

EQUALITY ACT 2010: WHAT DO I NEED TO KNOW? A SUMMARY GUIDE FOR BUSINESSES WHO SELL GOODS AND SERVICES



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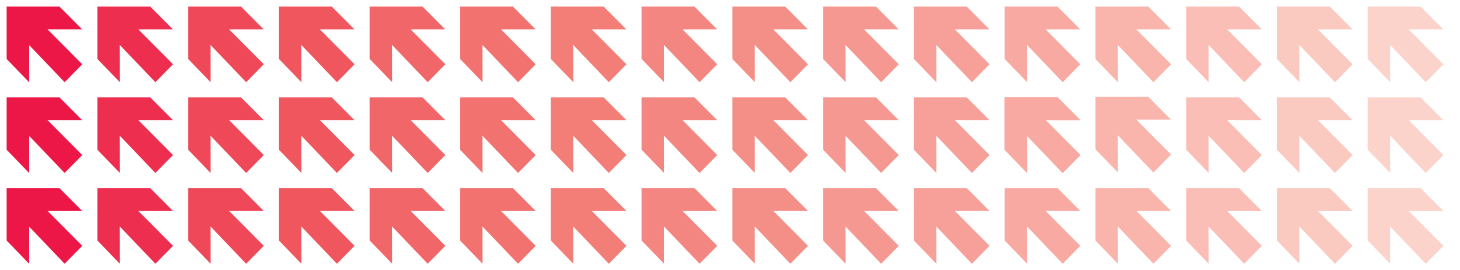


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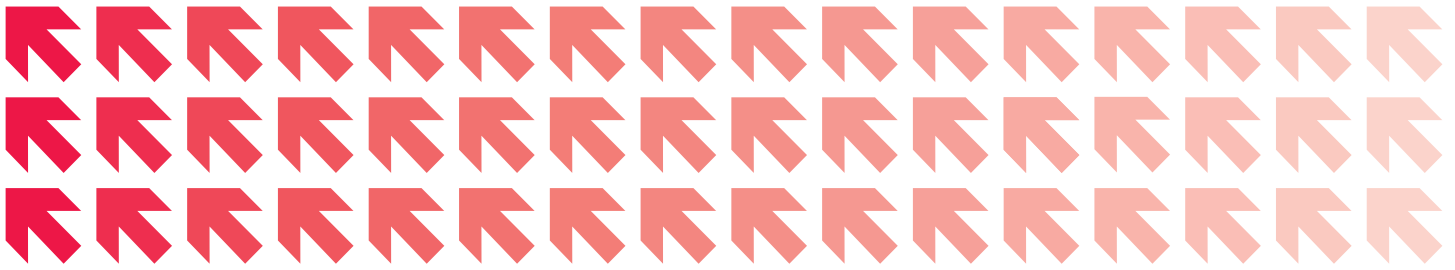
Government
Equalities Office

Putting equality at the heart of government



Foreword

The Equality Act 2010 replaces the existing anti-discrimination laws with a single Act. It simplifies the law, removing inconsistencies and making it easier for people to understand and comply with it. It also strengthens the law in important ways to help tackle discrimination and inequality.



Introduction

Most of the Equality Act 2010 comes into force on 1 October 2010. The Equality Act also contains other provisions, including the new concept of dual discrimination, an extended public sector Equality Duty and a prohibition on age discrimination in services and public functions. The Government is looking at how the rest of the Act can be implemented in the best way for business, and will make an announcement in due course.

This summary guide is intended to help businesses understand their new obligations under the Equality Act 2010 as providers of goods, facilities and services. More detailed information is available in a series of Quick Start Guides dealing with the main changes.

