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for everyone

Guidance

# Prevent discrimination: Support equality

August 2017



Prevent discrimination: Support equality

## About Acas – What we do

Acas provides information, advice, training, conciliation and other services for employers and employees to help prevent or resolve workplace problems. Go to [www.acas.org.uk](http://www.acas.org.uk) for more details.

## 'Must' and 'should'

Throughout the guide, a legal requirement is indicated by the word 'must' – for example, an employer must not ask a job candidate health-related questions before making a job offer, apart from in certain circumstances set out in law.

The word 'should' indicates what Acas considers to be good employment practice.

## Understanding the term 'employee'

Regarding discrimination matters, under the Equality Act 2010 the definition of 'employee' is extended to include:

- employees (those with a contract of employment)
- workers and agency workers (those with a contract to do work or provide services)
- apprentices (those with a contract of apprenticeship)
- some self-employed people (where they have to personally perform the work)
- specific groups such as police officers and partners in a business
- job applicants are also protected.

### August 2017

Information in this guide has been revised up to the date of publishing. For more information, go to the Acas website at [www.acas.org.uk](http://www.acas.org.uk). Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

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## About this guide

This guide aims to help employers of all sizes, senior managers, line managers and HR personnel to:

- **encourage equality** - equal job opportunities and fairness for employees and job applicants in the workplace
- **minimise the risk of discrimination** against employees and job candidates because of one or more of the nine protected characteristics under the Equality Act - age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation
- **promote diversity** – by valuing differences between staff whether, for example, because of race, age, religion or sex (gender)
- **manage fairly** the need for different working patterns, including flexible working, in a 24/7 world where Britain's working population is becoming ever-more diverse.

### Put it into practice

To effectively put the four principles above into practice in the workplace, a large- or medium-sized organisation or business is advised to have:

- a policy for managing the principles so everyone in the organisation knows what is acceptable and expected of them as individuals and as part of the organisation
- an action plan for promoting equality and diversity in the organisation
- a system for assessing whether the policy and action plan are producing the right results in the organisation
- a commitment to make and oversee any necessary changes to address inequality, step up the promotion of diversity and/or the prevention of discrimination.

A **small firm's** equality policy and any supporting action plan or activity should match its size and what it can realistically achieve. Also, they are likely to be simpler than for a large company.

This guide should also be helpful for employee representatives and employees in their role in promoting equality and diversity, and preventing discrimination.

It is the second of three main guides in a series. The first, Equality and discrimination: understand the basics, gives an overview of how equality

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legislation applies at work. The third, Discrimination: what to do if it happens, covers how an employee should raise a complaint of discrimination and how an employer should handle it.

There are also guides related to individual protected characteristics under the Equality Act 2010

## Business benefits of encouraging equality and diversity

Encouraging equality and diversity, and preventing discrimination in the workplace are a legal obligation. They are also ethically and commercially good practice for both large and small organisations.

Business reasons for an organisation to encourage equality and diversity in its workforce are mounting:

- **the make-up of the UK workforce is under-going considerable change.** For example, more people are continuing to work instead of retiring, women now make up almost half the workforce, around one in ten of the UK working age population are from an ethnic minority, while, looking to the future, one in four primary school children are from an ethnic minority
- **help serve a diverse range of customers** - economies such as China, Brazil, Russia and India are among the world's top ten, and offer a major market for British goods.
- **enhanced innovation** - having staff at all levels from a wide range of backgrounds and skills can help to develop a working environment producing ideas and solutions that might not emanate from a smaller array of diverse groups
- **improved problem solving** - the more complex a task or problem in an organisation, then the greater the potential benefit of having a team made up of people from a wide range of backgrounds and skills. For example, staff of different genders or racial or religious backgrounds can bring distinctive perspectives to the table which may contribute to a commercial breakthrough.

However, employers should be aware that organisations often have a less diverse range of staff at senior levels. A recent study by the [Green Park](#) recruiting firm warned that Britain's biggest companies are missing out on business opportunities because of what it calls the 'diversity deficit' at the top, where only a handful of senior roles are held by women or ethnic

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minorities. The study found that in the FTSE 100 companies few chairmen were not white, few were woman, and most chief executives and finance directors were white.

Encouraging greater awareness and understanding of the different protected characteristics, alongside tackling discrimination, can help to:

- **reduce the chance of misunderstandings** resulting in complaints, disciplinary action or an employment tribunal claim - there is no upper limit on how much compensation an organisation may be ordered to pay if it loses a discrimination claim
- **improve team spirit** – an employee or groups of employees who are being discriminated against are likely to be unhappy, less productive and de-motivated, and this can have a negative impact on the whole workforce
- **attract, motivate and retain staff**, and enhance an organisation's reputation as an employer – if staff who have been discriminated against feel undervalued or 'forced out' and leave, the organisation will incur the costs of recruiting, training and settling in new staff when its reputation as both a business and employer may be damaged.

