J H GREENWOOD & COMPANY

CHARTERED ACCOUNTANTS

Discrimination

FACTSHEET

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The Equality Act 2010 replaces all previous equality legislation, including the Employment Equality (Age) Regulations 2006. The Equality Act covers age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity. These are now called 'protected characteristics'.

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Workplace discrimination occurs when an employee or job applicant is treated unfairly based on characteristics such as race, gender, age, disability, religion, or other protected factors. Discrimination can take many forms, including biased hiring practices, unequal pay, harassment, or wrongful termination.

Recent legislation has strengthened protections against workplace harassment, expanding employer responsibilities to prevent and address discrimination. New laws may include stricter reporting requirements, broader definitions of harassment, and increased penalties for non-compliance. Employers are now expected to implement comprehensive anti-harassment policies, conduct regular training, and create safer reporting mechanisms for employees.

In October 2024, the UK government introduced a comprehensive Employment Rights Bill aimed at enhancing worker protections across various domains. Key provisions of this legislation include:

- **Protection Against Third-Party Harassment**: Employers are now legally obligated to take 'reasonable steps' to safeguard their employees from harassment by third parties, such as customers or clients. This means that businesses must proactively implement measures to prevent such incidents, ensuring a safer work environment for all staff members.
- **Enhanced Maternity and Pregnancy Protections**: The bill strengthens existing laws to provide greater security for pregnant employees and those on maternity leave, aiming to prevent discrimination and unfair treatment during and after pregnancy.
- **Menopause Action Plans**: Employers are required to develop and implement action plans addressing the needs of employees experiencing menopause, promoting a supportive and inclusive workplace culture.
- **Default Flexible Working and Regulation of Zero-Hours Contracts**: The legislation establishes flexible working arrangements as the default and seeks to eliminate most exploitative zero-hours contracts, granting employees more predictable and stable working conditions.

Discrimination

Discrimination occurs when someone is treated less favourably than another person because of their protective characteristic.

There are four definitions of discrimination:

Direct Discrimination: treating someone less favourably than another person because of their protective characteristic

Indirect Discrimination: having a condition, rule, policy or practice in your company that applies to everyone but disadvantages people with a protective characteristic

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Associative Discrimination: directly discriminating against someone because they associate with another person who possesses a protected characteristic

Perceptive Discrimination: directly discriminating against someone because others think they possess a particular protected characteristic

Harassment

Harassment on the basis of age is equally unlawful. For example, a mature trainee teacher may be teased and tormented in a school on the grounds of age during the teaching experience. If no action is taken by the head teacher, this may be treated as harassment. An employee may be written off as 'too slow' or 'an old timer'. This too could be seen as harassment.

The Equality Act 2010 covered harassment by a third party, making employers potentially vicariously liable for harassment of their staff by people they don't employ. However, this has been repealed with effect from October 2013, and employers will no longer have the risk of being held responsible if an external third party harasses an employee. However, employers must continue to take 'all reasonable steps' to ensure that employees don't suffer harassment at work; therefore it is recommended that your harassment policy still states that you show 'zero tolerance' towards such behaviour.

Recruitment

Employers must be aware of the significance of the legislation at all stages in the recruitment process and to avoid breaking the age rules they should consider:

- removing age/date of birth from adverts for example: 'Trainee Sales Representatives.. envisaged age 21-30 years'
- reviewing application forms to ensure they do not ask for unnecessary information about periods and dates
- avoiding asking for 'so many years of experience' in job descriptions and person specifications for example: 'graduated in the last seven years'
- avoiding using language that might imply a preference for someone of a certain age, such as 'mature', 'young', 'energetic' or 'the atmosphere in the office, although demanding, is lively, relaxed and young'
- ensuring that other visible methods are used to recruit graduates as well as university milk rounds, to avoid limiting opportunities to young graduates
- focusing on competencies to undertake a role and not making interview notes that refer to age considerations
- never asking personal questions nor make assumptions about health or physical abilities
- never ask health related questions before you have offered the individual a job.

Action for employers

Employers need to undertake the following to ensure that they are not breaking the law:

- review equality policies
- review employee benefits
- review policies and procedures on retirement
- undertake equality training covering recruitment, promotion and training.

How we can help

We will be more than happy to provide you with assistance or any additional information required. Please contact us for more detailed advice.

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