



**Nano & Micro
Technologies
for Healthcare**



NMH Cross Cutting Themes Support Programme

The NMH project is led by Swansea University, to support SME's in the health and related sectors within the Competitiveness Area of Wales.

The 18 sections in the attached report address all the issues relating to Equality and Diversity for U.K. businesses.

Preventing discrimination and valuing diversity

Whilst all issues are potentially of relevance for all organisations the Equality and Diversity Review undertaken for your company has highlighted the sections of this report that are currently of importance within your business and have been referred to in the Equality and Diversity Action Plan.

Please Note

“To the best of our knowledge, this document has been compiled based upon the most recent UK legislation but no representation or warranty, express or implied, is extended as to the adequacy or accuracy of the contents nor with respect to the use or reliance thereof by any receiving party.”

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Guidelines on How to:-

Prevent discrimination and value diversity

1. Introduction

The equality legislation sets out the grounds for unlawful discrimination, helps employers understand how to recruit and treat their staff fairly and promotes diversity in the workplace.

Unlawful discrimination discredits you as a business and can be very costly should an individual succeed in an unlawful discrimination claim against you at an employment tribunal.

This guide tells you what you must know about the equality legislation. It also outlines how you can monitor and promote diversity in the workplace.

2. Common areas of equality law

2.1 Unlawful discriminations

It is unlawful to discriminate on the grounds of:

- sex, including pregnancy and maternity
- marital status, including civil partnership status
- gender reassignment
- disability
- race
- age
- sexual orientation
- religion/belief or lack of any religion/belief
- trade union membership or non-membership
- status as a fixed-term or part-time worker

The anti-discrimination legislation applies to:

- job applicants
- all employers in the private and public sectors, vocational training providers, trade unions, professional organisations, employer organisations, and trustees and managers of occupational pension schemes
- employees, other workers - eg agency and casual workers - office holders, partners of firms and others
- those engaged by a business in a contract for services, eg contractors and the self-employed

2.2 The types of discrimination

There are generally four types of discrimination:

- direct discrimination - treating somebody less favourably on the grounds of their sex, race, etc
- indirect discrimination - applying a rule which in practice disadvantages one sex, race, etc, and cannot be justified
- harassment
- victimisation - treating someone unfairly because, for example, they plan to raise a discrimination-related grievance or they support someone in raising a grievance

Note that direct discrimination and harassment can include:

- associative discrimination and harassment, eg where someone discriminates against a person because that person's brother is disabled
- discrimination and harassment by perception, eg where someone discriminates against a person because they believe that the person is gay - even if they are not

2.3 Justifying discrimination

It is not possible to justify direct discrimination (except for direct age discrimination), harassment and victimisation. However, it may be possible to justify indirect discrimination in certain circumstances. For example, if an employer has a general rule that puts women or people with no religious belief at a disadvantage but the reason for applying that rule genuinely helps the employer to meet a legitimate aim, then indirect discrimination may be justified.

2.4 Where discrimination can occur

The equality legislation affects all areas of employment including:

- recruitment
- terms and conditions
- promotions and transfers
- the provision of training
- the provision of benefits
- dismissal
- occupational pensions

Discrimination can also occur after employment, eg a former employee can bring a discrimination claim after they have left if they get an unfavourable reference because they threatened to bring a discrimination claim.

2.5 Employment tribunal claims and discrimination

Any claim to an employment tribunal will generally have to be brought by the employee concerned within three months of the alleged discriminatory act occurring.

However, the tribunal would expect them to raise a formal grievance with you before bringing the claim. If they failed to do so, it may reduce the amount of any compensation it may award to the employee by up to 25 per cent..

There are no length-of-service or age requirements in bringing a claim and claimants do not need to have left your employment.

For their claim to succeed, the claimant must prove the existence of facts from which the tribunal **could** conclude that you have committed an act of unlawful discrimination.

If the claimant is able to do this, you must prove to the tribunal that you did not commit the unlawful act.

If an employment tribunal does in fact find that unlawful discrimination has occurred, penalties can be high, since there is no cap on compensation.

It's very important to remember that, as a business owner or manager, you may be held responsible for any discriminatory action by your employees if you cannot show that you took steps to try and prevent such action occurring.

3. Discrimination during the recruitment process

It is important to avoid discrimination during the recruitment process. This not only is a legal requirement, but also gives you the best chance of getting the right person for the job.

