

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Work

Chapter 1: Employment, etc.

Section 39: Employees and applicants

Effect

143. This section makes it unlawful for an employer to discriminate against or victimise employees and people seeking work. It applies where the employer is making arrangements to fill a job, and in respect of anything done in the course of a person's employment. In respect of discrimination because of sex or pregnancy and maternity, a term of an offer of employment which relates to pay is treated as discriminatory where, if accepted, it would give rise to an equality clause or if an equality clause does not apply, where the offer of the term constitutes direct or dual discrimination. It also imposes the reasonable adjustments duty set out in section 20 on employers in respect of disabled employees and applicants.

Background

144. This section replaces similar provisions in previous legislation.

Examples

- An employer decides not to shortlist for interview a disabled job applicant because of her epilepsy. This would be direct discrimination.
- An employer offers a woman a job on lower pay than the set rate because she is pregnant when she applies. She cannot bring an equality clause case as there is no comparator. However, she will be able to claim direct discrimination.
- An employer refuses to interview a man applying for promotion, because he previously supported a discrimination case against the employer brought by another employee. This would be victimisation.
- An employer enforces a "no beards" policy by asking staff to shave. This could be indirect discrimination, because it would have a particular impact on Muslims or Orthodox Jews.