

## **Key Changes of the Equality Act: Implications for HoDs**

Change 1 - More individuals are protected from discrimination.

Change 2 – During recruitment it is unlawful to ask applicants about their health, including whether they have a disability, before they have been offered a role.

Change 3 – Greater protection for disabled workers.

Change 4 - More individuals are protected from harassment.

Change 5 – Greater protection for individuals from victimisation.

### **Change 1 - More individuals are protected from discrimination.**

Those protected by the Act include:

Individuals **with** the 'protected characteristics' of Age, Disability, Gender Race, Gender Reassignment, Marriage/Civil Partnership, Pregnancy/Maternity, Religion or Belief and Sexual Orientation.

Individuals who **are perceived to have** a protected characteristic. For example, an individual who is not gay may bring a claim if they believe they have been discriminated against because of a perception that they are gay.

Individuals **who are associated with** an individual with a protected characteristic. For example, a member of staff providing care for a disabled partner or child would be protected from discrimination because of their association with a disabled person.

### **Potential implications for HoDs/managers**

- All staff will have at least two of the protected characteristics! Ensure that all your managers and staff are aware of the implications of equality and diversity at work and understand how they can prevent discrimination from happening. If you would like to discuss tailored training for your staff then please contact Julie Campbell, [j.l.campbell@shef.ac.uk](mailto:j.l.campbell@shef.ac.uk), ext 21499.
- An employee who cares for someone with a protected characteristic, for example, a disabled dependant, may ask for flexible working, a change to hours worked or time off to care for their dependant. HoDs will need to consider whether this is reasonable in order to ensure that the employee is not discriminated against on the grounds of discrimination by association.

**Please note:** The University's HR policies, procedures and information comply fully with the Equality Act. If these are followed there should be minimal risk of a claim of discrimination being made. They can be found at [www.shef.ac.uk/hr/guidance](http://www.shef.ac.uk/hr/guidance)

## **Change 2 – During recruitment it is unlawful to ask applicants about their health, including whether they have a disability, before they have been offered a role.**

Employers may now only seek information about a candidate's health/disability at job offer stage, unless a physical requirement is an intrinsic part of the role (i.e. what the University considers to be a "risk" job). Advice on whether a function is intrinsic to the job can be sought from your customary HR Advisor.

Although asking a question about an applicant's health or disability is not an act of discrimination in itself, acting on any disclosed information could be. It is still necessary, however, to ask applicants if they require any reasonable adjustments or support during the recruitment and interview process. And HEIs can continue to ask monitoring questions establishing whether there are disabled applicants applying for job positions. Positive action, including the Two Ticks initiative, remains unchanged by the Act.

### **Implications for HoDs/managers**

- During recruitment and selection care should be taken to ensure that any questions asked of an applicant focus only on that person's skills, experience and their ability to do the job.
- It is University policy for all staff who will be chairing a selection panel to attend Recruitment and Selection training for Panel Chairs. These will be offered within each faculty and will be supplemented by two generic sessions a year which can be booked via the Learning Management System, accessible through the Staff Development webpages at [www.sheffield.ac.uk/hr/sd/book/lms/index.html](http://www.sheffield.ac.uk/hr/sd/book/lms/index.html)

**Please note:** The University's e-Recruitment system complies fully with the Equality Act's requirements and there is guidance and information on the web at <http://www.shef.ac.uk/hr/recruitment/guidance> . Following this guidance minimises the risk of discrimination taking place.

## **Change 3 – Greater protection for disabled workers.**

A person has a disability if they have a physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to perform normal day-to-day activities.

- 'substantial' means more than minor or trivial
- 'long-term' means that the effect of the impairment has lasted or is likely to last for at least twelve months (there are special rules covering recurring or fluctuating conditions)
- 'normal day-to-day activities' include everyday things like eating, washing, walking and going shopping
- There are additional provisions relating to people with progressive conditions. People with HIV, cancer or multiple sclerosis are protected by the Act from the point of diagnosis. People with some visual impairments are automatically deemed to be disabled.

People who have had a disability in the past that meet this definition are also protected by the Act.

A new type of disability discrimination – **discrimination arising from a disability** – has been introduced. This means that it is unlawful for an employer to treat an employee unfavourably because of something arising in consequence of his or her disability (eg the need for the employee to attend regular hospital appointments because of his or her disability) where the employer knows, or could reasonably be expected to know, that the employee has a disability.

The requirement to make reasonable adjustments remains and has been strengthened to include the need to provide auxiliary aids such as providing extra equipment like a special keyboard, or getting somebody to assist the disabled person, for example a sign language interpreter. The employer cannot require a disabled employee to pay the costs of making any reasonable adjustments.

