

# Equality & Discrimination

*in the workplace*



All types of  
Discrimination

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Trade Union Membership

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How to cope  
with disputes at work?

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*and more...*



# Equality & Discrimination

*in the workplace*



This eBook gives a brief outline of rights to equality and protection from discrimination. It includes basic information on:

- *Who is entitled to the rights*
- *How to make a complaint if people are denied a right they believe they are entitled to.*

## We advise and guide

We give you practical know-how on setting up and keeping good relations in your organisation.

## We work with you

We offer hands-on practical help and support to tackle issues in your business with you.

*Deborah Hey*

*Director, Hey Bridge Associates*

### For more information

email: [deborahhey@heybridgeassociates.co.uk](mailto:deborahhey@heybridgeassociates.co.uk)  
or [alisonbridge@heybridgeassociates.co.uk](mailto:alisonbridge@heybridgeassociates.co.uk)

[www.heybridgeassociates.co.uk](http://www.heybridgeassociates.co.uk)

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# Rights to Equality, and Protection from Discrimination

The Equality Act 2010 brings together previous legislation such as the Race Relations Act and the Disability Discrimination Act and provides a more consistent approach to comply with the law.

There are two new strands to the Act – **Associative discrimination** and **Perceptive discrimination**.

## Associative Discrimination

Is where an individual is directly discriminated against or harasses for association with another individual who has a protected characteristic which are: age, disability, gender reassignment, race (which includes colour, nationality and ethnic or national origins), religion and belief, sexual orientation, sex, maternity and pregnancy (although it does not cover harassment because of marriage and civil partnership, and pregnancy and maternity).

## Perceptive Discrimination

Is where an individual is directly discriminated against or harassed based on a perception that he/she has a particular protected characteristic when he/she does not, in fact, have that protected characteristic listed above (other than marriage and civil partnership, and pregnancy and maternity).

## Age Discrimination

The Equality Act of 2010 protects people of all ages. However, different treatment because of age is not discrimination if it can be justified; this means employers must demonstrate that it is a proportionate means of meeting a legitimate aim. The Act continues to allow employers to have a default retirement age of 65 so long as it can be justified.

## Disability Discrimination

A person has a disability if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. Disabled people at work are protected from discrimination.

### This means that employers:

- *must not treat a disabled person less favourably because of a reason relating to their disability, without a justifiable reason*
- *are required to make reasonable adjustments to working conditions or the workplace where that would help to accommodate a particular disabled person.*

The Equality Act 2010 makes it unlawful for employers to ask applicants about their health or disability before offering them work. However, employers can ask about health or impairments where they may need to make reasonable adjustments for an applicant to attend an interview/assessment or ask questions necessary to establish if an applicant can perform an intrinsic part of the job (subject to any reasonable adjustments). A jobseeker cannot take a case to an Employment Tribunal if they think an employer is acting unlawfully for this, but can make a complaint to the Equality and Human Rights Commission.

# Rights to Equality, and Protection from Discrimination

## Equal Pay

Employers must give men and women equal treatment in the terms and conditions of their employment contract if they are employed on:

- *'like work' – work that is the same or broadly similar*
- *work rated as equivalent under a job evaluation study, or*
- *work found to be of equal value.*

A woman is employed on 'like work' with a man if her work is of the same or a broadly similar nature. It is for the employer to show that there is a genuine reason for any difference in pay for this 'like work', which is not based on the sex of an individual.

Individuals may complain to an employment tribunal up to six months after leaving the employment to which their claim relates. Normally, they may claim arrears of remuneration (which includes sick pay, holiday pay, bonuses, overtime etc, as well as 'pay') for a period of generally up to six years (five years in Scotland) before the date of their tribunal application.

The Equality Act 2010 makes it unlawful to prevent or restrict employees from having a discussion to establish if differences in pay exist. However, an employer can require their employees to keep pay rates confidential from people outside the workplace.

## Fixed-term Employees

The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 aim to ensure that employees on fixed-term contracts are treated no less favourably than comparable permanent employees.

### Examples of fixed-term work include:

- *agricultural workers doing 'seasonal' work*
- *shop assistants working for the Christmas period*
- *employees covering maternity leave*
- *employees doing a specific task – like painting a house.*

Under the regulations these employees have the right to the same terms and conditions of employment as comparable permanent employees.

# Rights to Equality, and Protection from Discrimination

## Gender Reassignment

It is discrimination to treat transsexual people less favourably for being absent from work because they propose to undergo, are undergoing, or have undergone gender reassignment than they would be treated if they were absent because they were ill or injured.

## Marriage and Civil Partnership

The Equality Act 2010 protects people from discrimination because they are married or in a civil partnership. The Act does not protect single people.

## Rehabilitation of Offenders

Under the Rehabilitation of Offenders Act 1974 many ex-offenders are given certain employment rights if their convictions become 'spent'. Broadly speaking, anyone who has been convicted of a criminal offence and who is not convicted of a further offence during a specified period (the 'rehabilitation period') becomes a 'rehabilitated person'.