For information regarding businesses' new obligations as providers of goods, facilities and services, please refer to:

- Acas: www.acas.org.uk/
- British Chambers of Commerce: www.britishchambers.org.uk
- British Retail Consortium: www.brc.org.uk
- Chartered Institute of Personnel and Development: www.cipd.co.uk
- Confederation of British Industry: www.cbi.org.uk
- Equality and Human Rights Commission: www.equalityhumanrights.com/your-rights/
- Federation of Small Businesses: www.fsb.org.uk
- Tourism for All: www.tourismforall.org.uk
- Trades Union Congress: www.tuc.org.uk

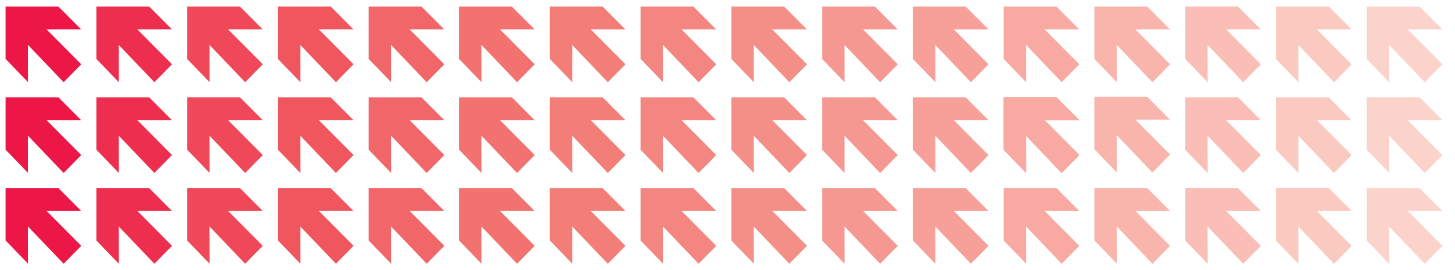
Who the law protects

People who access your goods, facilities and services are protected from direct discrimination on the basis of a 'protected characteristic'. The relevant characteristics are:

- disability (definition changed)
- gender reassignment (definition changed)
- pregnancy and maternity
- race – this includes ethnic or national origins, colour and nationality
- religion or belief
- sex, and
- sexual orientation.

Except in the case of pregnancy and maternity, people who are protected do not actually have to possess the characteristic themselves. Protection also applies, for example, where the person is unfairly treated because they are wrongly perceived to have a particular characteristic (or are treated as though they had it) or because they associate with someone who has the characteristic.

As a matter of good practice and good business, you should treat everyone accessing your goods, facilities or services fairly, regardless of their age, gender, race, sexual orientation, disability, gender reassignment, religion or belief, and guard against making assumptions about the characteristics of individuals.



Example

A bar decides to organise a singles night, promoting it as an opportunity to meet the woman of your dreams. The ticket seller wrongly assumes Phillip is gay and tells him that he cannot attend. Phillip complains to the bar that he is being discriminated against, as the ticket seller thinks he is gay when he is not. This is direct discrimination because of sexual orientation. If Phillip were in fact gay he could claim discrimination on the same basis.

Example

Patrick wants to go to the local nightclub with his disabled girlfriend, Bridget. The doorman turns them away because disabled people do not fit with the club's image. Patrick would be able to claim that he has been discriminated against because of disability, as he was refused entry because of his association with Bridget, an individual with that protected characteristic.

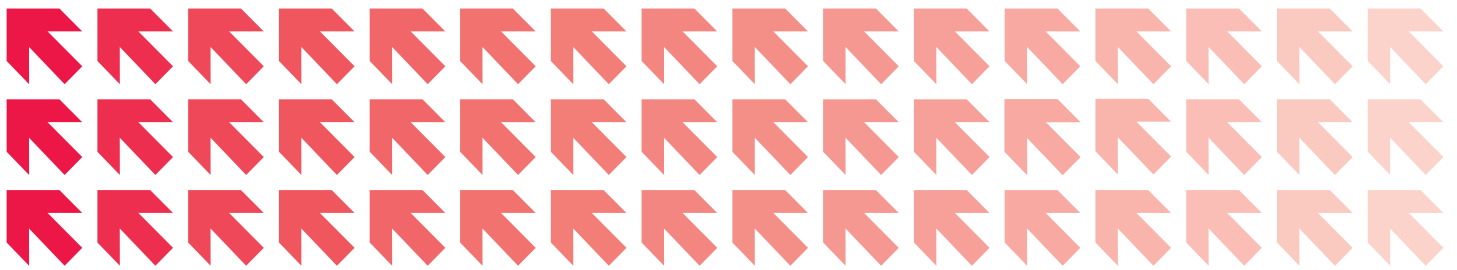
Breastfeeding mothers

The Act has specifically clarified that it is unlawful to discriminate against a woman because she is breastfeeding.