### **Implications for HoDs/managers**

A member of staff may disclose the fact that they are disabled in a number of ways; they may contact HR or Staff Occupational Health, they may tell their manager at a one-to-one meeting or during their SRDS meeting. Likewise managers may notice, for example, that a staff member with a previously good record of attendance now takes a lot of sickness absence, arrives at work late or is acting differently in the workplace. It is at the discretion of the individual to disclose their disability but managers can sensitively explore reasons for the changes in return to work meetings or one-to-one meetings.

Once aware that the individual is disabled the manager should explore with them what can be done to ensure that they are not disadvantaged or discriminated against while at work. Advice about reasonable adjustments can be sought from your customary HR Adviser.

If a disabled member of staff is recruited to a role the department can apply for government funding from Access to Work. If support is applied for within the first six weeks of employment the University does not have to make a financial contribution. Your customary HR Adviser can advise further.

A disabled member of staff may ask for time off to attend appointments, work more flexibly around, for example, medication regimes etc. Ensure that serious consideration is given to this request and make appropriate reasonable adjustments to avoid disability discrimination. It is good practice to involve the employee in discussions about reasonable adjustments, and to record discussions. Your customary HR Advisor can advise further.

### **Change 4 - More individuals are protected from harassment.**

Employees will now be able to complain of harassment even if they were not the direct subject of the harassment and even if the person that was the subject of the action does not make a complaint. For example, if a member of staff makes racist or sexist comments about a member of the team, another colleague might bring a claim of harassment based on the fact that the conduct creates an intimidating, hostile, degrading, humiliating or offensive environment for them.

An individual can also bring a claim of harassment if they are perceived to have, or associate with someone with, a protected characteristic. For example, an employee who is harassed because of their partner's religion or because they are wrongly perceived to be gay may also make a claim.

Individuals are also protected from harassment relating to the protected characteristics by third parties (eg contractors, students, visitors). Employers are liable if they are aware of incidents of harassment on at least two previous occasions and have failed to take reasonable steps to protect employees. The third party may be the same or a different party on each occasion.

### **Implications for HoDs/managers**

- Encourage the development of an inclusive working environment for all staff. For example, if you notice that many of the department's social gatherings are held in a pub, consider whether this may be excluding members of staff whose religious beliefs concerning alcohol prohibit them from attending. If you hold departmental meetings or seminars make sure that they are held at times that do not indirectly discriminate against colleagues (for example staff with caring responsibilities). Ensure that you communicate to all staff about key policies and procedures such as promotion, flexible working etc.
- Respond to any complaints of harassment or inappropriate behaviour by a third party and take appropriate action. Seek advice from your customary HR Adviser if necessary.
- Make all staff in the department aware of the University's Harassment Network (<http://www.shef.ac.uk/hr/guidance/eamp/harassment/network.html>) and the Staff Support Line (<http://www.shef.ac.uk/hr/wellbeing/info/supportline/home.html>).
- Contact Jane Ginniver in the Staff Development Team if you would like to discuss the possibility of training your staff about dignity at work on [J.Ginniver@sheffield.ac.uk](mailto:J.Ginniver@sheffield.ac.uk), extension 22463.

### **Change 5 – Greater protection for individuals from victimisation.**

Victimisation takes place where one person treats another less favourably because he or she has asserted their legal rights in line with the Act or helped someone else to do so. The person does not have to compare their treatment with that of another person to show that they have been victimised. Victimisation may occur if, for example:

- a manager brands a colleague as a 'troublemaker' because he or she raised the issue of development or progression opportunities as being potentially discriminatory.
- a team member alleges that they have encountered racism from another colleague, and as a result they are ignored by their colleagues.
- a senior member of staff starts to behave in a hostile manner to another member of staff who previously supported a colleague in raising a complaint against the senior manager for homophobic behaviour.

### **Implications for HoDs/managers**

Respond to complaints of victimisation, taking advice from your customary HR Adviser. HoDs can help prevent these situations from arising by creating and maintaining a culture which promotes inclusion, openness and respect amongst staff. A positive working environment enables staff to be confident about challenging inappropriate behaviour and to understand that if they raise a complaint it will be dealt with seriously.

If you require any further information or need clarification on any point, please contact Julie Campbell on [j.l.campbell@sheffield.ac.uk](mailto:j.l.campbell@sheffield.ac.uk), ext. 21499 or Gill Tait on [g.tait@sheffield.ac.uk](mailto:g.tait@sheffield.ac.uk), ext. 21604