Remember that job applicants - ie people you don't actually employ - might be able to make an employment tribunal claim against you if they believe you didn't select them for a job because you discriminated against them unlawfully.

Note that businesses in Northern Ireland with more than ten employees must conduct monitoring during recruitment.

3.1 Job descriptions and person specification

When writing the job description and person specification, you should state clearly what tasks the person will have to do and what skills they will need.

The specification should not have any requirements that are not directly related to the job. For example, for a position as a fork-lift truck driver, the job specification should not state that the successful candidate needs good written English as this is probably not essential - or even desirable - for the job. However, in an editorial or administrative role this can be specified.

3.2 Job advertisements

It is unlawful for a job advertisement to specify that the applicant must be of a particular gender, race, etc - unless being of that gender, race, etc is an **occupational requirement**.

It is unlawful to publish job advertisements that imply that any candidate's success depends to any extent on them not having, or not having had, a disability, or indicate the employer's reluctance to make reasonable adjustments. In addition, third-party publishers, eg newspapers, are liable if they publish discriminatory advertisements.

However, note that you can treat disabled people more favourably by advertising a job as being open only to disabled applicants.

To avoid age discrimination it is advisable not to use such phrases as "young and dynamic", "would suit someone who has just qualified" or "minimum of ten years' experience" as these may lead to age bias.

3.3 Occupational requirements

In some circumstances, you can state that being of a particular sex, race, religion/belief, age or sexual orientation is an occupational requirement for the job.

For example, it may be possible to state that being:

- of Italian origin is a requirement for a job as a waiter in an Italian restaurant so that the restaurant has an 'authentic' Italian atmosphere
- heterosexual is a requirement for a job with a religious organisation because the religion's believers object to gay and lesbian practices

3.4 Questions about disability and health

The Equality Act 2010 limits when you can make enquiries about health or disability when recruiting. These restrictions apply prior to the point where you:

- make a conditional or unconditional job offer to anyone, or
- include them in a pool of successful candidates to be offered a job when a vacancy arises.

Before that point you should only ask about a candidate's disability or health if you need to find out whether:

- they will be able to take part in some form of selection test
- you will need to make a reasonable adjustment to the interview or test for disabled applicants
- they will be able to do something that is intrinsic for the job in question

You can also ask about health or disability if:

- you want to monitor the diversity of your applicants
- you want to take positive action to enable you to recruit more disabled workers
- the job in question is one for which having a particular disability is an occupational requirement and you want to establish that the person has that disability

3.5 Asking a question that is not permitted

Asking a question about health or disability which is not permitted is not in itself discriminatory. However, the Equality and Human Rights Commission can take action against you if you make enquiries that are not permitted.

Also, if a candidate later makes a claim of direct discrimination because they believe that you used their reply to discriminate against them it will be for you to show the Employment Tribunal that this is not the case.

3.6 Application forms

If you use application forms, you should only ask for the minimum of personal details.

However, there may be certain information you need to ask for in order to avoid discrimination during the selection process. For example, you should ask applicants to indicate if they have any special requirements should they be required to attend an interview or other selection process.

If the applicant's response reveals or suggests that they are disabled, you should take reasonable steps to confirm whether or not they are disabled under the Equality Act 2010. If so, you would have a legal duty to make reasonable adjustments, eg by holding the interview in an easily accessible room or allowing extra time for selection tests.

If a disabled applicant asks for an application form in an accessible format you should comply with the request if it is reasonable to do so.

It is not unlawful to ask candidates for their ages, ethnicities, etc on application forms. However, in relation to disability and health, you need to avoid asking questions that are not permitted.

It is good practice to save questions about personal characteristics for a diversity monitoring form that you can separate from the main application.

3.7 Interviewing

When interviewing people for a job there are certain questions you should not ask, such as whether a candidate is married, is a partner in a same-sex civil partnership or plans to have children. Also, there are restrictions on questions that may be asked about disability or health.

If a candidate has informed you in advance that they are disabled you should ask them if there are any reasonable adjustments you might need to make to enable them to attend and participate in the interview.

You must only ask health- or disability-related questions that are relevant to establishing:

- The person's ability to carry out functions that are intrinsic to the job. For example, if telephone work is a significant and essential element of the job, you can ask whether the candidate has an impairment that affects their ability to use the telephone.
- Whether the person has a disability when you are intending to exercise positive action in recruitment of disabled people. For example, where you intend to increase the proportion of disabled employees you employ.
- Whether the person has a particular disability, where having that disability is an essential requirement of the job. For example, where the job is for a counsellor for people with a particular disability, and having first-hand experience of that disability is essential to the job.