Ensure that women to whom you are providing goods, facilities and services are able to breastfeed should they so wish.

Example

Saul, a bus driver, tells Kate, who is breastfeeding on the bus, that if she does not either stop or get off the bus she could be arrested for indecency. This is not only inaccurate, but is unlawful direct discrimination, and the company will be liable under the Equality Act 2010 unless it can show that it has taken all reasonable steps to stop the driver from acting in this way. Saul will be liable whether or not his employer is.



Private members' clubs

A private club with 25 or more members and whose membership is controlled by rules must not discriminate against members, potential members, or guests on any of the 'protected characteristics' set out on page 3 above. Review your existing arrangements to ensure that they do not discriminate on the basis of any of the protected characteristics.

Example

Brian wants to take his wife, who is a Muslim, to his golf club dinner. The club refuses admission because she is a Muslim. This is unlawful discrimination under the Equality Act 2010.

Disability

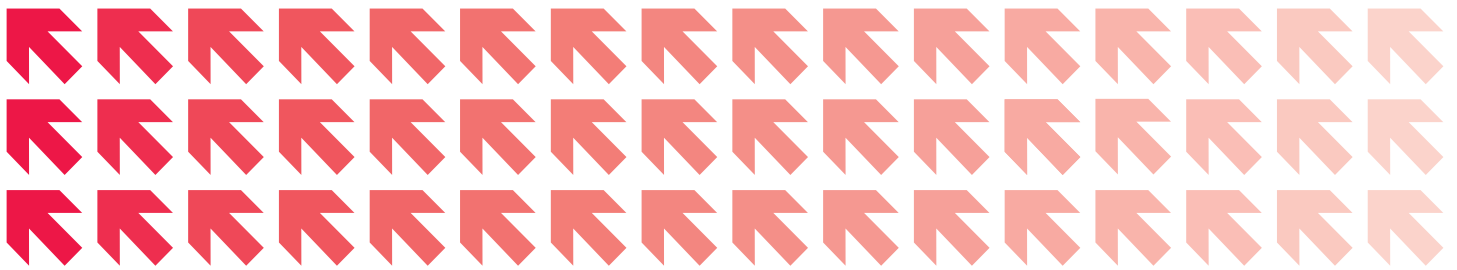
Disabled people must not be treated less favourably than others because they are disabled. Businesses also have an obligation to make reasonable adjustments to help disabled people access their goods, facilities and services. The Act makes significant changes in this area, introducing the principle of indirect disability discrimination and clarifying the three requirements for making reasonable adjustments and the point at which the duty to make reasonable adjustments is triggered.

The Act also introduces a new form of discrimination, known as discrimination arising from disability. This occurs when a disabled person is treated unfavourably because of something connected to their disability.

Examples

Direct discrimination – Geoff is a former soldier who lost both his legs during his service. Staff at his local cafe ask him to leave because they are worried that his appearance may distress other customers. This is direct discrimination on the basis of disability.

Indirect discrimination – Lynda runs a dental surgery and only offers appointments by phone. This makes it more difficult for deaf people to make appointments. This may be indirect discrimination, unless the policy can be 'objectively justified' as being a proportionate means of achieving a legitimate aim. A legitimate aim can be any lawful decision you make in running your business or organisation, although if there is a discriminatory effect then the sole aim of reducing costs is likely to be unlawful. Being proportionate really means being fair and reasonable, including showing that you have looked at less discriminatory alternatives to any decision you make.



Examples

Discrimination arising from disability –

Richard has a faulty hearing aid which beeps loudly every few minutes. While he is at the cinema a number of other customers complain that this noise is spoiling their enjoyment of the film. If the cinema asks Richard to leave, this may be discrimination arising from disability unless the cinema can ‘objectively justify’ its decision. (In this particular instance the cinema is likely to be able to do so.)