The Government's Department for Business Innovation and Skills has produced a report on the [Business Case for Equality and Diversity](#)

## How to prevent discrimination

Trying to prevent discrimination at work can break down into three main steps. A small firm, though, may feel it can manage only one or two of them, while a large organisation may have the resources to undertake all three to get the most out of the process. Even considering more than one step may help reduce the risk of discrimination.

**Step 1** is for employers to be aware of the key areas of work, such as recruiting new staff, where discrimination can be more likely to happen and how to avoid potential pitfalls.

**Step 2** is getting workplace rules for all staff – in other words, a policy - in place and in writing. In support of a policy, it can be helpful and advisable for the employer to plan how it will encourage equality and diversity and try to stop discrimination in its workplace. Employees have key parts to play.

**Step 3** is how the employer can measure if its policy and any supporting plan work in practice, and whether they might need to change.

## Step 1: Understanding where discrimination can arise

### Advertising jobs

- Stay clear of any reference to protected characteristics to avoid discrimination in job advertisements - phrases such as 'mature person', 'young graduate' or 'ten years' experience' are potentially discriminatory.
- State a commitment to equal opportunities - that applications are welcomed from all who believe they fit the essential requirements of the job and that applications from groups under-represented in the organisation are encouraged.
- Consider whether the advertisement for the vacancy is likely to reach a wide enough audience and people from different backgrounds. Using at least two different methods can help avoid targeting candidates from too narrow a group.
- Be clear whether flexible working is available for the role, or would be considered.

### Recruitment

- Have an accurate job description giving the role's main purpose and tasks, plus other duties and responsibilities.
- Have a person specification giving a profile of the person who would best match the job, focussing on skills and knowledge, experience, aptitudes, qualifications and personal qualities, spelling out which are essential and which are desirable.
- Make sure job description and person specification match, and that any personal qualities or circumstances mentioned are relevant to the role.
- Assess all candidates against the job requirements equally – although there can be very limited exceptions – irrespective of the job candidate's protected characteristics.
- Check that a job application form is not inadvertently discriminatory and be prepared to update it if needed. For example, to require a form to be filled out 'in your own handwriting', where written English is not

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relevant to the job, may discriminate against people with dyslexia. Also, on an application form do not ask for details related to protected characteristics such as date and place of birth, marital status or health absence details.

- Use at least two people when sifting applications and interviewing. Ensure assessments are based only on evidence to avoid unintended bias.
- Have the same core recruitment questions and ensure all candidates interviewed are treated fairly and consistently - it may be discriminatory not to. Of course, some candidates may have to be asked supplementary questions to help prompt them, but be wary of asking personal questions which may be perceived as intrusive and imply potential discrimination.
- Use caution if looking at job candidates' social media profiles to see how they present themselves to the outside world. This might reveal things an employer would not ask them about in a recruitment process and lead to discriminatory judgments. To find out more, see the Acas website page Social media and recruitment.
- Be wary of focussing on personal details in a CV which are not relevant to the requirements of the job, as this might lead to discriminatory judgments.
- Ask job applicants whether any reasonable adjustments, including access requirements, need to be made for any part of the recruitment process so workplace requirements or practices do not disadvantage a candidate with a disability.
- Only ask health-related questions to:
  - determine whether a candidate can carry out a function essential to the role
  - take 'positive action' to assist disabled people
  - record, in a monitoring procedure completely separate from the rest of the recruitment process and without revealing a candidate's identity, whether they are disabled
  - check, in rare circumstances when being disabled is a genuine requirement of the job, that the candidate has a disability.For most jobs, it is not necessary for candidates' health to be checked before they are offered a job, and to do so may be unlawful.
- Check job applicants are entitled to work in the UK and any necessary paperwork is correct and up to date. To find out more see the companion guide, Race discrimination: key points for the workplace.

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- Ask candidates to complete an equality and diversity monitoring form to give details of any protected characteristics. However, handle this carefully as the forms need to be kept separate from other paperwork. To find out more, see the section, Step 3: Monitoring if and how the measures are working, further into this guide.
- Keep a paper trail supporting clearly how the decision to appoint the successful candidate was reached.

## Promoting existing employees

- Make sure opportunities to try for promotion are publicised throughout the organisation and that employees of a particular protected characteristic are not overlooked.
- There must never be questions as to whether or not an employee with the relevant skills would 'fit in' because of their protected characteristic or because they have previously made a complaint about discrimination.
- It is unlawful to have an unwritten rule that preferred candidates above a certain level should or should not have a particular protected characteristic, apart from in rare circumstances where it might be a justifiable 'occupational requirement'. To find out more about 'occupational requirements', see the companion guide Equality and discrimination: understand the basics.

## Pay and other terms and conditions

- Ensure that there are no terms and conditions which disadvantage or exclude people because of one or more of the nine protected characteristics. The list here is not exhaustive, but includes basic salary, overtime, shift pay and other contractual benefits such as a pension scheme or share options.
- Take care if you are considering offering a new employee a different pay rate to the previous jobholder – this is a regular practice which has to be based on their skills, knowledge and experience. Unless an employer can objectively justify the pay rate as 'a proportionate means of achieving a legitimate aim', it could lead to equal pay issues. For more on objective justification, see the companion guide, Equality and discrimination: understand the basics.

