

The Equality Act 2010 (see <http://www.acas.org.uk/index.aspx?articleid=3017>)

1. How does the Act impact on organisations?

1.1 A requirement for transparency in relation to pay.

1.2 An employer will generally not be able to use pre-employment health questionnaires before a job offer is made. Certain questions will be permitted to establish whether the applicant will be able to carry out functions that are 'intrinsic' to the work applied for or to determine whether reasonable adjustments need to be made.

1.3 The duty to ensure that a disabled person is not placed at a substantial disadvantage.

1.4 The Act provides that Employment Tribunals have the power to make wide-ranging recommendations which employers will be obliged to carry out. While these recommendations are not binding, a failure to follow through with the recommendations could be detrimental if any future claims are brought against the same employer.

1.5 The Act includes a provision permitting positive action whereby employers are permitted to offer a job to someone who is from an under-represented group if the employers have the choice between two or more candidates who are equally qualified. The selection of a less well qualified candidate is not allowed and employers are not compelled to select the individual from the under-represented group.

2. How does the Act impact on Employees?

2.1 The Act limits the enforceability of contractual pay secrecy clauses. Staff are free to disclose information about their pay and any attempts by an employer to restrict this are unenforceable if the disclosure is made in order to find out whether there is a link between pay and a protected characteristic or the disclosure was made with the possibility of pay discrimination in mind. In these circumstances any disciplinary action will amount to victimisation.

2.2 The Act has a significant impact in the context of disability discrimination. The Disability Discrimination Act 1995 (DDA) states that a person has a disability if they have a physical or mental impairment which has a substantial and long term adverse effect on their ability to carry out normal day-to-day activities.

2.3 The Act includes a provision, discrimination 'arising' from disability. This makes it unlawful to treat a person unfavourably because of something connected with the disability.

2.4 The law on discrimination includes discrimination by 'association'. For example, an employee who cares for a disabled relative should not receive less favourable treatment because of their 'association' with the disabled relative.

2.5 Under the Act it is possible to claim direct discrimination on a combination of two protected characteristics. Note Also the Act provides protection against persistent harassment by third parties, for example, customers or suppliers.