ALLEN & OVERY

Summary of 2024 Amendments to the Equality Act 2010

29 January 2024

Nature of change	Explanation	Practical Implications for Employers
Protection for breastfeeding women	Women will be protected from suffering less favourable treatment at work because they are breastfeeding. Prior to the change, this right had previously been expressly stated as not applying to discrimination at work.	Employers should be prepared to have discussions with mothers returning to work about providing facilities in the workplace to store or express breastmilk. A failure to do so could give rise to a direct discrimination complaint.
Pregnancy and maternity discrimination – extension of protections	The amendments to the EqA aim to secure increased protection for women against unlawful discrimination on grounds of pregnancy and maternity. The changes include: 1. An extension of special treatment to cover the period of maternity, as well as pregnancy and childbirth. Importantly, a man cannot rely on special treatment afforded to women in this period to establish a complaint of less favourable treatment. 2. Women will have protection against unfavourable treatment after the end of the protected period (the duration of pregnancy	There are no immediate action points for employers to address in response to these changes. However, the changes evidence the intentions of Parliament to bolster and improve statutory protections for women in the workplace who are pregnant and on maternity leave (from 6 April 2024 we will see the introduction of further legislative amendments to extend redundancy protections for employees who are pregnant and on maternity/adoption/shared parental leave. The protected period during which an employee is entitled to be offered a suitable alternative vacancy, if one arises, will, commence when the

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	and statutory maternity leave), where the reason for such treatment is the pregnancy or a pregnancy-related illness occurring before their return. 3. Protection for women against pregnancy and maternity discrimination where they do not have the right to ordinary and additional maternity leave but benefit from equivalent maternity leave under an alternative statutory or contractual scheme that is substantially the same in nature. Previously, the protected period for women falling outside of entitlement to statutory maternity leave was just two weeks.	employee notifies their employer of their pregnancy. It will end 18 months after return from maternity leave, adoption leave, or in the case of shared parental leave, 18 months after the child's birth or placement.).
New indirect discrimination by association provisions have been added	One of the more notable changes to the Equality Act was the inclusion of a new statutory provision that permits complaints of indirect discrimination where the complainant does not share the protected characteristic of the disadvantaged group but can show they have suffered substantially the same disadvantage. The effect of this is to establish a new head of claim of indirect discrimination by association. Under the existing indirect discrimination provisions, to establish a complaint of indirect discrimination, the complainant must be able to establish that a provision, criterion or practice (PCP) was applied to a wide group but had a disproportionate and disadvantageous impact on persons sharing a protected characteristic, and that they possessed that relevant characteristic and suffered the same substantial disadvantage. The concept of indirect discrimination by association had already been established in an EU case referred to as Chez, which involved the	In practical terms, this provides legal basis for a wider pool of individuals to present indirect discrimination complaints to challenge the application of PCPs by employers, where they can establish they have suffered the same disadvantage. For example, employees with care-giving responsibilities for a disabled person could challenge changes to working patterns, or termination of home-working arrangements, based on the disadvantageous impact they suffer due to their association with a disabled relative. See ***Follows v Nationwide Building Society 2201937/2018*** for a non-binding decision of the ET, based on similar facts. Likewise, a male employee whose flexible working request has been refused may also be able to raise indirect associative sex discrimination arguments in relation to the burden of childcare, arguing that they are placed at the same substantial disadvantage as women. Women are still considered to be carrying the primary burden of childcare responsibilities – as confirmed by the

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	disadvantageous impact resulting from the placement of electricity meters in an area mainly populated by Roma travellers. A claim of unlawful race discrimination, brought by a non-Roma traveller living in that area, was upheld; the ECJ found that an individual who does not share the protected characteristic (in this case, race) could still suffer disadvantage alongside that protected group.	EAT in the case of ***Dobson v North Cumbria Integrated Care NHS Foundation Trust UKEAT/0220/19/LA(V)*** – making it very difficult for a male to mount a standard s.19 indirect sex discrimination complaint.
Equal pay – the 'single source' test for the purposes of establishing a comparator has been written into the Equality Act 2010	Comparator requirements have changed so that an employee can rely on somebody employed on terms that are attributable to a single body responsible for setting or continuing the pay inequality and that can restore equal treatment, or where their terms are governed by the same collective agreement. This is commonly referred to as the 'single source' test and now provides a UK statutory basis for using a broader scope for comparison than the previous requirement that the comparator must be employed by the same or an associated employer.	This has no significant implications for employers. It simply codifies into UK law the broader EU comparator test that has already been relied upon in the UK court system. The single source test has notably been relied upon in some of the on-going supermarket equal pay claims.
Changes to the definition of disability	The definition of disability, and specifically the existing provisions that define disability by reference to a person's ability to carry out "normal day to day activities", should be taken as including a person's ability to fully and effectively participate in working life on an equal basis with non-disabled workers. This means that Tribunals can, in considering the issue of disability, take account of those tasks that may be specific to certain roles, or more infrequent in nature, such as manual handling, or applying for jobs.	Tribunals were already applying this broader test to the question of whether a claimant meets the section 6 definition of disability, and so the change is unlikely to bring about any tangible difference to the assessment of disability in the Tribunal. It serves, however, as a useful reminder to employers that in the context of considering whether an employee may be disabled, and thus trigger a positive duty to make reasonable adjustments, employers should have cognisance of difficulties that may arise for applicants and employees in the completion of more ad hoc,

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	Previously, 'normal day to day activities', in the context of work could be taken as referring to those activities that were more general, common and frequent, such as sending emails, taking calls, or engaging with colleagues.	infrequent tasks, which may not be so immediately obvious.
Extended provisions to cover discrimination in recruitment	Employers may be liable for discriminatory statements made regarding recruitment, even where there is no active recruitment process underway, and there is no identifiable victim. Employer liability could even arise where the relevant discriminatory statement is not made by a direct employee, if there are reasonable grounds for the public to believe the maker of the statement is capable of having a decisive influence over the organisation's recruitment policy. This incorporates into domestic legislation a prior finding by the European Court of Justice that an employer could be liable for a discriminatory statement if it was sufficiently linked to recruitment. The case involved a statement made by a lawyer during a radio interview, that he would not hire or accept services from persons who are LGBTI. At the time of the statement, there had been no active recruitment process underway. Legal proceedings were brought in response to the comments by an association of lawyers that existed to protect the rights of LGBTI persons, and Italian law permitted they had standing to do so where there was no identifiable victim.	This provides broader scope for potential recruitment-related discrimination claims, outside the context of an active recruitment process. It is difficult to assess the practical implications of this, but we expect it to become clearer with time, as a body of UK case law emerges in this area. However, factors likely to be relevant for a claim to have prospects of success will be whether a sufficient link to recruitment by an employer can be established, determined by factors such as the status and capacity of the statement maker, the details of the statement itself and the context in which it was made.