## Equal pay

- Regularly monitor employee contracts to ensure that male and female employees in full-time or part-time employment are treated lawfully – they have a right to 'no less favourable' pay, benefits and terms and conditions in their employment contracts where they are doing equal work.
- An employee is entitled to know how their pay is made up. For example, how much is basic pay, overtime, or commission. Also, they cannot be prevented from disclosing this information to others, including trade union reps and officers, for the purposes of equal pay (but they may be required to keep the information confidential for other purposes if their contract requires it).

## Training

- Give staff access to training and development opportunities without being influenced by any protected characteristic or whether they are part-time or full-time.
- It is unlawful to withhold training with the intention of making promotion less likely, making selection for redundancy more likely, or as 'punishment' if an employee has complained about discrimination.
- Keep the provision of training as flexible and fair as possible. For example, residential courses can deter staff with caring responsibilities who need training that is practicable for them to attend.

## Dismissal

- Be aware that if an employee is dismissed because of a protected characteristic, they do not need any minimum employment period to make a discrimination claim.
- Do not treat anyone unfavourably because of something connected with their disability. This is what the law terms 'discrimination arising from a disability'. For example, an employee's need for more time to get to and from meetings, especially out of the office, because they are a wheelchair user. However, if an employer has made a reasonable adjustment to remove or minimise the impact of the individual's impairment in the workplace, they must still demonstrate capability of doing the job, or be moved, with their agreement, to a more suitable role. Dismissal would have to be based on 'capability' after reasonable adjustments had been made.

## Religious practice

- In addition to being careful that actions, policies, rules and procedures do not discriminate, employers will benefit from being mindful and sensitive towards their employees' religious needs and beliefs, and discussing with staff what could be done which would be reasonable and practical.
- Take into consideration religious rules of behaviour, religiously insensitive language and dietary requirements – for example, ensuring staff who require it can request halal food at a catered event. However, any changes should be reasonable and not allow one employee's faith to impact on: a different faith of another employee; employees who do not follow a religion or belief; or the workforce generally regarding, for instance, gender or sexual orientation.
- Providing a private space in the workplace for prayer and reflection can help to accommodate some religious observances and might circumvent some requests for time off to meet them. However, where practicable, plan for and accommodate requests for time off for religious festivals.
- A large firm might encourage employees to have an understanding of different faiths and beliefs at work to avoid any misunderstandings or situations which could become hostile or discriminatory. An option might be awareness training for staff in faiths and beliefs, but explaining this can be a complicated area where not everyone in a faith may hold the same convictions.
- Small firms with fewer resources can find meeting employees' religious needs and beliefs onerous, but they should try to do what they can and must not discriminate. While there is nothing in law which says that generally an employer must give time off or facilities for religious observance, it must ensure its policies and practices do not indirectly discriminate against particular religions or beliefs.

## Dress code

- Some flexibility on dress code and personal appearance may be necessary and some is good practice. For example, an employer should think about reviewing or amending a dress code if it may discriminate against staff of a particular religion. However, the needs of health and safety and an organisation's business requirements are also important. To find out more, see the Acas website page Dress code.

## Unacceptable behaviour

- Make it clear to new employees what behaviour is expected, what is not acceptable and what happens if rules are broken, and how problems concerning behaviour and discipline will be handled. Policies outlining these should be referred to in the employee's contract, also saying where they can be easily found.
- Include a statement in the organisation's equality policy which says breaches of the policy will be dealt with through the organisation's discipline and grievance procedures. There is more on these policies later in this guide.
- Maintain a commitment throughout the organisation to tackle and prevent bullying and harassment. Some organisations prefer to have a separate policy on bullying and harassment to do this.

## Redundancy

- Do not discriminate when selecting who might become redundant. For example, in selection criteria, an employer must exclude absences or attendance issues concerning disability, pregnancy or maternity, or authorised parental leave.
- Avoid using selection criteria which involve a protected characteristic. For example, disadvantaging part-timers in a redundancy process is likely to be sex discrimination if most of them are women.
- Offer an employee on maternity, adoption or shared parental leave – who has been chosen for redundancy using fair selection criteria – a suitable alternative vacancy if there is one. Such employees have special rights to be redeployed first. To find out more regarding pregnancy and maternity, see the joint Acas and EHRC guide *Managing redundancy for pregnant employees or those on maternity leave*.
- Do not solely use 'last in, first out' to decide who should leave, as this is likely to be discriminatory as, for example, most of the newer workers are likely to be younger than the longer-serving staff.

## Different types of leave for parents

- Make sure employees away from work because of pregnancy and maternity, antenatal appointments, paternity, adoption, Shared

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Parental Leave, or caring for children do not miss out on job or training opportunities and that they are kept informed of key matters and changes in their workplace.