3.8 Tests

You must make sure that tests for job applicants are not unlawfully discriminatory. For example, a written English test would discriminate against those whose first language is not English - although you could justify this if having good written English was necessary for the job.

You may have to make reasonable adjustments to adjust a test for a disabled applicant if they would otherwise be substantially disadvantaged compared to a non-disabled person, eg by giving them more time to complete it.

4. Discrimination when deciding who to employ

You could face a claim of unlawful discrimination if - because of gender, race, etc - you were to select a man, white person, etc for a job who is less well qualified than other candidates who are female, black, etc.

This does not mean, however, that you must always select the best qualified person.

4.1 Positive action when making the final selection decision

You can recruit a job candidate who has a protected characteristic if they are of equal merit to another candidate and you reasonably think that people with that characteristic:

- are underrepresented in the workforce
- suffer a disadvantage connected to that characteristic

However, you will:

- only be able to take such positive action where it is a proportionate way of addressing the underrepresentation or disadvantage
- not be allowed to choose a less suitable candidate just because they have a protected characteristic that is underrepresented or disadvantaged

The relevant protected characteristics are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race, ethnic or national origin, colour and nationality
- religion/belief or lack of any religion/belief
- sex
- sexual orientation

Where there is a disabled applicant, you can - if you wish - treat the disabled applicant more favourably by offering them the job because they are disabled - even though they are not the best qualified.

Note that taking any form of positive action is entirely voluntary.

4.2 Record-keeping

You must always be able to justify your decision to recruit a particular person. Therefore, you should document the recruitment process as much as possible.

This will help you provide evidence to an employment tribunal if you are faced with a claim of unlawful discrimination.

5. Sex, maternity and pregnancy discrimination

As well as gender itself, the equality legislation covers discrimination on the grounds of pregnancy and maternity.

Direct sex discrimination would occur if, for example, an employer dismissed a woman because she was pregnant or asked to take maternity leave.

Indirect discrimination would occur if, for example, an employer stated that a job could only be done by someone willing to spend long periods of time away from home. This discriminates against women who generally have greater childcare responsibilities than men. However, this discrimination could be justified if, for example, the job was for a salesperson who had to go abroad to meet customers face to face.

Note that it may be possible to state that a job holder must be male or female where being of that sex is an occupational requirement.

The law makes sexual harassment - and harassment related to sex - explicitly unlawful in employment or vocational training. Sexual harassment can include insensitive jokes, displays of sexually explicit material, sexual innuendos or lewd comments or gestures. It also includes the circulation of lewd emails, even if this is not actually sent to the person being harassed.

6. Equal pay and conditions

Women and men are entitled to **equal pay** for work of equal value.

'Pay' includes not only wages/salary but also contractual terms and conditions.

Therefore, even if you pay men and women the same basic pay for the same job, their pay may still be unequal if other benefits, eg a company car and private healthcare, are different for men and women.

Work may be different from that of a colleague of the opposite sex but it can be considered of equal value if it is similar or the same in terms of the demands of the job.

Employees are entitled to request key information from you by asking directly or they can fill in a special questions form. You are not obliged to respond but, if you wish to, you can use the special answers form.

If you choose not to respond, it can count against you should the matter reach an employment tribunal, as can giving an evasive reply.

You may be able justify differences in pay as long as you can show that gender was not a factor, eg you could pay more to employees who:

- work in Greater London where the cost of living is higher
- you want to retain as you would find it difficult to replace them

7. Gender reassignment discrimination

It's unlawful to discriminate against a person on the grounds that they have undergone, are undergoing or intend to undergo gender reassignment, with limited exceptions in recruitment.

It's also unlawful to treat such a person less favourably than a person who is off sick for another reason and similar period.

A person is protected from gender reassignment discrimination from the date they tell a medical practitioner that they want to undergo gender reassignment.

Before any surgery, someone undergoing gender reassignment (a 'trans person') needs to live as a member of the opposite sex. Inevitably this will include using gender-appropriate single-sex toilets.

You will therefore need to discuss with the individual when they wish to change from using one set of facilities to the other. This will probably be during the 'social gender' transition, when they present as members of the adopted sex even though they don't have any of the physical characteristics of that sex.

Other employees may object to sharing facilities in these circumstances. While the trans person must also take account of colleagues' and clients' sensibilities, you should remind objectors that a failure to treat others with dignity and respect could be seen as a breach of your equality policy and could amount to a disciplinary issue.