### This means that:

- *the conviction does not have to be declared for most purposes, such as applying for a job*
- *employees are given protection against dismissal or exclusion from any office, profession, occupation or employment (with some exceptions) because of their spent conviction and*
- *employers cannot prejudice a person in any way because of a spent conviction.*

A conviction resulting in a prison sentence of more than 30 months can never become spent. There are some exceptions to the Act – broadly relating to work with children, the sick, disabled people and the administration of justice.

## Part-time Employees

The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 aim to ensure that part-time workers are not treated less favourably than comparable full-timers. Principally, this means they should:

- *receive the same rates of pay*
- *not be excluded from training simply because they work part-time*
- *receive holiday entitlement pro rata to comparable full-timers*
- *have any career break schemes, contractual maternity leave and parental leave made available to them in the same way as for full-time workers and*
- *not be treated less favourably when selecting workers for redundancy.*



# Rights to Equality, and Protection from Discrimination

## Pregnancy and Maternity

A woman is protected against discrimination on the grounds of pregnancy and maternity during the period of her pregnancy and the statutory maternity leave which she is entitled to. During this period, pregnancy and maternity discrimination cannot be treated as sex discrimination.

Discrimination against someone because they associate with another person or are perceived to have one of the protected discrimination characteristics is also against the law.



## Race Discrimination

The Equality Act 2010 makes it illegal to treat a person less favourably due to their colour, nationality and ethnic or national origins. Race discrimination covers all aspects of employment – from recruitment to pay, and training to the termination of a contract.

**Discrimination covers four areas:**

- 1. Direct discrimination** – *treating someone less favourably on racial grounds*
- 2. Indirect discrimination** – *applying practices that might favour one racial group over another*
- 3. Harassment** – *unwanted conduct that violates a person's dignity and creates a hostile or degrading environment*
- 4. Victimisation** – *unfair treatment of an employee who has made a complaint about racial discrimination.*

However, a job may be restricted to people of a particular race or ethnic or national origin, if one of these characteristics is a genuine occupational requirement. A genuine occupational requirement or qualification may apply in limited circumstances for reasons of authenticity – for example, to achieve authenticity a theatre company may need black actors to depict certain scenes.

## Religion or Belief

The Equality Act 2010 protects people from discrimination on the grounds of religion and/or beliefs. The Regulations mean that an organisation's recruitment and selection procedures, as well as employment practices, must treat everyone fairly regardless of religion or belief.

# Rights to Equality, and Protection from Discrimination

## Sex Discrimination

Under the Equality Act 2010, employers should not discriminate on grounds of sex.

Sex discrimination covers all aspects of employment – from recruitment to termination of a contract, and training and pay.

It also includes applying requirements, conditions or practices which, though applied equally to all, have a disproportionate effect on one sex which cannot be shown to be justifiable (for instance to be job-related).

There are limited exceptions: the Act permits employers, under certain conditions, to train employees of one sex in order to fit them for particular work in which their sex has recently been underrepresented; they may also encourage the under-represented sex to take up opportunities to do that work.

## Sexual Orientation

The Equality Act 2010 gives protection from discrimination on the grounds of sexual orientation. The Act protects bisexual, gay, heterosexual and lesbian people. The Regulations mean that an organisation's recruitment and selection procedures, as well as employment practices, must treat everyone fairly regardless of their sexual orientation.



# Trade Union Membership



Employees have various rights to be protected against discrimination because they belong or do not belong to a trade union.

**For example, it is unlawful to:**

- *specify union membership in advertising a job*
- *limit recruitment to trade union members*
- *be refused employment or the services of an employment agency because of membership or non-membership of a trade union*
- *be dismissed or chosen for redundancy because of membership or non-membership of a trade union.*