## Flexible working

- Understand that all employees who have worked for their employer continuously for 26 weeks have the right to ask if they can work flexibly – that might be to do with hours, times or place of work.
- Also, consider requests from employees with less than 26 weeks' continuous service to avoid any potential claims of discrimination. For example, a new employee who becomes disabled might ask for two days working from home each week as a 'reasonable adjustment'.
- Discuss requests with employees and explore all concerns about impact on the business's operations.
- Accept or refuse requests on clear business grounds, being careful not to inadvertently discriminate against the employee.
- Agreeing to a trial for a fixed period can be a good way to test whether a requested flexible working arrangement is right for the business and the employee, and whether it might be suitable for a longer term.
- To find out more about flexible working, see the Acas guides Flexible working and work-life balance, The right to request flexible working, Acas code Handling in a reasonable manner requests to work flexibly and Homeworking, a guide for employers and employees

## Step 2: Taking measures to stop discrimination happening

### Introduce an equality policy

The starting point for an organisation or business, whether large or small, to promote fairness at work is an equality policy. It can refer to and interact with other policies – for example, discipline, and bullying and harassment.

When developing an equality policy, an employer should consult with employees and their representatives, if there are any. Any existing consultation and/or negotiating arrangements with employees or their representatives should be followed.

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As well as talking to employees, an employer could at this stage also conduct an equality impact assessment (EIA) to try to pick up on any issues ahead of drawing up the policy and its action plan. There is more on EIAs and the action plan later in this guide.

A policy should include, for example:

- the organisation's **commitment to provide equality** for all its staff and job applicants – and that pledge should stem from the head of the organisation such as the boardroom, chairman or chief executive
- its aim to **encourage, value and manage diversity** in the workforce
- its goal to **attain a diverse workforce** which is representative of the areas it is drawn from and the customers it serves
- that the organisation will seek to provide a workplace where all employees can give their best, where **discrimination, bullying, harassment and victimisation will not be tolerated**, and decisions are based on merit (apart from limited exceptions allowed under the Equality Act).
- that **breaches of the policy will be regarded as misconduct**, and dealt with through the organisation's disciplinary procedure.

Acas has developed a **sample equality policy** which employers can adapt to their own needs and can be found at [www.acas.org.uk/templates](http://www.acas.org.uk/templates)

### **But what if you're a small business...**

The same equality and diversity principles apply in managing a small firm as in running a large company. However, a small firm's equality policy should match its size and what it can realistically achieve. Its policy is likely to be simpler and shorter and a plan of action supporting the policy may or may not be beyond their resources.

If measuring equality, a small firm, (just like larger companies) should only collect protected characteristics data it is going to need and use in trying to improve equality and diversity in the business. But, if the numbers involved are small, and any statistical comparisons might be unreliable, a small firm might be better using its judgment. Where there is an issue, or suspected issue, it should investigate.

A small firm should never ignore an equality issue because it feels it has 'not got the time' to handle it. If a small firm is stretched, it could consider bringing in outside expertise and employers of all sizes should talk to staff about equality and diversity proposals.

## Use an action plan to support the policy

Ideally, the equality policy needs an action plan to back it up and bring it to life in the everyday workings of the organisation or business, and should set out what steps will be taken to ensure equality is achieved. For example, it might include training so all staff understand the importance of equality and diversity.

However, as mentioned earlier, some small firms may feel they do not have the resources to draw up or see through an action plan. But they might still opt for one or a few measures such as staff training.

A plan, if pursued, should be developed in consultation with employees and their representatives, if there are any. As mentioned earlier, if an organisation is introducing a policy and plan, an equality impact assessment (EIA) beforehand can help determine any particular goals which should be included. There is more on EIAs and the action plan later in this guide.

The plan should always include a stage to check the effect the equality policy and the plan once in operation are having in practice, and to assess how they might need to be reviewed to more effectively achieve the desired results or adapted to take into account change. This tends to be called 'monitoring' which is covered in more detail later.

An action plan will always need to be tailored to the needs of the organisation and should include setting dates for key phases:

- 1. monitoring the impact of the policy** (and also the plan itself once it has been established)
- 2. reviewing any relevant procedures** following the monitoring, remembering to consult with employee representatives should any changes be required
- 3. training employees and management** to understand the policy and plan, any necessary changes, what constitutes acceptable behaviour and what standards are expected of them. Refreshers should be held when updates are necessary
- 4. in larger organisations, carrying out further processes.** For example, an equal pay audit to ensure men and women doing equal work are getting 'no less favourable' pay, benefits and terms and conditions in their employment contracts. Small firms should remember the equal pay laws apply to them, too.

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The plan, too, should be supported by all senior executives. It should make clear who will carry out actions and by when, remembering that some actions may be ongoing, and include measurable targets that indicate success.

### **Train staff**

An organisation's training about equality, diversity and preventing discrimination should be regularly updated, supported from the top, for all staff, managers and executives, and cover:

- the law concerning equality and discrimination and what it means in practice
- the organisation's approach to equality, diversity and preventing discrimination
- roles and responsibilities of staff in making the policy and action plan work effectively in practice
- standards of behaviour expected of all staff, and how unacceptable conduct will be dealt with
- the organisation's policy and approach for dealing with bullying and harassment
- who staff should go to if they need advice on equality and discrimination. For example, where there are trade unions in the workplace, their equality reps could be a source of help and information.