Once a trans person's gender reassignment is complete, they can register their change of gender via a gender recognition certificate (GRC). Once they have a GRC, they will be issued with a new birth certificate in the acquired gender. This would mean that you would have to treat a male-to-female trans person with a GRC as a woman and, for example, change your personnel records to reflect this.

A person who has undergone gender reassignment while already married must divorce to gain a GRC. They and their partner will then be able to register a civil partnership to regain the legal status of their relationship.

8. Marriage and civil partnership discrimination

You must not discriminate against an employee who is married.

In addition, you must not discriminate against an individual who is registered as a civil partner under the Civil Partnership Act 2004.

Note that you must treat married employees and employees in civil partnerships in the same way. This means that any benefit such as private healthcare that is available to the spouses of employees should also be made available to employees' civil partners.

However, you can give benefits to employees who are married or in civil partnerships, but not to those who are unmarried or not in civil partnerships.

9. Age discrimination

It is unlawful for an employer to discriminate against someone on the grounds of age, ie against someone of a particular age or someone in any age band.

9.1 Future changes to the age discrimination legislation

Currently:

- There is a default retirement age (DRA) of 65 for employers who believe they need to set a retirement age. You can set the retirement age above this but you can only set it below 65 if you can objectively justify it.
- You can dismiss someone on the grounds of retirement using the statutory retirement procedure (SRP) - but only if you intend to retire them before 1 October 2011.

However, the DRA and the SRP are being phased out from 6 April 2011. From 1 October 2011 you will not be able to operate a retirement age or dismiss someone on the grounds of retirement unless you can objectively justify it.

Between 6 April and 1 October 2011, you can only use the DRA to compulsorily retire employees if you notified them before 6 April and if their retirement date is before 1 October.

From 1 October you can choose to have a set retirement age provided you can justify it objectively, eg on health or safety grounds. These changes will mean that in most cases employees can choose when to retire.

9.2 Examples of age discrimination

Direct discrimination would occur if, for example, an employer refused to employ people under the age of 30, believing them to be unreliable.

Note that, unlike other forms of discrimination, it is possible to justify **direct** age discrimination, eg you could refuse to employ someone who is over your normal retirement age of 65 or who will reach your normal retirement age of 65 within six months.

Indirect discrimination would occur if, for example, an employer introduces a benefit only for employees with more than ten years' service - fewer younger employees are likely to have enough service to qualify. However, it might be possible to justify this type of discrimination on the grounds that it encourages staff retention.

Note that it may be possible to state that a job holder must be of a certain age where being of that age is an occupational requirement.

9.3 Avoiding age discrimination

You should check that your recruitment process is non-discriminatory, eg aim to place advertisements in publications read by a range of age groups, and avoid using terms which imply a particular age group, such as 'mature', 'enthusiastic', 'highly experienced' or 'recent graduate'.

You must also make sure that your redundancy procedures are based on business needs rather than age, eg it could be discriminatory to select employees for redundancy solely on the basis of 'last in, first out'.

10. Discrimination against disabled people or because of disability

Under the Equality Act 2010, it amounts to unlawful disability discrimination if an employer:

- Treats a disabled employee or job applicant less favourably than others because of their disability - eg an employer refuses to employ someone even though they are suitable for the job, simply because they are a wheelchair user. This is **direct** disability discrimination, which can never be justified.
- Has a policy or procedure which, although it applies to all individuals, puts those who share the same disability at a particular disadvantage when compared with those who don't share it. This is **indirect** discrimination.
- Treats an employee/job applicant unfairly because of something arising from their disability - eg an employer dismisses an employee because of their long-term absence caused by having an arm amputated following a car accident. This is referred to as discrimination arising from disability. However, the employer may be able to justify this type of discrimination in certain circumstances. This type of discrimination cannot arise if the employer didn't know and couldn't reasonably have been expected to know that the person had the disability.
- Fails to comply with its duty to make a reasonable adjustment for a disabled employee/ job applicant. This type of discrimination cannot be justified. However, the employer is not required to make reasonable adjustments if the employer doesn't know - or could not reasonably be expected to know - that the employee/applicant is disabled and is likely to be placed at a substantial disadvantage compared to non-disabled people. However, the employer must do all it can reasonably be expected to do to find out whether this is the case.

