

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8: Prohibited Conduct: Ancillary

Section 109: Liability of employers and principals

Effect

355. This section makes employers and principals liable for acts of discrimination, harassment and victimisation carried out by their employees in the course of employment or by their agents acting under their authority. It does not matter whether or not the employer or principal knows about or approves of those acts.
356. However, employers who can show that they took all reasonable steps to prevent their employees from acting unlawfully will not be held liable.
357. Employers and principals cannot be held liable for any criminal offences under the Act that are committed by their employees or agents, except for those in the provisions on transport services for disabled people in Part 12 of the Act.

Background

358. This section replaces similar provisions in previous legislation. It is designed to ensure that employers and principals are made responsible for the acts of those over whom they have control. The section works together with the provisions on “Liability of employees and agents” (section 110), “Instructing, causing or inducing contraventions” (section 111), and “Aiding contraventions” (section 112) to ensure that both the person carrying out an unlawful act and any person on whose behalf he or she was acting can be held to account where appropriate.

Examples

- A landlord (the principal) instructs an agent to collect rent at a property. The agent harasses an Asian couple, who bring a claim in which the agent is held to have acted unlawfully. The principal may be held liable for breaching the harassment provisions even if he or she is unaware of the agent’s actions.
- A shop owner becomes aware that her employee is refusing to serve disabled customers. The employer tells the employee to treat disabled customers in the same way as other customers and sends the employee on a diversity training course. However, the employee continues to treat disabled customers less favourably. One such customer brings a claim against both the employee and the employer. The employer may avoid liability by showing that she took all reasonable steps to stop the employee from acting in a discriminatory way.