It may be helpful for an employer to provide staff with written summaries of key points from the training they can refer back to should situations arise in the workplace, particularly for areas where discrimination can be more likely.

At training sessions, staff should be given the opportunity to raise concerns and ask questions.

Ideally, training should be conducted by a senior manager, HR professional or an external trainer who fully understands equality, diversity and discrimination, and can give staff clear awareness.

### Essential training for specialist roles

Greater knowledge of equality, diversity and preventing discrimination can be particularly valuable for those in roles including:

- managing and supervising employees
- recruitment
- staff appraisals
- selection for promotion
- offering training opportunities
- deciding on pay and other terms and conditions of employment
- taking disciplinary action against staff including dismissal
- selection for redundancy
- allocating the organisation's resources among staff
- managing the equality policy and action plan.

Supporting this can be of considerable benefit to the organisation. For example, providing additional training for line managers can ensure a more efficient and consistent handling of employees' concerns.

## Step 3: Monitoring if and how the measures are working

Ongoing monitoring helps to assess whether the organisation is meeting the goals set out in its equality policy and supporting action plan.

### The five stages of monitoring

**STAGE 1.** Persuade employees and job applicants of the benefits



**STAGE 2.** Collect personal data



**STAGE 3.** Collate and analyse the data



**STAGE 4.** Get to the root causes of any significant findings



**STAGE 5.** Decide on any changes

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An example of an equality and diversity monitoring form is available at [www.acas.org.uk/templates](http://www.acas.org.uk/templates)

## **Stage 1: Persuade employees and job applicants of the benefits**

- Involve and seek views from employees either individually or through recognised trade unions or employee representatives. If an organisation doesn't have representatives, it should consider setting up a group that can seek and convey comment from employees.
- Tell employees and job candidates that filling in an equality monitoring form is optional but will help the organisation gain an accurate picture of the workforce. Assure them that the form will not carry a name and be kept separate from other documents such as application forms. Particular care should be taken when larger organisations break down results into operational areas, so that the process does not result in the identification of individuals.
- Be clear to job candidates that monitoring forms will not be used in the selection of applicants, and that staff shortlisting candidates for interview, interviewing and appointing will not see the forms.
- Explain that data from the forms will stay strictly confidential and will be used solely for making/keeping the workplace a fair environment, particularly in training and promotion opportunities.
- Provide employees with points of contact if they have concerns. This could include managers, trade union or employee representatives trained to act as 'fair treatment' contacts. Also, consider selecting a senior manager or staff member to champion the monitoring process.
- Communicate the organisation's message on monitoring in the most appropriate way – for example, company emails, an in-house magazine or intranet. It is important to remember that some methods might not be accessible to all employees – for example, homeworkers may not see the office notice board.

### **Option of a staff attitude survey**

A small firm may find it difficult to guarantee complete confidentiality through using monitoring forms, especially if staff numbers are low and an issue becomes prominent. It might be better to use a staff attitude survey, where fairness in the workplace might be just one of the areas covered. To find out more, see [www.acas.org.uk/businesssolutions](http://www.acas.org.uk/businesssolutions)

## Stage 2: Collect personal data

- Decide what data is relevant and necessary. An employer in the private sector might want to monitor all protected characteristics or just certain protected characteristics. Employers in the public sector have legal duties outlined in the section, Understanding the public sector's equality duty, later in this guide.
- Look at employees through every stage of their journey with the employer, from when a job advertisement is first drafted all the way through to when they retire or leave and are given a reference. This means gathering data on who has been:
  - **applying for jobs, securing interviews and getting jobs.** For example, did the job advertisement and the channels used produce enough suitable candidates from different backgrounds?
  - **trained** and in what parts of the organisation. For example, are there more employees from one or two backgrounds who are getting training opportunities, while colleagues from other backgrounds are not?
  - **promoted.** For example, is there any tendency that while the organisation's staff is a mix of both men and women and from different racial groups, the employees securing most senior positions are from one group and/or sex?
  - **absent.** For example, are there any patterns, apart from reasons related to pregnancy and maternity, where staff of one sex are away from work more than the other?
  - **raising grievances.** For example, are more staff with a particular protected characteristic raising grievances than other employees?
  - **disciplined** and why. For example, might there be a common theme where some staff do not seem to understand what is unacceptable behaviour?
  - **dismissed or left** the organisation. For example, was anyone dismissed because of discrimination? Or, are employees leaving the organisation because of bullying or harassment, or other reasons, concerning a particular protected characteristic or characteristics?
- Consider including additional options - as demonstrated in the sample monitoring form available at [www.acas.org.uk/templates](http://www.acas.org.uk/templates) – for example, are employees working full-time or part-time or in flexible working arrangements?
- Another source of data on equality, diversity and discrimination can be from 'exit interviews' when staff leave the employer.

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- Understand that information about some of the protected characteristics is categorised as 'sensitive personal data' under the Data Protection Act and requires special treatment.

