to public authorities, thus outlawing race discrimination in functions not previously covered
- place a duty on specified public authorities to work towards the elimination of unlawful discrimination and promote equality of opportunity and good relations between persons of different racial groups
- make Chief Officers of police vicariously liable for acts of race discrimination by police officers
- amend the exemption under the 1976 Act for acts done for the purposes of safeguarding national security.

### ***The Race Relations Act 1976 (Amendment) Regulations 2003***

The Race Relations (Amendment) Regulations 2003 modify the Race Relations Act 1976.

- Indirect discrimination on grounds of race, ethnic origin or national origin is extended to cover informal as well as formal practices.
- The concept of a 'Genuine Occupational Requirement' is introduced for situations where having a particular ethnic or national origin is a genuine requirement for the employment in question.
- The definition of discriminatory practices is extended to cover those who put particular groups at a disadvantage, rather than only those where there is proof that a disadvantage has been experienced.
- The Act is extended to give protection even after a relationship (such as employment in an organisation, or tenancy under a landlord) has finished.
- The burden of proof is shifted, meaning an alleged discriminator (such as an employer or landlord) has to prove that he or she did not commit unlawful discrimination once an initial case is made.

### ***Equality Act 2010***

From 1 October 2010, the Equality Act replaced most of the Disability Discrimination Act (DDA). However, the Disability Equality Duty in the DDA continues to apply. The Equality Act 2010 aims to protect disabled people and prevent disability discrimination. It provides legal rights for disabled people in the areas of:

- employment
- education
- access to goods, services and facilities including larger private clubs and land-based transport services
- buying and renting land or property
- functions of public bodies, such as the issuing of licences.

The Equality Act also provides rights for people not to be directly discriminated against or harassed because they have an association with a disabled person. This can apply to a carer or parent of a disabled person. Also people must not be directly discriminated against or harassed because they are wrongly perceived to be disabled.

### ***Equality Act 2006***

This amends the Sex Discrimination Act and places a statutory general duty on employers when carrying out their functions to have due regard to the need to eliminate unlawful discrimination and harassment, and also to promote equality of opportunity between men and women.

### ***Protection from Harassment Act (PHA) 1997***

Harassment is defined as any form of unwanted and unwelcome behaviour (ranging from mildly unpleasant remarks to physical violence) that causes alarm or distress by a course of conduct on more than one occasion (note that it doesn't need to be the same course of conduct).

The PHA is the main criminal legislation dealing with harassment, including stalking, racial or religious motivation and certain types of anti-social behaviour such as playing loud music. Significantly, the PHA gives emphasis to the target's perception of the harassment rather than the perpetrator's alleged intent.



### ***Employment Equality (Religion or Belief) Regulations 2003***

These regulations make it unlawful to discriminate against, harass or victimise workers because of religion or religious or similar philosophical belief. They are applicable to vocational training and all aspects of employment, recruitment and training.

### ***Employment Equality (Age) Regulations 2006***

The Employment Equality (Age) Regulations 2006 is a piece of legislation that prohibits employers from unreasonably discriminating against employees on grounds of age.

### ***Data Protection Act 1998***

Information about people can also be subject to abuse, so the Information Commissioner enforces and oversees the Data Protection Act 1998 and the Freedom of Information Act 2000. The Commissioner is a UK independent supervisory authority reporting directly to the UK Parliament. It has an international role as well as a national one.

The principles put in place by the Data Protection Act 1998 aim to ensure that information is handled properly. Data must be:

- fairly and lawfully processed
- processed for limited purposes
- accurate, adequate, relevant and not excessive
- not kept for longer than is necessary
- processed in line with your rights
- secure and not transferred to other countries without adequate protection.

'Data controllers' have to keep to these principles by law.

### ***Racial and Religious Hatred Act 2006***

The Racial and Religious Hatred Act 2006 makes inciting hatred against a person on the grounds of their religion an offence in England and Wales. The House of Lords passed amendments to the Bill that effectively limit the legislation to 'a person who uses threatening words or behaviour, or displays any written material which is threatening... if they intend thereby to stir up religious hatred.' This removes the abusive and insulting concept, and requires the intention – rather than just the possibility – of stirring up religious hatred.

### ***Child Protection and Safeguarding***

Safeguarding means keeping children, young persons and vulnerable adults safe from harm (physical or psychological distress or injury) and abuse (physical, sexual or emotional), abuse or injury. The United Nations Convention on the Rights of the Child 1989 set out minimum standards for all children up to the age of 18. Underpinned by the Children's Act 2004, 'Every Child Matters 2004' and 'Working Together to Safeguard Children 2006' are government initiatives that try to address concerns about child protection.

'Every Child Matters' sets out a framework that allows the building of services around the needs of children. It highlights the following key outcomes for the well-being of children and young people:

- stay safe
- be healthy
- enjoy and achieve
- make a positive contribution
- achieve economic well-being.

'Working Together to Safeguard Children 2006' states all agencies and individuals should aim to proactively safeguard and promote the welfare of children. This means the need for action to protect them is reduced.

### ***Discrimination and victimisation***

Under current law, there are two main forms of discrimination: direct and indirect.

#### ***Direct discrimination***

Direct discrimination occurs when someone is treated less favourably because of their sex, race or **disability**. With regard to employment, this could happen if an employer treats a job applicant or existing employee less favourably on the grounds of their sex, race or disability. In law, the applicable test is if someone would have been treated differently, or more favourably, had it not been for their sex, etc. This definition is expected to continue under future legislation.

An example of direct discrimination could be a woman of superior qualifications and experience being denied promotion in favour of a less experienced and less qualified man.

#### ***Did you know?***

An employer cannot argue that it was not their intention to discriminate; the law only considers the end effect.

#### ***Key term***

**Disability** – a physical or mental impairment that has a substantial and long-term effect on a person's ability to carry out normal everyday activities