

Birmingham City Council Equality Act 2010 Fact Sheet

SEX EQUALITY

The Equality Act (2010) consolidates all previous equality legislation and extends some protections to groups that were not previously covered. Although there are similarities, there are also significant differences concerning the types of protection afforded the different protected groups. The protected characteristics include: **age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.**

This Fact Sheet discusses the provisions with regard to the characteristic, **SEX**. It forms part of a series of fact sheets that highlight the relevant points pertaining to the Act for each of the nine protected characteristics. More detailed guidance and information about the provisions can be found in the Equality Act 2010 Statutory Code of Practice Employment and the Equality Act 2010 Statutory Code of Practice Services, public functions and associations.

The Equality Act replaced the Sex Discrimination Act 1975 and other related legislation

WHAT IS THE PROTECTED CHARACTERISTIC OF SEX

For the purposes of the Act Sex is a protected characteristic and refers to a male or a female of any age. In relation to a group of people it refers to men and/or boys, or women and/or girls. To show that that sex discrimination has occurred a comparison has to be made with a person of the opposite sex.

In relation to this characteristic the words sex and gender are used interchangeably to refer to treatment a person receives on the grounds of their biological make up and not on their sexual identity

Note: (1) Protection related to sex discrimination does not include gender reassignment which is a separate protected characteristic in itself

WHAT FORM OF PROTECTION DOES THE ACT PROVIDE?

Those who share the protected characteristic of Sex are protected from four different types of discrimination - Direct; Indirect discrimination; Harassment and Victimisation. The protection covers a whole range of areas including employment, services and provision goods.

Direct Sex discrimination is where someone is unfairly treated because of their Sex. This occurs when a person is able to show that they have been treated less favourably on grounds of their sex than others in similar circumstances

Examples of direct discrimination

- An employer transfers a woman from her post against her will because she is having a relationship with a colleague. If the employer does not transfer men in the same circumstances, this transfer may be direct sex discrimination.
- A man and woman are in the process of adopting a child, and tell the adoption panel that the man will be the main carer. Their application is unsuccessful and they suspect that this is because the panel wanted the woman to be the main carer.

There are two supplementary provisions that protect people from direct discrimination or harassment. These are:

- **Associative discrimination:** This is direct discrimination against someone because they associate with another person who possesses the same sex characteristic.
- **Perceptive discrimination:** This is direct discrimination against an individual because others think they possess a particular protected characteristic. It applies even if the person does not actually possess that sex characteristic.

Indirect discrimination is where a rule or practice or a criterion is applied to both men and women, but puts one sex at an unfair disadvantage.

Examples of indirect discrimination: An employer specifies that applicants for a job must be over six feet tall, even though this would not affect the person's ability to do the job. This would be indirect discrimination against women, since it would be harder for them to fulfill this criterion

Harassment is unwanted conduct which violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for that person.

In this case Sexual harassment is the unwanted behaviour that takes place simply because someone is a woman or a man. It is a form of direct discrimination and can take two different forms:

- (a) **Unwanted conduct on the grounds of your sex** - In this case you must be able to show that the treatment is because you are a woman (or a man). An example of this could be if you are being bullied at work and the harasser would not treat somebody of the opposite sex in this way. The conduct does not have to be of a sexual nature for this form of harassment.

Examples of harassment

- At a club meeting, the club manager makes derogatory comments and jokes about women to a mixed audience of men and women. It is not the club manager's purpose to offend or humiliate anyone in the audience; however this may amount to harassment where the effect of the jokes and comments creates a humiliating or offensive environment for a man or woman in the audience.
- A female member of a mountaineering club has a relationship with the President of the club. On seeing her with another male member of the club, the President suspects that she is having an affair. As a result, the President makes her life difficult by continually criticising her climbing skills in front of other members. The behaviour is not because of the sex of the female worker, but because of the suspected affair which is related to her sex. This could amount to harassment related to sex.