Victimisation is also unlawful discrimination under the Act, ie it is unlawful for an employer to treat an employee (the victim - whether a disabled or non-disabled person) unfairly because they have, or the employer believes they have:

- brought proceedings, or given evidence or information in connection with proceedings brought under the Act
- done anything else under the Act
- alleged someone has contravened the Act

For example, a disabled employee alleges discrimination because his employer refuses to promote him. A colleague gives evidence at the tribunal on the disabled employee's behalf and, as a result, the employer makes the colleague redundant. This amounts to unlawful victimisation (as well as unfair dismissal).

The law also makes it unlawful to:

- harass someone in relation to disability
- discriminate against someone on the grounds of their perceived disability, even if that perception is wrong
- discriminate against a person because they associate with someone who is disabled

10.1 What counts as a disability?

In general, the Equality Act 2010 considers someone to be disabled for the purposes of the Act if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

However there are special rules that apply to people with certain impairments like progressive conditions. Also, some people are deemed to be disabled people, for example those with HIV, cancer and some visual impairments.

In addition, a mental illness does not have to be 'clinically well recognised' before it is judged to be a mental impairment for the purposes of the Act.

Certain conditions are not regarded as impairments for the purposes of the Act, eg drug or alcohol addiction or a tendency to start fires, steal or physically abuse others.

10.2 Reasonable adjustments

Employers have a duty to make **reasonable adjustments** to any provision, criterion or practice, or to physical features of their premises, to enable a disabled person to work or continue working if they would otherwise be at a substantial disadvantage compared with non-disabled workers. Reasonable adjustments often involve little or no cost to your business.

11. Discrimination on the grounds of race

It's unlawful for an employer to discriminate against someone on the grounds of:

- race
- national origin
- ethnic origin
- colour
- nationality, including citizenship

Segregation of employees on the grounds of race is also unlawful.

Direct discrimination would occur if, for example, an employer refused to employ someone because they were not white and English.

Indirect discrimination would occur if, for example, an employer refused to employ people who could not write in English. This could only be justified if written English was necessary for the job.

Note that you may be able to state in a person specification that the job holder must be of a particular race, national origin, etc where being of that race, national origin etc is an occupational requirement.

12. Discrimination on the grounds of religion or belief

It is unlawful for an employer to discriminate against someone on the grounds of:

- religion - this means any religion
- belief - this covers any religious or philosophical belief
- lack of any religion
- lack of any belief

Neither religion nor belief is defined by law. However, belief could cover things like atheism and humanism.

Direct discrimination would occur if, for example, an employer paid Christians more than non-Christians.

Indirect discrimination would occur if a butcher stated that job applicants must be willing to handle pork and pork products. This would indirectly discriminate against Muslims and Jews, who regard pork meat as unclean. However, this could be justified if the butcher could show that:

- this requirement was absolutely necessary
- there was no way that the job holder could avoid handling pork

Note that you may be able to state that a job holder must be of a particular religion/belief where being of that religion/belief is an occupational requirement.

13. Discrimination on the grounds of sexual orientation

It is unlawful to discriminate against someone on the grounds of sexual orientation towards:

- people of the same sex, ie gays and lesbians
- the opposite sex, ie heterosexuals
- the same and opposite sex, ie bisexuals

Direct discrimination would occur if, for example, an employer refused to employ a heterosexual woman whom the employer believed was bisexual.

Indirect discrimination would occur if, for example, an employer only placed a job advertisement in newspapers and magazines aimed at gays and/or lesbians as heterosexuals tend not to read such publications.

Note that you may be able to state that a job holder must be of a particular sexual orientation where being of that sexual orientation is an occupational requirement.

14. Discrimination over membership or non-membership of unions

14.1 Refusal to employ

Employees have the right not to be refused employment because they:

- are or are not a member of a trade union
- used to be or used not to be a member of a trade union
- are planning to join or are refusing to join a trade union

Any withholding of a job offer for membership or non-membership of a trade union could lead to a claim at an employment tribunal. However, unlike other forms of unlawful discrimination, there is a limit of the amount of compensation that a tribunal can award.

14.2 Unfair treatment during employment

An employer must not treat workers - ie not just employees - unfairly during their employment where the treatment aims to prevent the worker:

- becoming a member of or leaving a trade union
- carrying out trade union activities at an appropriate time
- making use of trade union services at an appropriate time

'Trade union activities' includes voting in a trade union ballot but doesn't include taking industrial action.

An 'appropriate time' may be, for instance, outside working hours, during an employee's lunch break or at a time when the employer has agreed that they may take part in trade union activities.

