

time they are permitted to work within their overall period or type of leave given.’

### Conclusion

Employers, their HR managers and in-house counsel therefore need to take account of all these codes and practices so as not to fall

foul of them and risk discrimination claims or action by the EHRC and/or the Information Commissioner under the Data Protection Act 1998. Policies and procedures which incorporate the various codes not only assist the compliance process but along with training of staff are relevant to liability should any claims be made or investigations undertaken.

## The UK Equality Act – an update

**A**s readers of this newsletter will be aware, the majority of the provisions of the Equality Act 2010 came into force in the UK on 1 October 2010. The Equality Act extends to areas beyond employment law but for the purposes of this article we will focus only on the changes relevant to employment law.

For a time, employment lawyers in the UK were not entirely agreed whether this new piece of legislation was in fact groundbreaking or merely a consolidating piece of legislation. The consensus now seems to be that while the Equality Act is, in part, a consolidation of nine separate pieces of discrimination and equal pay legislation into a single document; it does also introduce new responsibilities for employers.

The Equality Act was the brainchild of the former Labour administration. However, following the May 2010 UK general election, a Conservative-Liberal Democrat coalition came to power and government policy on some of the suggested statutory provisions of the Equality Act shifted, in particular those which actively sought to support equality within society. Accordingly, there was some confusion in the run up to 1 October as to which provisions of the Equality Act would come into force, and the impact that these would have on businesses and their employees.

### Implementation – 1 October 2010

Overall, the Equality Act seeks to harmonise many aspects of protection against direct and indirect discrimination, victimisation and harassment concerning sex (including marriage and civil partnership, gender reassignment, pregnancy and maternity),

race, disability, sexual orientation, religion or belief and age (the protected characteristics).

Examples of significant areas of change from 1 October 2010 include:

- confirmation of protection for people who have been discriminated against because they are associated with someone who has a protected characteristic (eg, a carer of a disabled person), or because they are perceived to have a protected characteristic (eg someone who is discriminated against because others believe they are gay, even if they are not);
- the new concept of ‘detriment arising from disability’ offers further protection to workers who can show that they have experienced less favourable treatment because of something connected with their disability (without the need to establish that their treatment is less favourable than that afforded to other non-disabled employees);
- the extension of employer liability for third party harassment (eg, by a customer or client) to all protected characteristics, except marriage and civil partnership, pregnancy and maternity;
- at the recruitment stage, the Equality Act has limited the circumstances in which pre-employment health questionnaires can be used. This will potentially make it more difficult for employers to unfairly screen out disabled applicants for jobs;
- pay secrecy clauses will no longer be enforceable in certain circumstances, and any action taken against an employee in this regard will amount to victimisation; and
- the introduction of new powers for employment tribunals to make recommendations which benefit not just the claimant but the workforce as a whole.



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### Additional changes yet to be implemented

Certain provisions of the Equality Act have not yet come into force, as they remain under consideration by the new government as to how or even if they should be implemented. These include:

- potential dual discrimination claims (relating to direct discrimination concerning age, disability, gender reassignment, race, religion or belief, sex or sexual orientation);
- introduction of the concept of voluntary 'positive action', meaning that employers will be entitled to choose to recruit or promote those from a disproportionately underrepresented group, so long as that person is 'as qualified' as the other candidate. This will not, however, permit a general policy of treating people with a protected characteristic more favourably in the workplace than those who do not share that protected characteristic (other than those with a disability, who may currently be treated more favourably than a non-disabled individual);
- the requirement for employers with 250 or more employees to disclose information regarding the differences in pay between genders; and
- the introduction of a socio-economic duty on public authorities.

### Amendments to employment documentation

It is important that HR professionals and their advisers in particular are aware of those changes which should be reflected in their company policies, procedures and employment documentation.

It is recommended that an audit of all existing employment policies be carried out to identify any areas in which non-compliance is a possibility. For example, a review of a company's staff handbook will be necessary in relation to certain of its policies, such as those on equality and diversity, anti-discrimination, anti-harassment and bullying and equal opportunities. Standard employment contracts should also be reviewed in light of the implementation of the Equality Act.

As always, the true impact of the Equality Act in terms of changing the employment law landscape and rights of employees will become more apparent once cases make their way through the tribunal system. The first cases to be decided will make for interested reading.

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