(b) **Unwanted physical, verbal or non-verbal conduct of a sexual nature** - If the conduct is of a sexual nature, this is unlawful in itself and you do not have to compare yourself to how somebody of the opposite sex would be treated. This could include:

- Comments about the way you look which you find demeaning
- Indecent remarks
- Questions about your sex life
- Sexual demands by a member of your own or the opposite sex

In both cases the conduct, as highlighted above, must be done with the purpose of, or have the effect of, violating your dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for you.

The Act also introduced new provisions on harassment in the following ways:

- Employees can now take out complaints about behaviour they find offensive even if it's not directed against them
- Employers are now potentially liable for harassment of their staff by people they don't employ e.g. other service users

Victimisation is where someone who has made a complaint of discrimination or harassment or supported someone else's complaint is victimised as a consequence.

Example of victimisation - A member of staff who has made a complaint of sex discrimination or has decided to support another colleague in their complaint by acting as a witness to give evidence in a court case against an employer. The member of staff is then denied promotion or training or is moved away from their usual workplace because of their involvement in the complaint, this may be considered victimization.

ARE THERE ANY EXCEPTIONS?

There are some circumstances where some measures and practices based on sex that are considered “to be justifiable, beneficial or needed for good public policy reason”.

In such circumstances discrimination can be justified if you can show that you acted reasonably in managing your business, i.e. that it is ‘a proportionate means of achieving a legitimate aim. The sole aim of reducing costs is likely to be unlawful

Examples:

- having all female prisons
- providing prostate cancer screening facilities for men
- Voluntary bodies that are single sex, non-profit making and not set up under any laws can restrict membership to one sex and provide accommodation to those members. It can also provide accommodation to members of the public of one sex only where this is the main object of the organization
- communal accommodation – residential accommodation which includes dormitories or other shared sleeping accommodation – can be restricted to one sex only for reasons of privacy and decency or because of the nature of the sanitary facilities available

When is positive action lawful? - As part of complying with the general equality duty, relevant bodies could consider whether taking positive action is open to them and, if so, whether it would be appropriate to take that action.

It is lawful for such bodies as local authorities and the police to take positive action where they reasonably think that people who share a protected characteristic:

- a) Experience a disadvantage connected to that characteristic; or
- b) Have needs that are different from the needs of persons who do not share that characteristic; or
- c) Have disproportionately low participation in an activity compared to those who do not share that protected characteristic

Where the conditions above apply, the relevant body may take any action which is proportionate to meet the aims stated in the Act. Those aims are:

- a) Enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage
- b) Meeting those needs, or
- c) Enabling or encouraging persons who share the protected characteristic to participate in that activity

Positive action is not the same as positive discrimination, which is unlawful.

Example : Research indicates that women in Britain experience significant disadvantages in pursuing successful careers in science subjects as reflected in their low participation in the profession and their lower status within it, fewer contributions to publications. One of the key factors contributing to this position is the lack of visible role models. A leading publisher of scientific publications establishes a literary prize for a female scientist. This will raise the profile of women currently working in science and encourage girls to consider it as a career.

DO PUBLIC BODIES HAVE A DUTY TO PROMOTE SEX EQUALITY?

The Equality Act includes a public sector Equality Duty (also known as the General Duty), which requires public bodies, when exercising their functions, to have due regard to the need to eliminate sex discrimination, advance equality of opportunity for men and women, and foster good relations between men and women.

In practice public bodies can provide services aimed at needs of a particular sex group in areas such as:

- providing transport services
- providing treatment or medication to male and female patients and the availability of health services specifically for men and women
- providing accommodation such as housing, refuges etc
- Providing a leisure centre which runs single-sex swimming facilities for women

The provision of such services is unlikely to be unlawful sex discrimination because the Act allows facilities to be restricted by sex where the potential user-group would be seriously embarrassed by the presence of the opposite sex, or where the users are likely to be in a state of undress, or there are considerations of safety etc

Resources and Contacts:

1. Equality Act 2010 Statutory Code of Practice Employment
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/employercode.pdf
2. Equality Act 2010 Statutory Code of Practice Services, public functions and associations
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/servicescode.pdf
3. Government Equality Office - <http://homeoffice.gov.uk/equalities/>
4. EHRC (Equality & Human Rights Commission), the statutory body with responsibility to enforce and promote equality across the protected characteristics www.equalityhumanrights.com