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HR+ Limited

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The Equality Act 2010 consolidates existing discrimination laws into a single piece of legislation and aims to clarify and simplify this area of law. It defines direct discrimination as less favourable treatment because of a protected characteristic. This widens the scope for associative discrimination.

Pre-employment health related checks

The Equality Act limits the circumstances when you can ask health related questions before you have offered the individual the job. Up to this point, you can only ask health related questions to help you:

- decide whether you need to make reasonable adjustments to enable the person to participate in the selection process
- decide whether an applicant can carry out a function that is essential (intrinsic) to the job
- monitor diversity among people making applications for jobs
- take positive action to assist disabled people
- assure yourself that a candidate has the disability where the job genuinely requires the jobholder to have a disability

A jobseeker cannot take you to an Employment Tribunal if they think you are acting unlawfully by asking questions that are prohibited, though they can complain to the Equality and Human Rights Commission.

Once a person has passed the interview and you have offered them a job (whether this is an unconditional or conditional job offer) you are permitted to ask appropriate health – related questions.

Extension of employment tribunal powers

Under previous legislation, an employment tribunal could make a recommendation that an employer take action within their organisation to eliminate or reduce the effect on the claimant of any discrimination. The Act extends this power so that it will now be possible for a tribunal to make recommendations that an organisation should eliminate or reduce the effect of discrimination on other employees, not just on the claimant.

Equal pay – direct discrimination

The Equality Act retains the framework that was previously in place. This means that in most circumstances a challenge to pay inequality and other contractual terms and conditions still has to be made by comparison with a real person of the opposite sex in the same employment. However, a change in the Equality Act allows a claim of direct pay discrimination to be made, even if no real person comparator can be found. This means that a claimant who can show evidence that they would have received better remuneration from their employer if they were of a different sex may have a claim, even if there is no-one of the opposite sex doing equal work within the organisation. This would be a claim under sex discrimination.

Pay Secrecy

The Act makes it unlawful for you to prevent or restrict your employees from having a discussion to establish if differences in pay exist that are related to protected characteristics. It also makes terms of the contract of employment that require pay secrecy unenforceable because of these discussions. An employer can require their employees to keep pay rates confidential from some people outside of the workplace, for example a competitor organisation.

Employer Action Points

It is important that you consider any changes that may be needed to Employment documents, policies and procedures these include:

- 1) Reviewing your policies and contracts in light of the new definitions and prohibitions (e.g. direct and indirect discrimination; pay secrecy clauses and third party harassment)
- 2) Reviewing your Company application forms and recruitment process to ensure they conform with the limited scope of pre employment health questions; and
- 3) Educating all employees on the changes to the concept of discrimination.

Increase to the National Minimum Wage.

With effect from 1st October 2010 the following amendments to the regulations become applicable;

- 1) The standard adult rate (for workers aged 21* and over) will increase to £5.93 per hour.
- 2) The development rate (for workers aged 18 – 20) will increase to £4.92 per hour.
- 3) The rate for young workers aged 16 – 17 years increases to £3.64 per hour.

For the first time there will also be an apprentice minimum wage of £2.50 per hour. The new rate will apply to those apprentices who are under 19, or those that are aged 19 and over but in the first year of their apprenticeship.

* The age at which the main rate is applicable has been reduced by one year so that workers now qualify for the standards adult rate from age 21 rather than 22.

Employer Action points

- 1) Check employee records for age clarification and notify all affected employees in writing prior to the change date.
- 2) Notify payroll.
- 3) Amend any Company Employee documentation as required.

From 1 January 2011 payments made into travel and subsistence tax relief schemes will no longer count towards the national minimum wage.

Limit on immigration

The coalition Government announced on 28 June 2010 that it intended to impose a limit on migration from non – European countries. Details of how the final limit will be delivered will be agreed following consultations with businesses. In the meantime, an interim limit came into effect on July 2010 to avoid a rush of applications before the limit is set and that the number of work visas issued stays between 2009 levels.

The consultation ends on 17 September 2010 and the limit will then be decided and put in place by 1 April 2011.

The interim measures include:

A limit on the number of applications to Tier 1 (General) to be considered in any one month

The pass mark for Tier 1 (General) will increase from 95 points to 100 points

A limit on the number of certificates of sponsorship that each sponsor can assign to migrant workers under Tier 2 (General).

Review of default retirement age

Following the General Election, the Coalition Government announced that it would consult shortly on quickly phasing out the DRA from April 2011. It would also restore the link between the State Pension and earnings from 2011 and call for evidence from the public and interested parties in raising the state pension age to 66. On 29 July 2010 the Government published a consultation paper on proposals to phase out the DRA. The main proposals are:

- 1) Phasing out the DRA from 6 April 2011,
- 2) Removing the associated statutory retirement procedures,
- 3) Transitional arrangements for retirements that have been notified before 6 April 2011 and where the retirement date falls before 1 October 2011,
- 4) Employers can retain a compulsory retirement age after 6 April 2011, but only if they can objectively justify it.

The Consultation ends on 21 October 2010.

Bribery Offences Introduced

The aim of the Bribery Act 2010, which is to be introduced with effect from April 2011, is to promote anti-bribery practices among businesses by modernising the law on bribery.

The Act introduces a corporate offence of failure to prevent bribery by persons working on behalf of a business the penalty for which would be an unlimited fine - the only mitigating circumstance to this would be if the business has adequate procedures in place to prevent bribery.

For individuals, it will be a criminal offence to give, promise or offer a bribe and to request, agree to receive or accept a bribe. The legislation raises the maximum penalty for bribery by individuals from seven to ten years' imprisonment. What constitutes adequate procedures to prevent bribery is one of the key question's, however the answer to this is not as clear as it could be. Under clause 9 of the Act, the Government is obliged to issue guidance "about procedures that relevant commercial organisations can put in place to prevent persons associate with them from bribing" (section 9(1)).

Given that the Act is due to come into force later this year there is a real concern whether any guidance will be issued far enough in advance for Companies to digest it, review policies and make the necessary changes. It would be best practice to ensure that the resulting guidance be designed with a degree of flexibility to ensure Companies can adopt the compliance approach best suited to their business.

Employer Action Points

It is important that the senior management team take responsibility for both introducing and driving an anti – corruption programme and communicating this throughout the Company.

Some of the procedures that should be considered include;

- The compilation of clear and unambiguous guidelines into those areas that could be considered a risk, such as the acceptance of gifts, entertainment, travel expense reimbursement etc.
- A review of all policies relating to financial control procedures and Disciplinary and Grievance – in particular those relating to whistleblowing, investigation and follow up procedures.
- A review of appropriate HR policies and procedures for handling employee breaches of the Bribery Act.
- A review of employment contracts to include penalties should an employee be found in breach of the Bribery Act.
- A comprehensive training program – starting at Induction – to help develop a workforce that supports and understands its responsibilities in relation to ethical working.

Whilst it is the intention of HR+ to provide as relevant and up to date information as is reasonably possible, the introduction of the new coalition government and the changes that have been made to legislation agreed by the previous government may mean that amendments could have been made to any of the items covered in this article after they had been compiled. We would therefore recommend that the appropriate checks are made to ensure that there have been no further changes made since this went to print.

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