This unfair treatment could be, for example, threats of dismissal or refusal to promote.

14.3 Unfair dismissal

The tribunal will hold the dismissal of an employee to be unfair if they are dismissed or selected for redundancy:

- because of their trade union membership, trade union non-membership, trade union activities or proposed activities, or use or proposed use of trade union services
- because they failed to accept an unlawful inducement from an employer to give up their trade union rights or to disapply a collective agreement
- because they failed to accept an offer made by an employer to induce them to become a trade union member
- because they refused to make a payment in lieu of union membership, or objected to their employer deducting a sum from their wages or salary to make such a payment
- for exercising or seeking to exercise rights relating to trade union recognition procedures
- for exercising or seeking to exercise their right to be accompanied at a disciplinary or grievance hearing, or to accompany a fellow worker at such a meeting
- for reasons relating to jury service
- on grounds relating to pregnancy, childbirth or maternity
- for taking, or seeking to take, ordinary, compulsory or additional maternity leave
- for taking, or seeking to take, ordinary or additional paternity leave
- for taking, or seeking to take, ordinary or additional adoption leave
- for taking, or seeking to take, parental leave
- for taking, or seeking to take, time off for dependants
- for taking, or proposing to take, certain specified types of action on health and safety grounds
- because, subject to certain conditions, the employee was a shop worker or a betting worker and refused to work on Sundays or gave, or proposed to give, an 'opting-out' notice to their employer
- for reasons relating to the Working Time Regulations 1998

- for performing, or proposing to perform, any duties relevant to their role as an occupational pension scheme trustee
- for performing, or proposing to perform, any duties relevant to their role as an employee representative or as a candidate to be such representative or as a participant in the election of such a representative
- for making a protected disclosure
- for having sought, in good faith, to assert a statutory employment protection right
- for reasons relating to the national minimum wage
- for requesting flexible working arrangements
- for taking lawfully organised official industrial action lasting 12 weeks or less (or more than 12 weeks in certain circumstances)
- for reasons relating to the Transnational Information and Consultation of Employees Regulations 1999
- on grounds related to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000
- on grounds relating to the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002
- for reasons relating to the European Public Limited-Liability Company Regulations 2004
- for reasons relating to the Information and Consultation of Employees Regulations 2004
- for reasons relating to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006
- for exercising or seeking to exercise the right to be accompanied at a meeting to consider a request not to retire, or for exercising or seeking to exercise the right to accompany a fellow employee at such a meeting
- for reasons relating to the European Cooperative Society (Involvement of Employees) Regulations 2006
- for reasons relating to the Companies (Cross-Border Mergers) Regulations 2007
- for reasons relating to them making a request for time to study or train
- for reasons relating to the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009
- in relation to them being on a 'prohibited list', ie a blacklist of individuals who are currently or used to be trade union members or who currently or used to take part in trade union activities

A dismissal will also be unfair where the employee was dismissed:

- On grounds of retirement without the employer having first complied with their duty to consider a request by the employee not to retire.
- On the transfer of an undertaking or part of an undertaking, and the transfer itself, or a reason connected with it, is the main reason for the dismissal. This is unless it can be established that the dismissal was for an economic, technical or organisational reason entailing changes in the workforce.

For all these dismissals, the employee can bring an unfair dismissal claim to a tribunal from the start of their employment, ie they do not need at least one year's continuous employment.

15. Monitoring equality and diversity

You should monitor equality and diversity to examine if your equality policy is working effectively. If you find that it isn't working, ie you find that your workforce is not as diverse as it should be, you will need to find out why and take action to improve the effectiveness of the policy.

For example, if you find that non-white people are underrepresented in your workforce, you could take positive action, eg include text in job advertisements encouraging members of minority ethnic groups to apply.

15.1 What is monitoring?

Monitoring involves gathering information on the diversity of your potential recruits or existing employees. This data can be compared and analysed against data about other groups of employees in your company, jobseekers in your local community and the national labour market.

It is unlikely that you will find exactly the same proportion of men and women or other groups. Monitoring is about looking for significant differences between groups or identifying trends over periods of time and then finding out why.

15.2 Getting employees involved in monitoring

To get the best out of the process, you may need to explain to some staff the benefits of monitoring. For example, some employees may feel uncomfortable about filling in monitoring forms. If so:

- reassure them that you will treat any information they give as confidential
- explain to them that you are carrying out the monitoring process to make your equality policy a reality
- point out that a successful policy is good for business

It may help if you involve workplace representatives in explaining what monitoring is for. If you do not have any representatives in your organisation, consider setting up a working group. This can act as a point of contact for employees if they want to raise any concerns.

