

30<sup>th</sup> April 2010

## **Last Minute Scramble for Equality**

The Equality Bill finally became law in the scramble to rush through legislation in the final hours before Parliament was dissolved in the run up to the General Election.

In the main, the Act just consolidates and simplifies existing discrimination law, but it does extend existing law in certain areas too.

The Act now protects a person against being discriminated against, harassed or victimised because of a protected characteristic. The protected characteristics are age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.

Most of the provisions of the Act will take effect on 1<sup>st</sup> October 2010 as the Equality Act 2010. The most important changes introduced by the Act are:

It introduces the concept of combined discrimination where an employer discriminates against a person because of two protected characteristics. These provisions will not take effect until April 2011.

Pre-employment health questions are another important area of change. If a prospective employee is turned down for a job and later alleges disability discrimination, it will be for the employer to prove that there was no discrimination if the rejected employee alleges that the employer asked questions about their health when considering them for employment.

The Act does not remove the default retirement age of 65, but this is under review. It is likely that the default retirement age will either be raised or scrapped altogether, in due course.

Employment Tribunals may now make recommendations as to the action to be taken by an employer to stop discrimination, even if those actions cannot benefit the aggrieved employee.

The Act contains powers to introduce regulations at some time in the future requiring businesses that employ more than 250 persons to publish details comparing the pay of males with that of females.

A term in an employee's contract which prevents them from discussing their pay will be unenforceable if the discussion is about whether an employee's pay is connected to a protected characteristic such as age or gender.

Positive discrimination will now be allowed at the time of employing or promoting a person, so if a company reasonably believes that it does not have enough women on its board, it will be able to pick a candidate for the job on the ground that she is a woman, provided she is as well qualified as the other candidate or candidates.

The Act paves the way for introducing a single equality duty for public sector employers. The duty will require public sector bodies to adopt policies to: eliminate discrimination, harassment and victimisation; advance equality of opportunity and foster good relations between persons who share a particular protected characteristic and those who do not.

Richard Stephens, partner in the employment department, says : "The Equality Act 2010 is important because it consolidates the existing anti-discrimination legislation and by providing for things such as positive discrimination and transparency on pay, it sets up a framework for developing anti-discrimination policy in the future.

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