## Who has these rights?

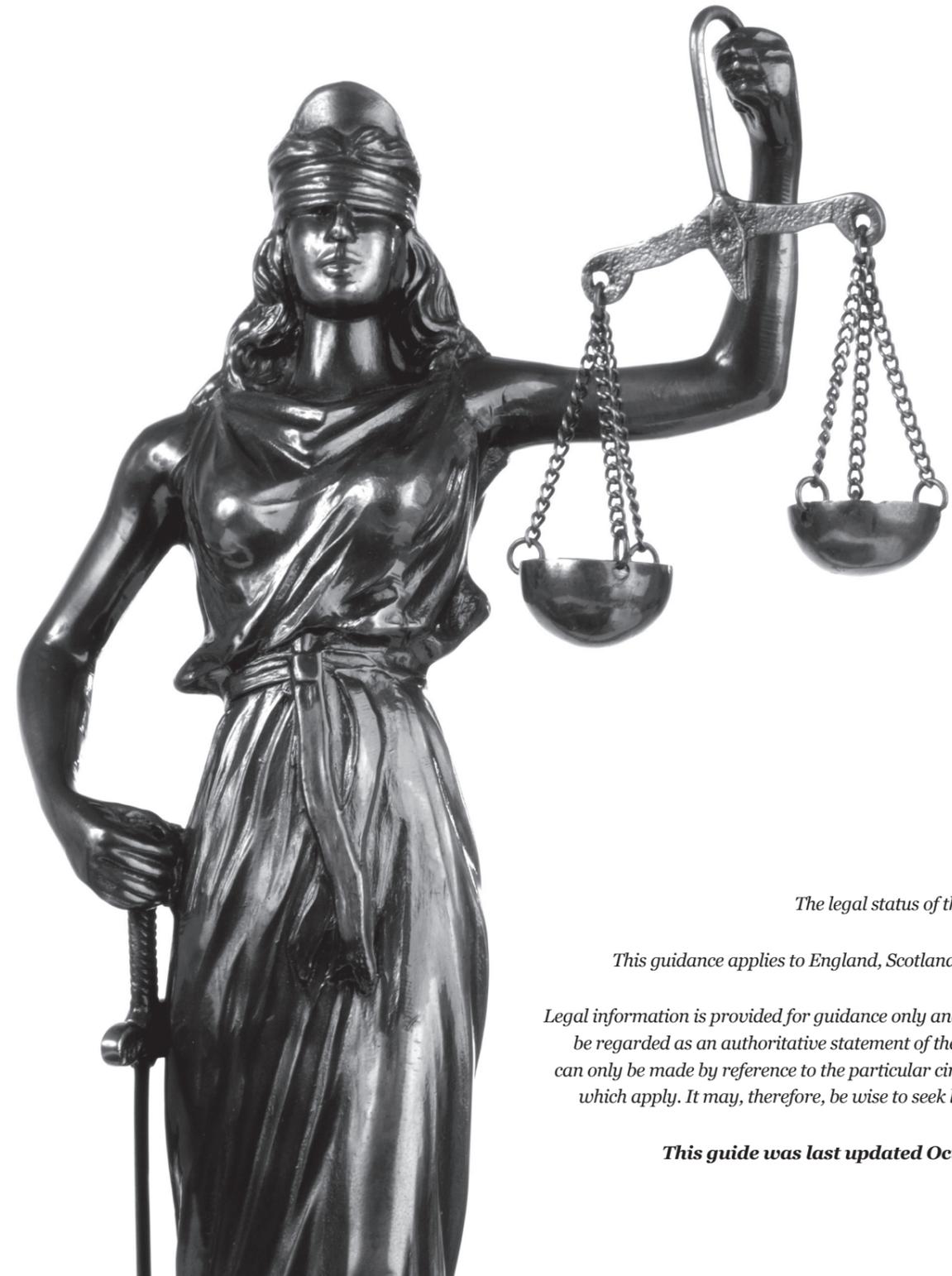
Most people are entitled to the statutory rights listed in this eBook, although, in many cases, qualifying conditions must be fulfilled before a right may be claimed. Some rights apply to all employees as soon as they start work; others depend on factors such as length of service, continuity of employment and activities in addition to the job (eg union work). For certain rights, various groups of people are excluded. Most rights apply only to employees but some apply to wider groups of workers.

Employers and employees are free to agree better terms than those required by legislation in their contract of employment. A contract of employment is an agreement entered into by an employer and employee under which they have certain mutual obligations. Employers must give employees a written statement of the main particulars of employment within two months of the beginning of the employment. It should include, among other things, details of pay, hours, holidays, notice period and an additional note on disciplinary and grievance procedures.

## What happens if there is a dispute about rights at work

**If employers and employees have a dispute about any of the rights listed in this eBook they have the following options:**

- *Resolve the dispute. Employees should always try to resolve a problem or dispute with their manager or employer first. This should be through the organisation's own grievance procedure. An independent third party or mediator can also help resolve disciplinary or grievance issues. Mediation is a voluntary process where the mediator helps two or more people in dispute to attempt to reach an agreement. Any agreement comes from those in dispute, not from the mediator.*
- *An employee can make a complaint to an employment tribunal if he or she believes an employment right has been denied or infringed. In most cases, people who are treated detrimentally for exercising their rights may also complain to a tribunal. Complaints normally must be made within three months of the date of the alleged infringement – although there are exceptions.*
- *Acas Arbitration Scheme. For cases of alleged unfair dismissal and complaints under the right to request flexible working only, both parties can choose to have their case heard by an independent arbitrator appointed by Acas. The hearing is private, informal, non legalistic, quick and confidential and the arbitrator's decision final. The remedies are the same as through an employment tribunal.*
- *A tribunal hearing has various remedies and awards it can make, depending on the type of case. For example, if the tribunal decides an employee has been unfairly dismissed, the remedy could be reinstatement, re-engagement or monetary compensation, depending on the circumstances. Costs can also be awarded. A tribunal hearing is public.*



*The legal status of this guidance*

*This guidance applies to England, Scotland and Wales.*

*Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.*

***This guide was last updated October 2013***

HeyBridge Associates



**For more information**

email: [deborahhey@heybridgeassociates.co.uk](mailto:deborahhey@heybridgeassociates.co.uk)  
or [alisonbridge@heybridgeassociates.co.uk](mailto:alisonbridge@heybridgeassociates.co.uk)

[www.heybridgeassociates.co.uk](http://www.heybridgeassociates.co.uk)