

Equality Act: firms must not ask job applicants about health

Employers will not be able to ask people who apply for a job about their health under new equality laws that come into force today.

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Staff who are dyslexic, have taken a large number of sick days or who look after disabled and elderly relatives will also find it easier to win unfair dismissal cases under the new law.

Other provisions will allow bankers to compare salaries,



Theresa May, the Home Secretary and Equality Minister

<http://www.telegraph.co.uk/finance/jobs/7893086/Pay-secrecy-to-be-lifted-as-gagging-clauses-outlaw-ed.html>) and guarantee mothers the right to breastfeed their babies in public.

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Experts fear the significant strengthening of anti-discrimination law will lead to a surge in employment tribunal claims as well as increasing the burden of red tape on businesses when they are struggling to recover from the recession.

However some of the most controversial elements of the single Equality Act - driven through by Harriet Harman just weeks before the general election - have not yet been implemented by the Coalition. These include the requirement for large organisations to publish the gap in pay between male and female employees, and the right of employers to use "positive action" to recruit more female or ethnic minority staff.

The Act aims to make rights simpler by bringing together nine pieces of legislation,

<http://www.telegraph.co.uk/finance/jobs/8030030/Equality-Act-Six-things-employers-need-to-know.html>) and creating a list of "protected characteristics" on which it is unlawful to discriminate: age, disability, gender, gender reassignment, race, religion, sexual orientation, marriage and maternity.

Business leaders, lawyers and personnel experts agreed that the most significant change is the [new ban on questions about a prospective employee's health at first interview](http://www.telegraph.co.uk/finance/jobs/7899265/Companies-urged-to-review-pre-employment-health-questionnaires.html).

(<http://www.telegraph.co.uk/finance/jobs/7899265/Companies-urged-to-review-pre-employment-health-questionnaires.html>)

Until now, employers have routinely asked about the medical background of job applicants but under the Equality Act they will be breaking the law unless they can prove their questions were designed to monitor diversity, or check whether the interviewee can carry out an essential task. It will be illegal to ask how much time off work a prospective employee has taken, while one HR expert claimed managers will not even be allowed to ask: "How are you this morning?"

However bosses will be able to screen by health after making an offer or drawing up a short-list.

The British Chambers of Commerce estimates it will cost £189million for business to implement the Equality Act. David Frost, its director-general, said: "At a time when the Government is trying to create as many jobs as possible in the private sector this legislation will put people off for fear of getting it wrong. The Equality Act is a very complex bit of employment legislation. If small businesses get this wrong they end up in an employment tribunal."

A spokesman for the Institute of Directors said: "The health provision is undoubtedly an extra burden on businesses. All business will need to be very clued up on the ramifications of what the new regulations are - if you have a whole HR team that's fine, but a lot of our members are small businesses and they don't have that."

Deborah Casale at Gannons Solicitors said: "This will no doubt become a grey area in the law and may open the door to more disability discrimination claims."

However supporters of the law believe it could help injured veterans who are seeking work after leaving the Armed Forces, as well as people who have a history of mental illness.

The Equality Act will make it easier for staff to claim they were discriminated against because of a disability. This is because they no longer have to prove they were treated less favourably than non-disabled colleagues.

It is expected to lead to discrimination claims from dyslexic workers who have been barred from carrying out certain tasks because of their tendency to make spelling mistakes.

An employee who had been disciplined for taking a lot of sickness leave could also claim they had been treated unfairly.

The law also introduces the category of "discrimination by association", which allows carers of disabled children or elderly parents to claim they suffered in the office as a result of their responsibilities at home.

Edward Wanambwa, employment and discrimination specialist at Russell Cooke Solicitors, said: "The Equality Act 2010 is the most ambitious and overarching piece of discrimination legislation for decades. Its purpose is to harmonise and clarify existing law; the impact of which will perhaps most significantly be felt by the 6million carers across the UK who now have an unambiguous right to sue for discriminatory conduct experienced as a result of an association with a disabled person."

Another category, combined discrimination, could see staff claim they were treated badly because of a combination of their age and their gender - where an allegation under a single area would have failed.

It also becomes illegal to discriminate against someone for the "perception" that they are homosexual, for instance, even if they are not. Transsexuals are protected from discrimination even if they are not undergoing "gender reassignment" treatment.

Employment tribunal judges will be able to recommend changes to the practices of a business rather than just concentrating on the experience of the individual who brings a claim.

Elsewhere, the Act specifically allows nursing mothers to breastfeed their baby in public places. Managers in shops or cafes will not be allowed to ask a mother to stop breastfeeding, move to somewhere more private or leave because they are breastfeeding.

The new law also stops colleges from preventing teenage girls at school who are pregnant or who have had a baby from taking their A-levels.

The legislation does not cover breast feeding at work, however a mother who is discriminated against for feeding would likely have a case for sex discrimination because of existing laws, experts say.

Under the new legislation, staff particularly in the financial sector will be free to discuss their pay, and can claim victimisation if they are disciplined for sharing information about wages or bonuses.

Rachel Dineley, employment partner at law firm Beachcroft, warned that small firms were likely to be caught out, and forecast a rise in cases brought in front of tribunals.

DLA Piper, the law firm that employs Nick Clegg's wife, said detailed guidance on the new law had only been published in the past month.

Sandra Wallace, the firm's head of equality and diversity, said: "Unfortunately, by issuing the implementing legislation so late in the day, and not incorporating all elements of the Act, businesses have been left with a halfway house that will potentially confuse them even more than they already were, and risk protracted legal wrangles in employment tribunals that are already overstretched with a general increase in claims."

Some groups said the Government should have gone further and implemented all of the parts of the Act drawn up by Labour. It is estimated that 90 per cent of the law comes into force today.

Ceri Goddard, chief executive of the Fawcett Society, said: "Rowing back on the requirement for big business to publish and take action on any differences in pay between men and women employees - so to conduct gender pay audits - is tantamount to endorsing the shocking gender pay gap."

The Government likened the advance in employment rights guaranteed under the Equality Act to an equal pay campaign launched by female factory workers in 1968, commemorated in a film that opens in cinemas today.

Theresa May, the Equality Minister, said: "Thanks to pioneers like the women who feature in Made in Dagenham, the workplace is much fairer than it was in 1968, but there is still plenty of room for improvement.

"In these challenging economic times it's more important than ever for employers to make the most of all the talent available. When a company reflects the society it serves, it's better for the employer, the employees and the customers, so being a woman should never be a barrier to being treated fairly at work.

"From today the gagging clauses that stop people discussing their pay with their colleagues will be unenforceable, allowing women and men to find out if they're being paid unfairly.

"This move towards transparency is just one part of the Equality Act, which also makes it easier for businesses to comply with discrimination law by streamlining the equality laws, and provides more protection to disabled people."