You will also need to:

- encourage external job applicants to complete the monitoring form
- reassure staff that all information collected will remain strictly confidential
- select a senior manager or member of staff to champion the monitoring process
- decide on the best way to communicate your message, eg via magazine articles or a dedicated intranet site

Make sure that each question has an option of 'prefer not to say'. However, do not make completion of a monitoring form compulsory or in any way 'punish' those who refuse to cooperate.

15.3 The type of information you should collect

You should - at the very least - collect information based around the six main strands of equality legislation:

- age
- race
- gender
- disability
- religion or belief
- sexual orientation

15.4 What you should attempt to find out

It is good practice to monitor your employees at every stage of their employment - from recruitment right through to when they leave.

This means finding out:

- who applies to work for you
- who you interview and who you finally recruit
- who you promote
- who you train and in what work areas
- who raises grievances at work
- who you discipline and what for
- who is absent or sick and for what reasons
- who you dismiss
- who leaves the organisation

15.5 How to get the monitoring data

Ask job applicants for monitoring data on a sheet that can be detached from the application form. That way the information can be kept separate from the selection process. Make it clear that the information will only be used for equality monitoring and not for short-listing.

All applicants must be treated fairly at the point of selection. Choosing someone because they are - or are not - of a particular sex, age, ethnicity, etc is unlawful discrimination.

However, you can treat disabled people more favourably by actively choosing to select a disabled candidate for a job even though they may not be the best qualified.

As for your existing workforce, you could also ask them to fill out a monitoring form.

However, smaller businesses may find it difficult to ensure confidentiality or an issue may be too sensitive. In these circumstances, you could use a staff-attitude or customer-satisfaction survey.

15.6 Understanding and interpreting monitoring data

Monitoring is about making comparisons between groups of employees or job applicants and, if there is a real difference, finding out why.

Bear in mind that any difference in itself is not necessarily bad - indeed it would be very surprising if the number of job applicants was split 50-50 - for example, between men and women.

A widely used rule of thumb to assess the difference in recruitment rates between groups, eg between men and women or white British and non-white British people, is known as the 'four-fifths rule'.

The four-fifths rule suggests that if any group is less than four-fifths of the rate of the group with the higher or highest success rate, it may indicate bias.

The four-fifths rule can be used at each stage of a selection process to identify any particular difference.

It is not intended to be an absolute measure, but is a simple and easy way to measure whether the differences in rates are worth investigating further.

16. Promoting equality and diversity

In order to promote equality and diversity in the workplace, you should have a written equality and diversity policy.

You may wish to consider carrying out a pay review to see if there are any imbalances to assure yourself that your organisation is not discriminating.

16.1 Equality and diversity policies

It's very important to remember that, as a business owner or manager, you may be held responsible for any discriminatory action by your employees if you cannot show that you took steps to try and prevent such action occurring.

One of the main ways of doing this is to have an equality and diversity policy, backed up by action plan to promote the policy and ensure that it is understood and followed across the business.

The policy should set out your commitment to promote equality and diversity in areas such as recruitment, training and pay to tackle discrimination.

It should also:

- help your employees understand what you expect of them, eg to treat their colleagues and clients with dignity and respect
- set out your employees' legal rights and obligations

16.2 Equal pay reviews

Many companies have instituted equal pay reviews which aim to ensure that all staff enjoy the same pay and conditions while doing similar types of work.

The reviews can help avoid 'glass ceiling' working cultures, where certain types of people don't get promoted above specific levels. These reviews can also help make sure that an equal pay policy is working.

Equal pay reviews may be carried out by someone within the company trained to deal with equality issues or they may be conducted by an outside team of specialists.

16.3 Positive action during recruitment

If your monitoring reveals imbalances in staff numbers in terms of race, sex, etc you can use positive action to encourage members of the under-represented group to take up opportunities for work, eg by having job advertisements stating that applications from, for example, women, or minority ethnic groups will be particularly welcome. However, the advertisement must still state that the final recruitment decision will be based solely on merit.

When faced with two equally qualified job candidates, you can - in certain circumstances - use positive action when choosing which one to actually recruit.

16.4 Positive action and promotions

You can promote an employee who has a protected characteristic if they are of equal merit to another employee under consideration and you reasonably think that people with that characteristic are underrepresented in the workforce, or suffer a disadvantage connected to that characteristic.

