Summary of the Equality Act 2010

Protected characteristics

Discrimination is unlawful on the grounds of the following ‘protected characteristics’:

<table>
<thead>
<tr>
<th>Protected characteristic</th>
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<tbody>
<tr>
<td>age</td>
<td>disability</td>
</tr>
<tr>
<td>marriage and civil partnership</td>
<td>pregnancy and maternity</td>
</tr>
<tr>
<td>religion or belief</td>
<td>sex</td>
</tr>
<tr>
<td>gender reassignment</td>
<td>race (incl. colour, nationality, ethnic/national origins, caste)</td>
</tr>
</tbody>
</table>

Key terms and definitions

Direct discrimination
A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

Indirect discrimination
A discriminates against B if without objective justification A applies a general provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's. For example, a practice of only offering full-time appointments may be perceived to indirectly discriminate against women who are more likely to have caring responsibilities and be less able to work full-time.

Discrimination by association
This is a form of direct discrimination where someone is discriminated against because s/he associates with another person who may have a protected characteristic (i.e. ‘because of a protected characteristic’). For example, if A treats B less favourably because B cares for an elderly relative, A could be held to be discriminating against B ‘on grounds of age’ or disability, even though B’s age is not the reason for the treatment. The Act extends discrimination by association to all the protected characteristics apart from marriage or civil partnership and pregnancy and maternity (though other provisions may apply).

Discrimination by perception
Direct discrimination occurs where an individual is treated less favourably because s/he is perceived to have a protected characteristic (apart from marriage or civil partnership and pregnancy and maternity), even though s/he may not actually possess the characteristic.

Combined or dual discrimination
The Equality Act includes a specific provision relating to dual or combined discrimination, but this has not been enacted.

Harassment
Harassment is ‘unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual’. Harassment applies to all protected characteristics except pregnancy and maternity, and marriage and civil partnership.

Employees may complain of behaviour that they find offensive even if it is not directed at them, and complainants need not possess the relevant characteristic themselves.

Employees are also protected from harassment because of perception and association.

Third party harassment
Employers are potentially liable for the harassment of their employees by third parties under certain circumstances.

Victimisation
A victimises B if A subjects B to a detriment because B does a protected act (such as raising a grievance) or A thinks B has done, or may do, a protected act. An employee is not protected from victimisation if they have maliciously made or supported an untrue complaint.
Summary of the Equality Act 2010

Disability
Under the Act a person is considered disabled if s/he has a mental or physical impairment that has a substantial and long-term negative effect on his or her ability to carry out normal daily activities.

The employer has a duty to make ‘reasonable adjustments’ where a disabled employee is placed at a substantial disadvantage because of their disability due to a policy, criterion or practice of the employer.

In addition there is a protection from ‘discrimination arising from a disability’, i.e. an employer cannot treat an individual unfavourably because of something arising in consequence of that individual’s disability. Employers may only ask questions about health after a conditional job offer has been made, so that information about disability is not a factor in selection decisions. Although candidates should be asked about whether they require any adjustments to enable them to attend the interview / undertake any tests required during the interview stage.

Gender reassignment
Transgender people are protected when they propose to undergo, are undergoing, or have undergone a process for gender reassignment. Under the Equality Act 2010 there is no longer a requirement for medical intervention.

Pregnancy and maternity
A woman is protected against discrimination on the grounds of pregnancy and maternity during the period of her pregnancy and of any statutory maternity leave to which she is entitled. The employer cannot take into account the employee's period of absence due to pregnancy-related illness when making decisions about her employment.

Race
For the purposes of the Act, race includes colour, nationality, and ethnic or national origin. In 2013¹ the Equality Act (s.9(5)) was amended to state that the Government must introduce secondary legislation to include caste as an aspect of race. This has not yet happened, but a recent case in the Employment Appeal Tribunal² indicates that, in some circumstances, caste can be considered to fall within the definition of ‘ethnic origin’.

Religion or belief
The Act protects individuals of all religions and beliefs, as well as those with none. Religion has the meaning usually given to it but belief includes religious and philosophical beliefs, including lack of belief (e.g. Atheism). Generally, a belief should relate to a substantial and weighty area of life and affect an individual’s life choices or the way they live for it to be protected.

Sex
The Act protects both men and women.

Sexual orientation
The Act protects bisexual, gay, heterosexual and lesbian people.

¹ Enterprise and Regulatory Reform Act, 2013, s.97
² Chandhok & Anor v Tirkey [2014] UKEAT 0190_14_1912. The Employment Appeal Tribunal (Langstaff P) decided that the existing concept of ‘ethnic origins’, part of the definition of the protected characteristic of ‘race’ in the Equality Act, was sufficiently wide to capture many acts of caste discrimination.