



HR Briefing May 2009

Employment Law Update

This month we review the new Equality Bill and the impact on employers.

The Equality Bill

1. Why do we need an Equality Bill?

The aim of the Bill is to harmonise and strengthen discrimination law in order to support progress on equality.

It is hoped that the Bill will streamline the reams of legislation in the area and provide simpler guidance for employers and service providers by bringing together and restating the existing discrimination legislation concerning sex, race, disability, sexual orientation, religion or belief and age. It will seek to adopt a single approach where appropriate.

2. What are the changes to current legislation?

What should be borne in mind is that this Bill has not yet been implemented in UK law and it may go through several changes during its time through Parliament.

However it is important that you are aware of the key proposals, which include:-

- An amendment to the definitions of direct and indirect discrimination.
- Lawful discrimination where employers will be able to discriminate lawfully where there is an "occupational requirement"; or even take positive action where there is equal footing between candidates and there is a chance to promote someone from an under-represented group.
- The reversal to the "pre-Malcom" position on Disability discrimination following the major changes resulting from the House of Lords case of *Mayor and Burgesses of the London Borough of Lewisham v Malcolm [2008] UKHL 43* and the introduction of indirect disability discrimination.
- The use of a hypothetical comparator in direct sex discrimination claims.
- The enforceability of pay secrecy clauses in contracts will be limited and in certain cases, employers may have to publish details of their gender pay gap.

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3. How will the changes affect employers?

The changes mean that your understanding of what constitutes discrimination may need updating and as a result, it is advisable that any harassment and discrimination policies in place should be reviewed.

It is also important to note that not all the provisions will be implemented immediately, so it is important that you seek advice in relation to any discrimination, victimisation, and/or equal pay queries that you may have. This is particularly important given the dramatic tenfold increase in equal pay claims in the five years prior to March 2008.

Key Recommendations

Employers

- Review policies/procedure on harassment/ discrimination
- Remember that the Bill is not yet implemented in UK law – due to come in force 2010
- Track the changes to the Bill
- Risk assess and plan for the impact of any of the proposals, for example, do you have a gender pay gap that needs addressing?
- Approach the changes with caution and seek advice – remember positive action is very different to positive discrimination

If you have any queries on any of the above please contact **Alison Loveday** at alisonl@berg.co.uk to discuss further issues. Alternatively you contact **Alison** on **0161 833 9211**.