

# EQUALITY ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 8: Prohibited Conduct: Ancillary**

#### *Section 110: Liability of employees and agents*

##### **Effect**

359. This section makes an employee personally liable for unlawful acts committed in the course of employment where, because of section 109, the employer is also liable - or would be but for the defence of having taken all reasonable steps to prevent the employee from doing the relevant thing. An agent would be personally liable under this section for any unlawful acts committed under a principal's authority. However, an employee or agent will not be liable if he or she has been told by the employer or principal that the act is lawful and he or she reasonably believes this to be true.
360. Subsections (4) and (5) make it an offence, punishable by a fine of (currently) up to £5,000, if an employer or principal knowingly or recklessly makes a false statement about the lawfulness of doing something under the Act.
361. This section does not apply to discriminatory acts done by an employee or agent because of disability in relation to schools, because claims for disability discrimination in schools cannot be enforced against individuals.

##### **Background**

362. This section incorporates some of the elements in the "Aiding unlawful acts" provisions in previous discrimination legislation. It takes a more direct approach and unlike the previous provisions it is not necessary to show that the employee or agent knew that the act was unlawful.

##### **Examples**

- A factory worker racially harasses her colleague. The factory owner would be liable for the worker's actions, but is able to show that he took all reasonable steps to stop the harassment. The colleague can still bring a claim against the factory worker in an employment tribunal.
- A principal instructs an agent to sell products on her behalf. The agent discriminates against a disabled customer. Both the principal and the agent are liable, but the courts are able to determine that evidence provided by the principal indicate the authority given to the agent did not extend to carrying out an authorised act in a discriminatory manner. The disabled customer can still bring a claim against the agent.