Reasonable adjustments – A restaurant knows that a number of its customers have sight impairments and decides to produce a large-print menu. This would be a reasonable adjustment.

The Equality Act 2010 contains exceptions to the general prohibition of sex discrimination which allow the provision of single-sex or separate-sex services for men and women. A business or service provider can decide whether and how a transsexual person can use such a service, depending on all the circumstances. The decision must be ‘objectively justified’ – in other words, it must be a fair and reasonable way of achieving a legitimate aim.

Can a man just put on some lipstick and try to get into the ladies’ toilet?

No. Providers of separate-sex services (such as toilets, changing facilities or saunas) have the right to make decisions on what facilities transsexual people can use – but remember that this is a very sensitive issue and it is important that you take the views of the transsexual person into account when making the decision. However, a man who just puts on lipstick but does not wish to change his sex is not a transsexual person who is undergoing the process of changing his gender, nor is he likely to be thought to be transsexual, so he cannot rely on this protection.

Gender reassignment

When providing goods or services, it is unlawful to discriminate against or harass a transsexual person. A transsexual person is protected if they have simply told someone that they wish to change their sex, are undergoing the process of changing their sex, or have already undergone that process. A person is protected once they have proposed changing their sex, even if they later change their mind.

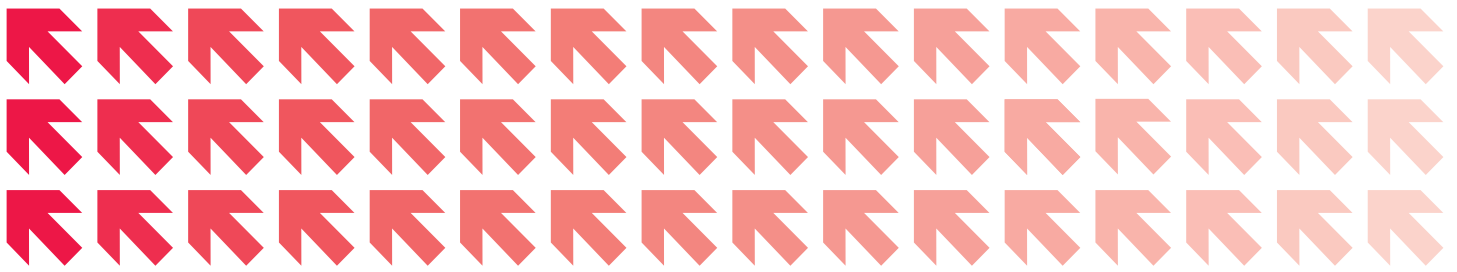
A transsexual person is protected whether or not they are under medical supervision. Do recognise that not everyone undergoing gender reassignment will want or require medical supervision and that this is very much a personal process.

Harassment

Businesses that provide goods, facilities or services must not allow their customers to be subjected to harassment.

There are two main types of harassment as laid out in the Equality Act 2010. These are:

- unwanted conduct related to a protected characteristic, and
- unwanted conduct that is sexual in nature.



In each case the conduct must have the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. It is also harassment to treat a customer less favourably because they have rejected or submitted to sexual harassment or harassment related to gender reassignment.

Examples

Moira, a black woman, is shopping in her local grocery store and overhears a shop assistant and a customer chatting and making racially abusive comments. As this conduct was unwanted by Moira and it made her feel humiliated and degraded, she can bring a claim of racial harassment.

While Kelly is sitting in the hairdresser's, the hairdresser makes several unkind comments about her size. A claim for harassment is unlikely to succeed because the comments, although unwanted, were neither related to a protected characteristic nor sexual in nature.

Positive action

Businesses are able to use positive action to target their goods, facilities or services to a particular group that is either disadvantaged or currently under-represented in their consumer base, or that has particular needs. Businesses should research their potential consumer base to work out which, if any, groups are under-represented, as they may wish to target these groups. Do not just assume that a particular group is under-represented.

Example

A new pharmacy opens in an area with a large Bangladeshi community. The manager decides to offer Asian men free blood sugar checks, as Asian men are at higher risk of diabetes.

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