



# Age, Gender Race & Sex



## **Age, gender reassignment, race and sex**

### **NB: THIS PRACTICE NOTE COVERS THE LAW WHICH APPLIES ON OR AFTER 1 OCTOBER 2010 (EQUALITY ACT 2010) in UK**

For information on the law which applied before 1 October 2010, refer to Gender reassignment and sexual orientation instead.

#### **Protected characteristics**

The Equality Act 2010 provides protection against discrimination which relates to certain listed characteristics which people may possess. Some protections relate specifically to only one of those characteristics. Others provide the same protection in relation to all the characteristics, which are collectively referred to as 'the protected characteristics'.

Each protected characteristic is listed and (with the exception of pregnancy and maternity) defined in the Act:

References: EqA 2010, s 4

- o age -- see Age, below, for further information  
References: EqA 2010, s 5
- o disability -- see Disability for further information  
References: EqA 2010, s 6
- o gender reassignment -- see Gender reassignment, below, for further information  
References: EqA 2010, s 7
- o marriage and civil partnership -- see Marriage and civil partnership for further information  
References: EqA 2010, s 8
- o pregnancy and maternity
- o race -- see Race, below, for further information  
References: EqA 2010, s 9
- o religion or belief -- see Religion or belief for further information  
References: EqA 2010, s 10
- o sex -- see Age, gender reassignment, race and sex -- Sex, below, for further information  
References: EqA 2010, s 11
- o sexual orientation -- see Sexual orientation for further information  
References: EqA 2010, s 12

#### **Age**

The Equality Act 2010 has very little to say in the provision which provides definitions relating to the protected characteristic of age. All it tells us is that, in relation to the protected characteristic of age:

References: EqA 2010, s 5

- o any reference in the Act to a person who 'has a particular protected characteristic' means a person of a particular 'age group'
- o a reference to persons who 'share a protected characteristic' means persons of the same 'age group'
- o a reference to an 'age group' means a group of persons:
  - o who are all of a particular age
  - o who all fall within a particular range of ages

It should be remembered that, while the most obvious forms of age discrimination will adversely affect those who are older, the protection applies in relation to inequality of treatment with regard to any age. Hence the possibility of discrimination against the young should be borne equally in mind. For example, any job recruitment exercise which specifies that applicants must have a certain number of years' experience may indirectly discriminate against younger applicants, unless that requirement is justified (see Indirect discrimination, Justification and Employment events which give rise to prohibited conduct claims -- Recruitment).

### **Gender reassignment**

A person has the protected characteristic of gender reassignment if, for the purpose of reassigning his or her sex by changing physiological or other attributes of sex:

References: EqA 2010, s 7(1)

- o he or she is proposing to undergo a process (or part of a process)
- o he or she is currently undergoing a process (or part of a process)
- o he or she has undergone a process (or part of a process)

Note that in relation to such 'processes', there is no requirement that they be undertaken under medical supervision.

Any reference in the Equality Act 2010 to a 'transsexual person' means a person who has the protected characteristic of gender reassignment.

References: EqA 2010, s 7(2)

In relation to the protected characteristic of gender reassignment:

References: EqA 2010, s 7(3)

- o any reference in the Equality Act 2010 to a person who 'has a particular protected characteristic' means a transsexual person
- o any reference in the Equality Act 2010 to 'persons who share a protected characteristic' means transsexual persons

### **Race**

The protected characteristic of race includes:

References: EqA 2010, s 9(1)

- o colour
- o nationality
- o ethnic origins
- o national origins

In relation to the protected characteristic of race:

References: EqA 2010, s 9(2)

- o any reference in the Equality Act 2010 to a person who 'has a particular protected characteristic' means a person of a particular 'racial group'
- o any reference in the Equality Act 2010 to 'persons who share a protected characteristic' means persons of the same 'racial group'

Any reference in the Equality Act 2010 to a 'racial group' means a group of persons defined by reference to race.

A particular 'racial group' may, however, comprise two or more distinct racial groups.

Caste is not yet an aspect of the protected characteristic race, so inequality of treatment as between different castes will not (without an accompanying racial distinction) be actionable in relation to the protected characteristic of race. There is however a specific power to amend the Equality Act 2010 to change the position in relation to caste. – This position is in UK, however in countries like India where there can be discrimination based on

## **Sex**

The Equality Act 2010 again has only very little to say in the provision which provides definitions relating to the protected characteristic of sex. All it tells us is that, in relation to the protected characteristic of sex:

References: EqA 2010, s 11

- o any reference in the Equality Act 2010 to a person who 'has a particular protected characteristic' applies either to a man or to a woman
- o any reference in the Equality Act 2010 to 'persons who share a protected characteristic' means persons of the same sex

It should be remembered that, while the most obvious forms of sex discrimination will adversely affect women, the protection applies in relation to inequality of treatment to men as well. Hence the possibility of discrimination against men should be borne equally in mind.