Equality in Employment Guidance

Approved / Reviewed By:	CEO
Originally Ratified On:	28 November 2022
Last Reviewed On:	November 2025
Review Expectations:	Under regular review subject to changes in legislation. Formal review will be undertaken annually.

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1. Summary

The legislation covering equality in employment is comprehensive and affects every aspect of employment practise from advertising a post, to post employment. These guidance notes briefly outline the main provisions so schools can ensure their employment practices are consistent with current law and good practice. Schools should take professional advice on any questions where equal treatment is an issue.

This guidance outlines key obligations under the Equality Act 2010 and related legislation. It provides schools with practical steps to ensure compliance and promote equality in employment.

Key points include:

- Nine protected characteristics under the Equality Act 2010.
- Prohibited conduct: direct/indirect discrimination, harassment, victimisation.
- Public sector equality duty and Equality Impact Assessments.
- Penalties for non-compliance and importance of monitoring.
- Equal pay requirements and statutory codes of practice.

Schools should review policies annually, train staff, and maintain transparent monitoring systems.

2. Who is protected?

The Equality Act 2010 harmonised and replaced many previous pieces of legislation., it relates to services, i.e., public procurement functions as well as employment and provides a single, consolidated source of discrimination law, covering all the types of discrimination that are unlawful.

Further information and guidance on the implications to the service schools provide, and the actions schools need to take is available from Gov.UK

https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools

Workers have the right not to be unlawfully discriminated against, harassed, or victimised on a range of grounds. These are known as the “protected characteristics”, of which there are nine:

- **Age**: people of all ages are protected
- **Disability:** only disabled people are protected, which means disabled people can be treated more favourably in order to eliminate disadvantage, hence the need to make reasonable adjustments in the workplace to accommodate their needs.
- **Gender reassignment:** people are now protected as soon as they start to manifest an aspect of intention to reassign their gender, i.e., they do not have to be undergoing a medical procedure.
- **Marriage and civil partnership:** people are not protected from discrimination for being single
- **Pregnancy and maternity:** a woman is protected as soon as she is pregnant, and during the period of any statutory maternity leave to which she is entitled, she should not suffer a detriment at any time because of maternity leave.
- **Race:** including national and ethnic origin, and potentially caste[1], people of all races are protected.
- **Religion and belief:** this covers any religion, and philosophical beliefs that meet a number of set criteria, people of no religion or no belief are equally protected.
- **Sex:** both sexes are equally protected.
- **Sexual orientation:** people of any sexual orientation are protected.

The right to make a complaint of unlawful discrimination is not restricted to people in employment and no qualifying period of employment is required. In some cases, job applicants and former workers may also make a complaint to an employment tribunal.

There is also separate legislation protecting employees from discrimination on the grounds of trade union membership and activity, and part-time or fixed term working. This guidance will not focus on these issues as they are separate to the main equality legislation. More information can be found at:

Trade Unions: https://www.gov.uk/join-trade-union/trade-union-memerbship-your-employment-rights
Part time workers: https://www.gov.uk/part-time-worker-rights
Fixed-term workers: https://www.gov.uk/fixed-term-contracts

NB: The government has decided not to include caste within specific legislation, preferring for the courts to rely on emerging case law. The key reasons for this were considered to be the difficulty in defining caste legislation.

3. What is the prohibited conduct?

Discrimination and harassment may arise in a variety of employment decisions, particularly offer of employment, training and promotion, performance, appraisals, treatment during employment (including harassment and victimisation).

The act prohibits related to any of the protected characteristics below.

- **direct discrimination:** ***for example*****,** a school refuses to employ a teacher because he is gay. Once it has been established that direct discrimination has occurred, a tribunal will not allow any legal justification or defence. It is always unlawful, apart from in extremely limited circumstances.
- **indirect discrimination without justification:** where the effect of certain requirements or practises has an adverse impact on a group. Indirect discrimination is normally not intentional but creates a barrier for a group of people. An individual bringing a claim of indirect discrimination must be able to show that the detriment affects a group, not just to an individual. Where indirect discrimination has been identified at least one of three things need to occur: *eliminate – mitigate – justify*
- **discrimination arising from disability:** where the less favourable treatment is not directly because of the person's disability but relates to something arising from the disability. Unlike other discrimination claims, this type of claim does not require a comparator: the person does not have to prove that a non-disabled person in similar circumstances would have been treated differently. As such, it is intended to provide extra protection for disabled people.

  Employers can defend such claims if they can show their actions to have been a proportionate means to achieving a legitimate aim. A key issue for this type of discrimination is whether the employer knew, or ought reasonably to have known, of the disability. It is possible to make a defence that the disability was undisclosed, and the school could reasonably be expected to have known about it. ***For example*****,** a dyslexic person is not promoted because of their poor spelling which spoils their written work. Whilst a non-dyslexic person might lawfully be passed over for promotion for the same reason, it will be important for the school to be able to show that that all reasonable adjustments were considered and made first, before acting in this way. If this did not occur, and the school knew about the dyslexia, the action would constitute unlawful discrimination.

