



## briefing

Employment, Pensions and Benefits - April 2009

### Equality Bill 2009 published

#### New laws to tackle discrimination

**The eagerly anticipated Equality Bill 2009 has just been published and has attracted a great deal of media interest and, it is fair to say, some controversy too.**

The purpose of the Equality Bill is to simplify current discrimination law and to introduce new measures to tackle discrimination and inequality. Clearly there is a need to simplify the existing broad and complex discrimination laws. There are currently nine major pieces of discrimination legislation, around 100 statutory instruments and more than 2,500 pages of guidance and Statutory Codes of Practice. The Equality Bill will replace this legislation with a single Act which, it is hoped, will make it easier for individuals and employers to understand their rights and obligations.

As for tackling discrimination and inequality, this is considered necessary because there continues to be a gender pay gap, with women still earning on average 22.6% less per hour than men and there is a significant gap between the employment rates of disabled and non-disabled, with disabled people more than twice as likely to be out of work than non-disabled people. If you are from an ethnic minority, you are 13% less likely to find work than a white person. Not only this, but it is also recognised that there are social inequalities whereby, less academically able children of the better off, overtake more able but poorer children at school by the age of six.

The Equality Bill will tackle discrimination in a number of key areas, by:

- introducing a new public sector duty to consider reducing socio-economic inequalities;
- putting a new equality duty on public bodies;
- using public procurement to improve equality;
- banning age discrimination outside the workplace;
- introducing gender pay and equality reports;
- extending the scope to use positive action;

- strengthening the powers of Employment Tribunals;
- protecting carers from discrimination;
- offering new protection for breast feeding mothers;
- banning discrimination in private clubs; and
- strengthening protection from discrimination for disabled people.

Looking at some of these proposals in more detail:

#### **New public sector duty to consider reducing socio-economic inequalities**

It is the Government's view that inequality does not just arise from gender and ethnicity but that there is a persistent "inequality of social class". The Equality Bill will place a new duty on Government Ministers, departments and key public bodies such as local authorities and NHS bodies to consider what action it can take to reduce socio-economic inequalities. Note that the duty will apply only to strategic decisions taken by, for example, a primary care trust rather than decisions taken by service providers, for example, an individual GP. This duty is likely to come into force in 2011.

#### **New Equality Duty on public bodies**

Public bodies include local authorities, primary care trusts, schools, colleges and universities, and there are already in place three equality duties on public bodies: the race equality duty introduced in 2000, the disability equality duty introduced in 2005, and the gender equality duty introduced in 2006.

The Equality Bill will create a [single public sector equality duty](#) which will cover the current duties and in addition, sexual orientation, religion or belief, age and gender reassignment. The equality duty will mean that public bodies will need to consider the needs of different groups in the community when designing and delivering public services. In due course, a list will be provided of the public bodies to which the equality duty will apply.

It is important to note however, that the duty will also apply to private bodies that deliver a public function, for example, a private firm running a prison.

## Using public procurement to improve equality

It is estimated the public sector has an annual expenditure of around £175 billion every year on goods and services. The Equality Bill provides that public bodies can use their purchasing power through procurement to push forward the drive for equality by encouraging suppliers to promote equality in their own workforces.

## Age discrimination outside the workplace

The age discrimination legislation was introduced in October 2006 and prohibited age discrimination in the workplace. Older people continue to be discriminated against in the context of goods and services as well as health and social care.

The Equality Bill will make it unlawful to discriminate against someone aged 18 or over when providing services or carrying out public functions. For example, a 75 year old who enquires about travel insurance should be provided with a quote which accurately reflects the level of risk they face, not an arbitrary assumption about that individual's health simply because of their age.

## Gender pay and equality reports

This provision has attracted some criticism in the current economic climate. The Government is of the view that pay discrimination cannot be tackled if it is hidden.

In relation to the private sector, the Equality Bill contains a power requiring reporting by employers on the gender pay gap where there are 250 or more employees. This power will not be used before 2013 and this means that in the meantime, private sector employers with 250 more employees will be expected, on a voluntary basis, to tackle gender pay inequality. In the summer, the [Equalities and Human Rights Commission](#) (EHRC) will develop a set of metrics for gender pay reports and will monitor progress in the private sector each year.

In relation to the public sector, public bodies with over 150 employees will be required to publish annual details of their gender pay gap, their ethnic minority employment rate and their disability employment rate.

For both sectors, there will also be a ban on secrecy or gagging clauses which stop employees discussing their pay with colleagues.

## Positive action

Positive action does not mean positive discrimination (which will continue to be unlawful). Positive action means that employers will be able to offer someone from an under-represented group a job (or promotion) if they have the choice between two or more candidates who are equally acceptable. Positive action will allow employers to make their workforce more diverse.

## Strengthening the powers of Employment Tribunals

The Equality Bill will allow Employment Tribunals to make recommendations in discrimination cases which benefit the whole workforce and not just the individual who brought the claim. Consequently, the employer will need to take certain specified steps within a specified period of time.

## Protecting carers from discrimination

The Equality Bill will strengthen the rule protecting people from discrimination when they are associated with someone who is protected themselves, for example their carers. An example to illustrate this proposal would be that an employer could not refuse to recruit or promote a member of staff simply because they care for an older relative.

## Improving protection from disability discrimination

The Equality Bill will make it unlawful to treat a disabled person in a particular way which amounts to poor treatment unless the treatment can be justified.

## Looking ahead

The second reading of the Equality Bill is expected to take place in May and it is anticipated that it will receive Royal Assent in Spring 2010. The Government expects that the majority of the Bill will come into force in Autumn 2010, save for the socio-economic duty on public bodies and public sector equality duty which, as mentioned above, are likely to come into force in 2011.

Much of the criticism of the Bill is that it is inappropriate to impose more employment legislation on employers at a time of economic recession. According to the Institute of Directors, the Bill is "[a further example of unnecessary regulation at a time when companies, particularly small and medium size enterprises are struggling to survive.](#)" The Government's response to such criticism is that there is no excuse for continuing unfairness just because economic times are difficult.

In the meantime, there will be further consultation on various provisions of the Bill and we will continue to monitor its progress.

## More information

If you would like further information, or to discuss the potential impact on your organisation, please call Debra Gers, or your regular Morgan Cole contact.



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