

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9: Enforcement

Chapter 3: Employment tribunals

Section 124: Remedies: general

Effect

402. This section sets out the remedies available to employment tribunals hearing cases under the Act. It does not however apply to a breach of an equality clause or an equality rule, which is dealt with in sections 132, 133 and 134.
403. An employment tribunal can make a declaration regarding the rights of the complainant and/or the respondent; order compensation to be paid, including damages for injury to feelings; and make an appropriate recommendation. The measure of compensation is that which applies in tort claims, for example claims of negligence, where the compensation puts the claimant in the same position, as far as possible, as he or she would have been in if the unlawful act had not taken place.
404. Where a tribunal makes a recommendation it does not have to be aimed only at reducing the negative impact on the individual claimant(s) of the respondent's actions which gave rise to the successful claim, but can be aimed at reducing that impact on the wider workforce. The recommendation must state that the respondent should take specific action within a specified period of time. A tribunal has the power in any case where a recommendation made for the benefit of the individual claimant only is not complied with, to award compensation or increase any award already made.
405. In a case of indirect discrimination where the respondent proves that there was no intention to treat the claimant unfavourably, a tribunal cannot award damages to a claimant unless it has first considered making either a declaration or recommendation.

Background

406. This section is designed generally to replicate the effect of provisions in previous legislation, under which employment tribunals could make a declaration, order compensation to be paid and make recommendations. However, under that legislation the recommendations that they could make could only be for the benefit of the individual claimant(s). The Act extends the recommendations power so that employment tribunals can make recommendations which benefit persons other than the claimant.

Example

- A tribunal could recommend that the respondent:
 - introduces an equal opportunities policy;

*These notes refer to the Equality Act 2010 (c.15)
which received Royal Assent on 8 April 2010*

- ensures its harassment policy is more effectively implemented;
- sets up a review panel to deal with equal opportunities and harassment/grievance procedures;
- re-trains staff; or
- makes public the selection criteria used for transfer or promotion of staff.