- **harassment:** – Harassment is defined in section 26 of the Equality Act 2010 as unwanted conduct related to a relevant protected characteristic and which violates a person's dignity or has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment. Schools need to recognise that harassment or bullying in any workplace is clearly undesirable and unacceptable. Not only can it have a detrimental effect on health and well-being of an employee who suffers it, but it can generally undermine good working relationships, affect staff morale, and reduce overall effectiveness in a working environment. Schools have a legal duty to provide a safe working environment for its employees.

As harassment is defined by "its purpose or effect", the impact on the victim is taken into account even where the perpetrator did not intend to cause offence or distress. Therefore, harassment cannot be denied by saying that it was unintentional, or intended humorously, or because of unawareness that someone had a particular protected characteristic. ***For example*****,** the harassment could be based on association with someone else, for instance people in inter-racial partnerships. If the conduct is related to one of the equality strands and can be reasonably be said to have created an offensive, intimidating, or distressing environment for an individual, it will constitute harassment.

3.1 **victimisation:** workers may also bring a claim if they have been treated unfavourably because they have made, or are contemplating making, a complaint about discriminatory treatment, or they have supported someone else in making such a complaint, e.g., by being a witness.

3.2 **discrimination by association:** less favourable treatment because of an association with another person with a protected characteristic. The protections is most likely to apply to those with caring responsibilities, (associative discrimination on the grounds of disability) but could also apply to other groups, ***for example*** people whose relative or partner is of a particular race or sexual orientation.

3.3 **discrimination by perception:** less favourable treatment because a person is believed to possess a protected characteristic even if they do not, ***for example*** a heterosexual person is believed to be gay and is therefore treated less favourably.

3.4 **Vicarious liability:** where an individual arises out of an act of another worker, rather than the school itself, as is most likely in the case of harassment, the school may still be held to be vicariously liable, even if it did not have any knowledge of the conduct. The only way it can defend against this is to be able to show that all reasonable steps have been taken to prevent harassment and discrimination from occurring. This includes demonstrating that the school has sound employment policies and practices, which are made clearly known to staff.

3.5 **Eliminating and mitigating discrimination:** Schools must take steps to eliminate and or mitigate any identified negative impacts as far as possible before reaching the position of justification. Each school should consider their policies and practices, particularly when any changes are being made in order to eliminate or minimise indirect discrimination as much as possible.

Consultation with staff, unions or particular groups may be necessary in order to help identify potential negative impacts that were previously not considered. For example, in order to provide adequate lunch-time cover, it is believed shift patterns and hours for all part-time teaching assistants need to change.

This could cause negative impacts for a number of groups i.e., those with caring responsibilities, (related to disability and sex), disabled staff whose condition precludes working certain hours, or particular religions, if it prevents worship at that time of day.

The first thing the school should consider is how to ***eliminate*** the negative impact – whether the proposed change needs to be imposed, or if there are other options, such as asking for volunteers, deploying people in other roles, or an opt-out of the change for those with issues related to being in a protected group.

If the evidence shows this is not practical or possible, next, the school should consider how to ***mitigate*** the negative impact. For instance, it could ensure rotas are arranged several months in advance, to give people adequate notice to make other caring arrangements, make reasonable adjustments for disabled staff and/or build in extra flexibility for those with issues related to being in a protected group, for instance, by being able to swap with colleagues if something particularly important comes up.

3.6 **Justifying discrimination:** Where it is not possible to eliminate or mitigate a negative impact, employers can justify their actions, if they can show them to be a "proportionate means to achieving a legitimate aim.

Proportionate means - both the level of the negative impact, and whether anything else could be done instead, should be considered.

Legitimate aim - the intention behind the action must in itself be defensible and reasonable. Reducing costs alone is unlikely to be considered a legitimate aim, although it can be a factor. The school needs to be able to provide detailed evidence of its justification and considerations to demonstrate its intention to be reasonable: a blank assertion that the action is necessary will be insufficient legal defence. For example, it would be unlawful indirect discrimination to impose a blanket ban on job share or part-time working options, as this discriminates against people with caring responsibilities who are more likely to be women.

4. The public sector equality duty

Local authority-maintained schools are bound by the public sector equality duty, it requires them to have due regards to the need to:

- eliminate unlawful discrimination, harassment, and victimisation
- advance equality of opportunity
- and foster good relations

The specific duties required are :

- publish information to show their compliance with the Equality Duty at least annually
- set and publish equality objectives; at least every four years
- all information must be published in a way which makes it easy for people to access.