### **Sensitive personnel data**

This includes race and religion or belief. It also applies to an employee's 'sexual life' and 'physical or mental health condition', so the protected characteristics of disability, sexual orientation and gender reassignment are also particularly sensitive areas.

Any plan to collect and analyse data on any of these areas should be considered in consultation with any staff with one of more of these protected characteristics, as well as any trade union or employee representatives. An employer should also be aware that some employees do not want give information about their protected characteristics.

If monitoring is carried out in any of these areas, confidentiality should be guaranteed and additional safeguards, such as secure storage with restricted access, are advisable. An organisation should always ask for permission to store such information as part of the monitoring process.

The Equality and Human Rights Commission have more information on monitoring particularly sensitive areas at [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

## **Stage 3: Collate and analyse the data**

- Examine the level of diversity in the workforce and job applicants, and how this compares against other parts of the company (if it is part of a larger employer), the profile of jobseekers in the local community and the national labour market.
- Look for any significant differences between groups in the workforce based on the protected characteristics. They might impact on employees and jobseekers applying to join the organisation and, in turn, the image, reputation, performance and future of the organisation.
- Think about what might be behind a significant difference – could there be discriminatory reasons, or non-discriminatory reasons. There are different tools to indicate whether a matter is worth looking into further. For example, one used by some medium and large organisations when recruiting is called the '**Four-fifths rule**'.

### **For example... the 'Four-fifths rule'**

It is not intended to be an absolute measure, but simply to indicate whether a matter is worth investigating further. It is suited to larger organisations because to be of any statistical value it needs to be based on measuring a pool of at least 200 people. This is how it works...

Williams and Co, a call centre, advertised 30 new posts and interviewed 200 people – 100 men and 100 women. Twenty men and 10 women were offered jobs. The key figures are:

- The male success rate, 20 out of 100 (20%)
- The female success rate, 10 out of 100 (10%)
- Four-fifths of the highest success rate (the men at 20%), 16%.

The rule suggests there may be bias if the success rate of any group is less than four-fifths of the rate of the group with the highest success rate. So, as the female success rate (10%) is less than four-fifths the male success rate (16%), the difference should be looked into further.

**Small firms**, because of the smaller numbers they would be dealing with, would find it more practical to use their judgement rather than this calculation. Additionally, they might want to collect relevant data and look for any significant differences over time – say, a few years.

## **Stage 4: Get to the root causes of any significant findings**

- Don't jump to conclusions. An employer should firmly bear in mind that a difference is not necessarily bad – there may be reasonable and non-discriminatory reasons why. This might include achieving an aim of the organisation's equality policy and supporting action plan. Or, it might be an outcome that is unwanted, unintended and needs looking into further.
- Carry out an investigation to clarify why something is happening or conduct an equality impact assessment (EIA). EIAs are covered later in this guide.

## **Stage 5: Decide on any changes**

- Where the policy and action plan are producing the desired results in practice, carry on monitoring at least once a year, but look out for significant patterns.

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- Changes required may be simple, straightforward, supported throughout the organisation and easily introduced. For example, supporting a more diverse workforce by promoting flexible working arrangements such as job shares or flexi-time.
- Sometimes an employer might feel the best course would be to take what the Equality Act terms 'positive action' to help employees or job applicants it thinks:
  - are at a disadvantage because of a protected characteristic, and/or
  - are under-represented in the organisation, or whose participation in the organisation is disproportionately low, because of a protected characteristic and/or
  - have specific needs connected to a protected characteristic.To find out more about 'positive action', see the companion guide, Equality and discrimination: understand the basics.
- Where changes are made, new goals are desired, or there are concerns that the policy and plan are not working in the expected manner, it may be time to alter the action plan's targets. Remember, decide this with employee representatives.

## Good practice for monitoring particular protected characteristics

- **Age:**
  - Monitor only the range of age bands agreed in consultation with employees and their representatives. See the example of the equality and diversity monitoring form on the Acas website at [www.acas.org.uk/templates](http://www.acas.org.uk/templates).
  - Identify any patterns in which age bands get more or less training or development opportunities.
  - Use the Acas Age Audit Tool at [www.acas.org.uk/ageaudit](http://www.acas.org.uk/ageaudit) to assess what employees think about age issues in their workplace and the organisation's practices and policies.
- **Disability:**
  - Avoid making general assumptions about disabilities. But separate from a monitoring process, if a disabled job candidate or employee asks for 'reasonable adjustments' to be made so they can work for the employer, talk to them to gain a full understanding.
  - Maintain confidentiality - many disabled people do not want to disclose their disability to others.
- **Gender reassignment:**
  - Any monitoring question about sex (gender) should include options to answer 'Non-binary', 'Prefer not to say' or 'Use your own term'. This

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question should be asked separately from one about sexual orientation.