However, you will:

- only be able to take such positive action where it is a proportionate way of addressing the under-representation or disadvantage
- not be allowed to choose a less suitable employee just because they have a protected characteristic that is underrepresented or disadvantaged

The relevant protected characteristics are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race, ethnic or national origin, colour and nationality
- religion/belief or lack of any religion/belief
- sex
- sexual orientation

16.5 Positive action and training

You can give members of, for example, the minority sex or non-white people access to training for particular work.

The provision of training for specific groups can help them to:

- develop interview techniques
- better complete application forms
- develop confidence or assertiveness
- develop management skills to help them to apply for promotion
- develop skills to the required level to compete for jobs and promotion opportunities

You could also provide:

- training to, for example, older workers who have out-of-date skills
- careers counselling and guidance for those wishing to return to work after a long break, eg women who have not worked for a long time owing to their childcare responsibilities

However, positive discrimination - eg deliberately recruiting only non-white people to reach a quota - is unlawful. Taking any form of positive action is entirely voluntary.

17. The Disability Discrimination Act and Your Web Site

If you have a web page or website, the UK Disability Discrimination Act 1995 probably isn't at the top of your bedside reading pile; however, it is something you should be aware of as it may have a big effect on your on-line business.

Put simply, the Act was designed to ensure disabled people had access to all the things able-bodied people take for granted. It became law in 1995, and its measures have been phased in over time.

The Code of Practice to the Act was published in May 2002. It states: "It is important to remember that it is the provision of the service which is affected by Part III of the Act and not the nature of the service or business or the type of establishment from which it is provided." The Code of Practice goes on to give the following example: "An airline company provides a flight reservation and booking service to the public on its website. This is a provision of a service and is subject to the Act."

The legislation applies to everyone who operates a website: company, sole trader, individual, club or association.

There are many ways in which disabled people can use the Internet. Blind or visually impaired users often have specialist software such as screen readers and voice synthesisers. Some use magnifiers that enlarge portions of the screen - some browsers can perform the same function - others use low resolution monitors. Less common are "dynamic Braille displays", as they are generally too expensive for the average user to purchase; however, they are used by some institutions.

Screen reading software that converts the screen contents into synthesised speech (JAWS by Freedom Scientific or Window-Eyes by GW Micro, for example) is probably the most common method for visually impaired users to access the web. This software interprets the HTML code, and a synthesised voice reads aloud the screen contents to the user. If a website has not been designed to meet accessibility standards, the screen reading software will not interpret the page correctly.

Physically disabled people often use specially adapted keyboards to surf the 'net. Many are unable to use a mouse and have to rely on keystrokes; for them, using a Graphic User Interface (GUI) is out of the question.

So what constitutes "accessibly", and what can you do to protect your business online?

These are tricky questions to answer as there is very little about websites specifically mentioned in the Act and Code of Practice. It will probably have to be tested at length in the courts (some action groups for the disabled are already gearing up to bring about prosecutions); however, adherence to Web Accessibility Initiative (WAI) W3C guidelines will ensure that all users will be able to access your site regardless of their technical limitations or disabilities. These guidelines are respected both within and outside the computer industry, yet widespread knowledge of them is limited.

If your website does not comply with the guidelines, it will probably just need a bit of "tweaking" to bring it up to scratch. This may include making minor adjustments like ensuring there is an "alt" text description for images on your site, using blends of colours that will not confuse colour-blind users, creating a logical tab order for people who cannot use a mouse, and making full use of the new HTML commands - the article has been replaced by , for example.

One in seven people in the UK - about 8.5 million - suffer from some type of disability (Source: Disabled Rights Commission), so making your website accessible to all users doesn't just make sense from a legal point of view, but from a business point of view as well.

18. Equality and contracting with the public sector

Almost all public-sector bodies - eg local government authorities and NHS trusts - have a legal duty to eliminate discrimination and to promote equality of opportunity on the grounds of gender, race and disability.

This duty can be relevant, however, to private businesses - but only when they are contracted to carry out public functions.

If you are therefore invited to bid to supply goods or services or to be a subcontractor to a public-sector organisation, you may be asked to show that you have an equality and diversity policy or how many people from minority ethnic groups you employ.

Therefore you may have a competitive advantage if you already have good equality and diversity practices in place.

Note that if you have a contract with a public body, the duty to promote equality nevertheless remains with that body.