

## Employment Law Changes Proposed by the New Coalition Government

Following the recent General Election, the new Coalition Government has published an official document setting out their plans for the years ahead. Many of the issues discussed impact upon employment law. It is the Government's stated intention to try to make Employment Law simpler and more flexible but to ensure that fairness is retained. While there is no certainty that all, or even most, of these measures will be implemented, this does give us some insight into the changes that may lie ahead. Below is a summary of the main reforms to look out for.

### Equality

- Promoting equal pay and taking steps to end discrimination in the workplace.
- Extending the right to request flexible working to all employees and consulting with businesses to ascertain how best to do so. This is likely to be controversial given the potential burden upon businesses.
- Reform access to work so that disabled people can apply for jobs with funding already in place for any adjustments that may be needed.
- Parents allowed to share parental leave between them in a way that suits their particular situation in the first year after a child's birth.

### Phase out the default retirement age

- Currently, employees have to make a request to their employers to carry on working beyond 65 and employers can refuse this request without giving a reason. The Coalition Government has proposed scrapping the default retirement age altogether, albeit on a phased basis. This would have potentially significant impact on all employers as it would not be possible simply to "retire" an employee.

### Immigration

- There will be a cap on UK immigration so that there is a limit on the number of non EU economic migrants allowed to work and live in the UK.

### Other Possible Changes Ahead

The new Government does not want to transfer any more sovereignty or powers to the E.U. The Government opposes the "Gold Plating" of European Directives, meaning that they do not want domestic legislation to be unduly onerous in the pursuit of meeting European obligations. This will lead to review on many issues:

- The Conservatives stated prior to the election that they did not wish to implement the Agency Workers Directive, which would give agency workers the same rights as permanent workers after 12 weeks of employment. There is a suggestion that this will be revisited.
- Review of the Equality Act 2010, specifically clauses relating to positive action in recruitment and mandatory pay audit. This Act was passed just prior to the dissolution of Parliament (see below).
- Review the effect of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") specifically in relation to service provision changes (contracting in and out). This could alter significantly the "TUPE landscape" - of relevance to all commercial organisations.

These are just a few of the reforms that may take place under the new Coalition Government. It is likely that there will be more and the Government has yet to set out its timescales for implementation. Watch this space for further news!

**Douglas Strang** [dst@bto.co.uk](mailto:dst@bto.co.uk)

## In this edition

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A resumé of the changes in employment law expected to be introduced by the new Coalition Government.

### The Equality Act 2010 - Key Issues

- Revised disability discrimination law
- Restriction on pre-employment questionnaires
- Discrimination by association and perception
- Pay transparency
- Positive Action

### Top Tips

Employment issues that may arise during the World Cup.

# The Equality Act 2010 - Key Issues

The Equality Act was passed on 8 April 2010. Many of the provisions are scheduled to come into force this October.

The Act is intended to represent a comprehensive codification and harmonisation of the current discrimination law which has often been described as inconsistent and difficult to interpret. It also introduces some innovations in discrimination law. Some of the changes are highlighted below.

## Disability Discrimination

The Act prohibits indirect disability discrimination (on the same basis as the other strands of discrimination law) for the first time.

There will also be a new right to claim discrimination "arising from" a disability (to counter the effects of the House of Lords' decision in **Malcolm**). The new form of discrimination will apply where an employer treats a disabled person unfavourably, where this treatment is because of something arising in consequence of the disabled person's disability, and the employer cannot show that this treatment is justified.

Claims for failure to make reasonable adjustments and direct discrimination will still apply.

## Health Questionnaires

There are provisions restricting employers' freedom to ask questions about candidates' health prior to offering posts.

## Justifying Less Favourable Treatment

There will be one hurdle for employers to cross if seeking to justify less favourable treatment and this will be consistent across all strands of discrimination. The employer must show its actions were a 'proportionate means of achieving a legitimate aim' which is a potentially higher test than the current one.

## Changing the Discrimination Rules

Discrimination based on the victim's association with someone who has a protected characteristic, or the erroneous perception that the victim has that characteristic, is now specifically made unlawful, and the provisions are now

consistent across all strands of discrimination.

The Equality Act also introduces a new claim of "combined discrimination" (where the discrimination was on account of **two** of the strands) such as because '*She was a black woman*'. Employers' liability for staff harassment of third parties has been extended.

## Improving Transparency

One aim of the Act is to improve transparency and this is mirrored in a number of its reforms.

There is provision to prohibit pay secrecy clauses in contracts of employment.

In relation to Equal Pay, the Act allows the making of Regulations requiring employers with at least 250 employees to publish information relating to the differences in pay between men and women.

## Positive Action in Recruitment

The Act allows employers to take positive action when selecting between two equally qualified candidates. This means an employer can specifically choose someone from an under represented group where the candidates are equally qualified. The Conservatives were opposed to this and it remains to be seen whether it will be brought into force.

## Summary

While it is, as yet, unclear exactly how some of these new reforms will operate in practice, this is certainly an extremely important Act which will shape discrimination law for years to come. Employers need to be aware of the changes that are being introduced with a view to reviewing their policies and practices and updating the training of their managers and staff to ensure compliance with the new regime and avoid potential problems and claims. The employment team at **bto** are well placed to guide you through these changes to ensure that your organisation is ready for the new regime.

**David Hoey** [dho@bto.co.uk](mailto:dho@bto.co.uk)

## Top Tips

With the World Cup taking place, here are some practical tips to manage some of the employment law issues that may arise:

- Ensure your policies and procedures on unauthorised absence are up to date.
- Consider introducing a policy with regard to staff requests to leave early to watch games during working hours to ensure consistency.
- Avoid race discrimination by ensuring all nationalities are treated equally.
- Deal with any disciplinary issues fairly and in accordance with your disciplinary policy.



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