

## NHS Employers' submission in response to two consultations:

- Equality Act 2010: consultation on repeal of two enforcement provisions
- Equality Act 2010: consultation on employer liability for harassment of employees by third parties

Prepared for the Government's Equalities Office

August 2012

## Contents

|                               |   |
|-------------------------------|---|
| NHS Employers' key messages   | 3 |
| NHS Employers                 |   |
| About us                      | 4 |
| Background                    | 4 |
| Broader context               | 5 |
| Specific comments / responses | 5 |

## NHS Employers' key messages on the Red Tape Challenge and the associated consultations

- NHS Employers welcomes the Government's aims of simplifying, harmonising and strengthening the law on equality within the Equality Act and associated legislation.
- NHS Employers welcomes the move to simplify the equalities legislation and reduce the bureaucracy associated with employment tribunals.
- NHS Employers are aware that many NHS organisations are already focusing on all the diversity strands (or protected characteristics) to ensure a diverse and inclusive workforce – and that this is reflected by many of them having already produced equality objectives – many of them using the new framework with health (the Equality Delivery System).
- NHS Employers welcomes initiatives like the Red Tape Challenge as an innovative way of gathering views from across a wide range of interested parties. However, high level online discussions like this do not easily engage the attention of employers. We therefore feel that the views of specific sectors (such as health) also need to be gathered and garnered through more targeted and bespoke methods such as focus groups and webinars.
- Crucially, going forward, it is important that employers are given enough time to implement any changes and that the new provisions are supported by clear, concise and practical guidance and supporting materials (including case studies and examples).
- In this respect, NHS Employers will continue to work closely with the Government's Equalities Office and the Equality and Human Rights Commission on any associated guidance.
- This submission is provided in confidence and we request that the Government Equalities Office do not seek to publish any of the material without the express permission of NHS Employers.

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August 2012

# NHS Employers

## **About us**

NHS Employers represents trusts in England on workforce issues and helps employers to ensure that the NHS is a place where people want to work. The NHS workforce is at the heart of quality patient care and we believe that employers must drive the workforce agenda. We work with employers to reflect their views and act on their behalf in four priority areas:

- Pay and negotiations
- Recruitment and planning the workforce
- Healthy and productive workplaces
- Employment policy and practice

NHS Employers is part of the NHS Confederation.

## **Background**

NHS Employers have been actively involved in the formulation, development and construction of the Equality Act on behalf of NHS organisations. This has included:

- Formal responses to numerous consultations exercises
- Attendance at various Government Equalities Office conferences focussed on the Equality Act
- Participation in various senior stakeholder and roundtable meetings convened by the Government Equalities Office and the Equality and Human Rights Commission between January 2009 and the present date

NHS Employers undertook a consultation with employers on both of the above mentioned consultations in July 2012. This included a webinar on 31 July 2012 which was attended by 45 NHS and other public sector representatives. Although the formal response rate to the consultation was relatively low (fewer than 20), the responses represented a good cross section of NHS organisations. Detailed comments from this consultation – supplemented by information gathered from the aforementioned webinar - are summarised below.

## **Broader context**

NHS Employers has continually updated the service on developments around the Equality Act. This has been done through:

- Regular updates in our Workforce Bulletin
- Specific focus at our annual equality, diversity and human rights conferences between 2009 and 2012 (which attracted over 750 NHS staff)
- Seminars and workshops at regional events in partnership with Strategic Health Authorities (SHA)
- Regular updates on our website: [www.nhsemployers.org](http://www.nhsemployers.org)
- Reference to the Equality Act in associated briefings issued to the service on diversity monitoring and the business case for diversity

NHS Employers is also committed to the spread of good equality and diversity practice. In this spirit, we will be working closely with 12 leading edge NHS organisations on developing good and best practice in area through our Partners programme. We will work with these organisations and their respective SHA's through 2012/13 to disseminate and share this evidence across the wider NHS.

## **Response to the proposed changes to the wider recommendations power for Employment Tribunals**

The response to this aspect of the consultation from NHS organisations was very mixed. However, the greater balance of employers favoured removing the wider power provisions.

## **Comments from NHS Employers on this aspect of the consultation**

It is quite clear from these responses and from the feedback that we have received from employers in other forums, that there is an appetite and a need for change within the Employment Tribunal system more broadly. We are pleased that the Government has already taken forward some of the proposed changes outlined in the Beechcroft review – and we look forward to future consultations in this regard and to working with Government to ensure that the Employment Tribunal system works efficiently and effectively in terms of promoting greater equality and fairness within the workplace. We would be particularly keen to explore options for resolving individual or group employment disputes through informal mechanisms using mediation and conciliation.

## **Response and comments on the procedures for individuals obtaining information to pursue an Employment Tribunal claim**

Again, the response to this aspect of the consultation from NHS organisations was very mixed – but with the greater balance of employers favouring the removal of the formal questionnaire.

### **Comments from NHS Employers on this aspect of the consultation**

Our view is that this response from employers reflects the aforementioned appetite for change within the Employment Tribunal system. In a survey conducted during a webinar held on 31 July 2012 connected with this consultation, nearly 95% of around 45 respondents felt that the Equality Act had either made no difference or increased the level of bureaucracy within their organisations. In relation to Employment Tribunal specifically, our view is that employers feel that the system has become over complicated and over “legalised” – making it adversarial and therefore not conducive to mediation and / or informal resolution. The removal of this provision (and the above mentioned provision) alone will not lead to this change – and needs to be part of the broader overhaul that we have alluded to. Again, we look forward to working with Government in moving this forward in a way which increases effectiveness whilst still retaining equity and fairness.

### **Response and comments on the third party harassment provisions.**

Once again, the response to this aspect of the consultation from NHS organisations was very mixed. However, on this point, the greater balance of employers did not support the removal of the third party harassment provisions.

### **Comments from NHS Employers on this aspect of the consultation**

We are not surprised at this response from NHS organisations. The NHS is going through a period of unprecedented change – and is being opened up to a multiplicity of providers and contractors. This means that – in such a public arena – employers need as much leverage as possible to help them create a conducive and inclusive workplace for staff and environment for patients. If the Government decides to proceed with removing this provision from the Act, it will therefore be extremely important that they issue clear and simple guidance for employers on how they can use alternative existing legislative provisions (such as health and safety legislation and the Protection from Harassment Act 1997).

Again, we look forward to working with Government in this respect if required.

## NHS Employers

The NHS Employers organisation is the voice of employers in the NHS, supporting them to put patients first. Our vision is to be the authoritative voice of workforce leaders, experts in HR, negotiating fairly to get the best deal for patients.

We help employers make sense of current and emerging healthcare issues to ensure that their voice is front and centre of health policy and practice. We keep them up to date with the latest workforce thinking and expert opinion, providing practical advice and information, and generating opportunities to network and share knowledge and best practice.

We work with employers in the NHS to reflect their views and act on their behalf in four priority areas:

- pay and negotiations
- recruitment and planning the workforce
- healthy and productive workplaces
- employment policy and practice.

The NHS Employers organisation is part of the NHS Confederation.

## Contact us

For more information on how to become involved in our work, email [getinvolved@nhsemployers.org](mailto:getinvolved@nhsemployers.org)

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