Further information and guidance is available at: https://www.gov.uk/government/publications/public-sector-equality-duty

5. Equality Impact Assessments (EIAs)

Equality Impact Assessments (EIAs) in themselves are not a legal requirement, they have an important role to play in demonstrating "due regard" to eliminating discrimination and advancing equality of opportunity. Conducting EIAs on policies and processes, and keeping them updated when changes are made, is one of the best ways of ensuring a systematic thorough, and transparent approach to integrating equality, and demonstrating a commitment to this agenda.

An Equality Impact Assessment, is a way of ensuring that the schools' policies, practices, services, and functions are as inclusive as they can be ensuring that:

- they do not inadvertently disadvantage anyone directly affected
- wherever possible, they proactively advance equality, diversity, and inclusion
- The process involves the analysis of information and feedback from protected groups and others. This helps the school to understand the actual potential impact of changes on these groups.

Carrying out Equality Impact Assessments are a means ensuring that schools pay due regard to the Equality Act (2010).

There is no set format for an EIA. It is recommended that EIAs are carried out on all policies, procedures and decisions that may have an impact on staff or service users and are updated any time changes are made. The Trust HR provider has a template available and further guidance is available via www.suffolk.gov.uk under Equality Impact Assessments.

6. How does the law work and what are the penalties?

- **reverse burden of proof:** once a person has shown they did suffer a detriment, the normal burden of proof is reversed, which means it is for the school to prove that the reason for the detriment was not unlawful discrimination.
- **balance of probability:** it should be noted that claims are assessed on the "balance of probability" and not the stronger criminal test of "beyond reasonable doubt".
- **comparator:** claims of direct and indirect discrimination require a comparator, so a person must demonstrate that there is a person, or group, who has been treated more favourably in similar circumstances. The only exceptions are pregnancy and maternity and racial segregation, as they are deemed to be unique situations with no appropriate comparison.
- **qualifying period:** there is no qualifying period of employment to make a discrimination claim, so contractors and workers, job applicants and ex-employees can all bring claims.
- **time limits:** for discrimination claims are strict: they must be brought within three months of an incident occurring, or the last incident occurring, unless there are exceptional circumstances where a delay is acceptable or reasonable.
- **penalties:** discrimination awards have no maximum limit; awards take into account both loss of earnings and injury to feelings.
- The highest sum awarded in the period 1 April 2019 to 31 March 2020 was £265,719 and was awarded in a disability claim. This was closely followed by an award of £243,636 for an age discrimination claim.

The fee system was introduced to combat the cost to employers and the number of weak and vexatious claims. Employees can currently be expected to pay **up to £1,200** to bring a claim before a tribunal.

7. Statutory code of practice

In October 2007, the Equality and Human Rights Commission (EHRC) replaced three previously separate equality commissions: the Equal Opportunities Commission, the Commission for racial Equality and the Disability Rights Commission. It is a statutory body, and has published codes of practice for employment, which have statutory force, that supplement the legislation. Failure to comply with the relevant code of practice may be cited in evidence by a complainant. Additional useful information can be found on https://www.equalityhumanrights.com

8. Monitoring equal opportunities

It is good practice to monitor equal opportunities by keeping statistics on the makeup of your workforce and job applicants.

9. Equal Pay

Equal pay legislation, starting with the Equal Pay Act 1970, requires that men and women should receive equal pay for carrying out like work, or work of equal value. It is essential in all local authority schools that governing bodies cooperate with the County Council in matters of pay determination and apply to the County Council's systems fairly and rigorously. A pay decision made by an individual school which leads to a successful equal pay claim may have implications for other schools.

Please contact the Trust's HR provider for help and guidance for any cases or complaints relating to equality matters in employment.

10. Also see:

- Employment & Disability Guidance
- Equality & Diversity Policy
- Staff Harassment & Bullying Policy

11. Legislative Updates

Upcoming Legislative Changes (Employment Rights Bill 2025)

Key Changes:

- Equality Action Plans: Large employers (250+ staff) must publish plans alongside gender pay gap data.
- Extended harassment duties: Employers must take "all reasonable steps" to prevent sexual harassment; liability for third-party harassment reinstated.
- Tribunal time limits extended from 3 to 6 months.
  Creation of Fair Work Agency for enforcement.

Recent Judicial Guidance

Supreme Court ruling (2025):

- Clarified that "sex" under the Equality Act refers to biological sex, impacting single-sex exceptions and workplace facilities. Employers should review policies in line with EHRC guidance.

12. Summary of changes

Document control		
Date	**Section(s)**	**Update(s)**
27 Nov 23	Title Box	HR Committee updated to Finance & HR Committee
25 Nov 24	-	Reviewed – No Changes
18 Nov 25	Summary	Extended Summary with list of key legislation
18 Nov 25	11	Added Legislative updates