- **Marriage and civil partnership:**
  - Treat the protected characteristic as a single category – don't put married, same-sex marriage and civil partnership as separate categories. So, simply ask: Are you married or in a civil partnership?
- **Pregnancy and maternity:**
  - Areas to monitor can include how employees who are pregnant or on maternity or shared parental leave have been treated in any restructuring of the organisation, recruitment, promotion opportunities, pay and benefits, sickness absence, or any bullying or harassment.
  - Also, how many women return to work after maternity leave, and if they do come back how many are still with the firm a year later? The figures may indicate whether or not the organisation is 'family friendly'.
  - Be aware that numbers monitored for this protected characteristic may be small, so drawing statistical conclusions may be difficult.
- **Race:**
  - Consider which ethnic groups should be monitored – that will depend on the make-up of the employer's workforce.
  - If an employer does not know the ethnic groups in its workplace, it should as a minimum use the categories in the example of an equality and diversity monitoring form available at [www.acas.org.uk/templates](http://www.acas.org.uk/templates).
  - Make sure employees and job applicants understand what is meant by ethnic groupings, and that the questions are being asked to help promote equality and diversity in the organisation.
- **Religion or belief:**
  - Think about which religions and beliefs should be monitored – that will depend on the make-up of the employer's workforce.
  - If an employer does not know the religions and beliefs in its workplace, it should as a minimum use the categories in the example of an equality and diversity monitoring form at [www.acas.org.uk/templates](http://www.acas.org.uk/templates).
  - Those categories should include options to tick 'No religion or belief', or write in a religion or belief not included in the form.
- **Sex (Gender):**
  - Spot whether certain jobs or roles are performed mostly by one gender.

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- A policy of encouraging flexible working where it matches the needs of the organisation can help promote gender equality.
- Identify how many staff make flexible working requests – and, for example, of which sex, age, race or religion, and how many are granted and how many are refused.
- **Sexual orientation:**
  - Identify if there are issues in the workplace which prevent gay and lesbian colleagues giving their best or getting opportunities.
  - Do not inadvertently identify gay or lesbian employees – they may not wish this information to be shared.
  - If monitoring this protected characteristic for the first time, an organisation may get few gay men, lesbians or bisexuals answering the question, What is your sexual orientation? This may indicate they feel uncomfortable about 'coming out' at work.

## Other aspects of equality law

### Avoid stereotyping

Employers and employees should avoid what is commonly called stereotyping – having a belief that people of a certain group have the same characteristics. Stereotyping does not look at a person as an individual, but infers that they have a whole range of traits and abilities that it is assumed all members of that group have. For example, it can make a manager or employee think things about people that are untrue.

Stereotyping can stem from a past experience and then thinking a similar situation is going to be the same, and/or where past prejudices still linger. It can also be a misguided attempt to simplify a modern and complex social world.

Stereotyping tends to foster prejudiced attitudes and, whether intended or not, often conveys a negative impression and/or results in negative repercussions such as a potential discrimination claim. For example, a line manager making an off-hand comment that people of a particular race are 'all lazy' is likely to cause offence and constitute race discrimination.

### Understanding the public sector's equality duty

Employers and employees in the public sector, and in private or voluntary organisations carrying out work on behalf of a public sector employer, have a legal duty in the workplace to:

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- 1. prevent and eliminate discrimination, harassment and victimisation** prohibited by the Equality Act. This applies to all protected characteristics and employers are required to ensure that they are acting fairly towards employees, customers and other users of their services.
- 2. establish and promote equality and equal opportunities** in the day-to-day running of their organisations. This applies to all protected characteristics other than marriage and civil partnership.
- 3. foster good relations**, by tackling prejudice and promoting understanding, between people who share a protected characteristic and those who do not. This applies to all protected characteristics other than marriage and civil partnership.

While the public sector equality duty does not include the protected characteristic of marriage and civil partnership in requirements 2 and 3, employers and employees are still bound by the general requirements of the Equality Act, meaning they must not discriminate, harass and victimise on the grounds of this protected characteristic.

## Role of an equality impact assessment

An equality impact assessment (EIA) is a way for an organisation to gauge the impact of its policies, products or services on employees, customers and other users of its services. It can help indicate why certain things may be happening regarding equality, diversity and discrimination.

Evidence might come from monitoring data, methods such as the Acas Age Audit Tool, a staff survey of the workplace, discussion and feedback from a range of executives, managers and staff across the organisation, trade unions, customers and other users of its services. It should be objective, not unduly influenced by management's point of view and based around four main questions:

- 1.** what is the purpose of the policy, product or service?
- 2.** how in practice is the policy, product or service trying to achieve this?
- 3.** who is benefiting and who is not, and how?
- 4.** does the policy, product or service have any secondary aims, and what are they?

EIAs should be clear from the outset on the purpose of the policy, product or service; be honest about what is happening in reality in delivering them; and gather experience of executives, line managers, employees, customers and other users of its services on the receiving end.

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For example, it may become apparent that some groups of staff or customers do not benefit as much as might have been intended, or that one policy in an organisation may have unintended influence over another. Where an organisation identifies a significant disparity, it can:

- stop the action causing the disparity
- adjust the policy, product or service to remove any identified barrier to those who do not benefit sufficiently
- continue with the policy, product or service and seek to justify the difference as 'a proportionate means of achieving a legitimate aim'. For more on this, see the companion guide, Equality and discrimination: Understand the basics.

