

The new 'Equality Challenge': are you ready? (Part two)

In last month's edition of Isle of Man Portfolio, Elaine Codona, Director of Global People Solutions, and Katherine Sheerin, who leads the employment law team at Cains, discussed the draft Equality Bill, which sets out to provide new legal rights for those with a protected characteristic, both in the workplace and in accessing goods and services. "Protected characteristics" covered by the Bill include: age; disability; gender reassignment; race; religion or belief; sex; sexual orientation; marriage and civil partnership; and pregnancy/maternity.

Right: Elaine Codona.
Far right: Katherine Sheerin



The anticipated impact of the Bill is very wide and will affect all businesses in every sector, whether large or small. In this edition, we explore in more detail what this means in the employment context, where employers may have to get to grips with new concepts and responsibilities, as well as ensure their organisation is "culturally" attuned to meet the standards that the new legislation will require.

There is a clear competitive advantage to be gained by employing a diverse workforce and in embracing the new focus the Bill brings to providing equality of opportunity for all. An organisation with a diverse range of employees is well placed to understand the needs of a wide range of customers, and can interact with a

broad client base. Not only that, but it is also in a good position to recruit and retain staff in an increasingly diverse and dynamic labour market.

Encouraging equality of opportunity also means that talent can be properly recognised and nurtured, wherever it may be found within an organisation. This also chimes with the changes taking place in the modern workplace where more flexible working patterns are becoming the norm and increasing numbers of people from previously under-represented sectors of the working population are seeking full participation in working life.

However, despite the advantages of a diverse workforce, there are also challenges and new legal duties under the Bill that employers will

need to be prepared for. So, where should you start?

Irrespective of the size of your business, you can prepare for the introduction of the new equality legislation by:

- reviewing your employment handbooks and policies to ensure that they are appropriate and fit for purpose, updating as necessary to incorporate reference to the new protected characteristics and prohibited behaviours; and
- providing education and training for line managers and employees (i.e. change management, handling more tricky equality points, ensuring their understanding of the contents of policies and procedures etc.)



Global People Solutions and Cains have teamed up to offer seminars providing you with the tools and know-how needed to ensure your organisation is well prepared for the new equality legislation.



Successful implementation of equality policies only partly depends on having the right HR documents and written procedures; many of the challenges are in delivering and carrying these into effect. Consequently, appropriate staff training and organisational culture play a big part in delivering genuine equality of opportunity and minimising employer exposure for weaknesses in this area.

Global People Solutions and Cains have teamed up to offer seminars providing you with the tools and know-how needed to ensure your organisation is well prepared for the new equality legislation. Let us run an in-house seminar for you, with training designed to deliver an understanding of the key concepts and an overview of employer obligations, as well as providing a "toolkit" and audit checklist to assess whether additional measures may be required to bring your organisation into compliance with the new requirements. We will draw on our experience to provide practical guidance and case studies to build attendees' awareness and put equality issues into context.

Typically, we can advise on, and facilitate understanding in, the following core areas of HR practice and employment law (amongst others):

- the difference between the concepts of "equality" and "diversity" and how these aims can be promoted and supported in the workplace;
- equal opportunities obligations at recruitment and the extent to which an employer can make pre-employment enquiries e.g. in connection with health and disability;
- diversity monitoring and positive action;
- the different types of unlawful treatment: discrimination, harassment and victimisation;
- the ongoing employment relationship: promotion, performance management, redundancy and disciplinary matters;
- benefits and equality issues; and

- managing potential exposure from the employer's perspective – responsibility for employees' unlawful acts and best practice approach.

At the level of individual protected characteristics, we are experienced in advising on some of the more challenging and "thorny" issues that may arise involving questions such as:

- "What constitutes a disability and what does the duty to make reasonable adjustments require at a practical level?"
- "What impact will the new legislation have on managing long-term sickness and capability issues?"
- "How might the protected characteristic of "religion or belief" affect workplace culture and what particular issues might arise?"
- "Can I be held liable for the harassment of an employee by a third party (e.g. a customer or a supplier)?"
- "What do I do if an employee raises an allegation of discrimination, harassment or victimisation in the context of a disciplinary process?"
- "How do I assess whether an employee with a protected characteristic is, or may be, subject to detrimental treatment giving rise to potential legal liability?"
- "How should I deal with office banter and what should company policy be on relationships between colleagues outside work?"
- "What happens where there are potentially competing rights and protected characteristics, e.g. in relation to flexible working requests by different employees?"
- "How do I avoid potential discrimination in performance management situations where there may be age or disability factors?"
- "When may a difference in treatment be justified for legitimate purposes – e.g. where is the dividing line between lawful positive action to encourage gender diversity and unlawful positive discrimination?"
- "How do the new equality provisions – with particular reference to race - interact with work permit and visa requirements?"

In addition to running seminars, we can assist by undertaking equality audits and by reviewing and updating your organisation's employee handbook and written policies to ensure equal opportunities are promoted whilst prohibited discriminatory or harassing behaviours are dealt with adequately in disciplinary procedures and anti-bullying/harassment measures.

Where desired, and with regard to the needs and values of your particular organisation, we can advise you on managing the changes related to the introduction of the new equality legislation and work with you on:

- changing attitudes from management level downwards so as to encourage a more inclusive approach to people management;
- developing policies and practices to help you attract and retain diversity of talent taking into account individuals' changing needs and responsibilities over the employment life cycle (e.g. eliminating bias in the recruitment process and in promotion and performance management; adopting flexible working arrangements for employees with caring responsibilities etc.);
- addressing the causes of inequality and creating a workplace with equal access to training and promotion for all (including by making reasonable adjustments for employees with special needs); and
- embedding equality as a core corporate value and making its attainment everyone's responsibility.

Elaine and Katherine's respective areas of expertise mean that we can combine the legal understanding you need with invaluable input on the employee relations and cultural aspects of a successful equal opportunities programme. Contact us to discuss how we can support you with the equality challenge.

Please get in touch with jenny.maddocks@cains.com to book a complimentary seminar. Please note that places are limited and will be allocated on a first come first served basis, so don't delay!