In the private sector, it is good practice to publish the findings and outcome of an assessment in an easily understandable format for staff and, where relevant, customers. In the public sector, an organisation has a responsibility to publish the priorities in its action plan to demonstrate it is complying with the public sector equality duty.

The Equality and Human Rights Commission have more information on EIAs at [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

## Further information

### Useful tools online

Example of an equality policy ([www.acas.org.uk/templates](http://www.acas.org.uk/templates))

Example of an equality and diversity monitoring form

([www.acas.org.uk/templates](http://www.acas.org.uk/templates))

Acas Age Audit Tool ([www.acas.org.uk/ageaudit](http://www.acas.org.uk/ageaudit))

### Acas learning online

Acas offers free E-Learning. The Equality and diversity course gives an overview of what equality and diversity mean, why they are important, putting the principles into practice in an organisation and a test to gauge understanding of the key points. Acas also offers another e-learning course on how to handle bullying and harassment.

### Acas training

Our Equality and Diversity training is carried out by experienced Acas staff who work with businesses every day. Training can be specially designed for smaller companies and our current programme includes:

- equality, diversity and discrimination: the essentials
- tackling bullying and harassment at work

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- promoting mental health at work.

Go to [www.acas.org.uk/training](http://www.acas.org.uk/training) for up-to-date information about our training and booking places on face-to-face courses.

Also, Acas specialists can visit an organisation, diagnose issues in its workplace, and tailor training and support to address the challenges it faces. To find out more, see to the Acas website page Business solutions.

### **Acas guidance**

Equality and discrimination: understand the basics

Discrimination: what to do if it happens

Age and the workplace: a guide for employers and employees

Disability discrimination: key points for the workplace

Gender reassignment discrimination: key points for the workplace

Marriage and civil partnership discrimination: key points for the workplace

Race discrimination: key points for the workplace

Religion or belief and the workplace

Sex discrimination: key points for the workplace

Sexual orientation discrimination: key points for the workplace

Asking and responding to questions of discrimination in the workplace

Managing redundancy for pregnant employees or those on maternity leave

Bullying and harassment at work: a guide for managers and employers

Bullying and harassment at work: a guide for employees

Code of practice on discipline and grievance

Guide on discipline and grievances at work

Age discrimination

Disability discrimination

Gender identity discrimination

Marriage and civil partnerships

Maternity leave and pay

Race discrimination

Religion or belief discrimination

Sex discrimination

Sexual orientation discrimination

Equal pay

### **The Equality and Human Rights Commission**

<http://www.equalityhumanrights.com/>

### **Equality Advisory Support Service**

For wider equality issues the Acas helpline does not cover, call the EASS helpline on 0808 800 0082 (Text phone: 0808 800 0084)

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**Additional help**

Employers may be able to seek assistance from groups where they are members. For example, if an employer is a member of the Confederation of British Industry or the Federation of Small Businesses, it could seek its help and guidance.

If an employee is a trade union member, they can seek help and guidance from their trade union representative or equality representative.

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## Keep up-to-date and stay informed

Visit [www.acas.org.uk](http://www.acas.org.uk) for:

- Employment relations and employment law guidance – free to view, download or share
- Tools and resources including free-to-download templates, forms and checklists
- An introduction to other Acas services including mediation, conciliation, training, arbitration and the Acas Early Conciliation service
- Research and discussion papers on the UK workplace and employment practices
- Details of Acas training courses, conferences and events.

**Sign up for the free Acas e-newsletter.** The Acas email newsletter is a great way of keeping up to date with changes to employment law and to hear about events in your area. Find out more at:

[www.acas.org.uk/subscribe](http://www.acas.org.uk/subscribe)

**The Acas Model Workplace.** This engaging and interactive tool can help an employer diagnose employment relations issues in its workplace. The tool will work with you to identify areas of improvement you can consider, and will point toward the latest guidance and best practice:

[www.acas.org.uk/modelworkplace](http://www.acas.org.uk/modelworkplace)

**Acas Helpline Online.** Have a question? We have a database of frequently asked employment queries that has been developed to help both employees and employers. It is an automated system, designed to give you a straightforward answer to your employment questions, and also gives links to further advice and guidance on our website:

[www.acas.org.uk/helplineonline](http://www.acas.org.uk/helplineonline)

**Acas Helpline.** Call the Acas Helpline for free and impartial advice. We can provide employers and employees with clear and confidential guidance about any kind of dispute or relationship issue in the workplace. You may want to know about employment rights and rules, best practice or may need advice about a dispute. Whatever it is, our team are on hand. Find out more: [www.acas.org.uk/helpline](http://www.acas.org.uk/helpline)

### Look for us on:

Facebook - <https://www.facebook.com/acasorguk>

LinkedIn - <http://linkd.in/cYJbuU>

Twitter - <http://twitter.com/acasorguk>

YouTube - <https://www.youtube.com/user/acasorguk>