

The Equality Act 2010 – occupational health considerations

The Equality Bill obtained its Royal Assent in April 2010, of which a part has recently come into force as of October 2010. **Express Medicals'** Dr STEVE MALLESON summarises some of the main features that may impact occupational health practitioners in the rail sector

The Act has been designed to replace previous legislation in such areas as race, age, gender, disability and religious discrimination. Through combining disparate pieces of legislation within these areas the Act aims to promote consistency, as well as maintaining a fairer workplace environment in compliance with the law. The nine previous pieces of legislation relating to discrimination will soon become redundant as they are combined into one Act of Parliament. These include the Disability Discrimination Act 1995; Race Relations Act 1976; Sex Discrimination Act 1975; Equal Pay Act 1970, and the three Employment Equality Acts relating to religion, sexual orientation and age.

Those within the rail sector may well feel a ripple effect from this new legislation, which may be felt in the following ways:

Enquiries made prior to employment

Under section 60 of the new Act applicants asked to complete pre-employment assessments prior to a firm job offer cannot be asked questions relating to health or disabilities (unless for a particular permitted purpose).

This purpose may include establishing whether an applicant will be able to comply with the requirements for attending an interview. Further assessment (if required) for specific purposes can only be undertaken after the job offer has been made i.e. subject to medical assessments or other enquiries.

Thus transparency is ensured as an individual can be certain when refused a role that it is health or disability related, as all other factors would previously have been addressed. Some potential employers in the past have asked for medical details prior to other assessments citing such insufficient reasons for refusal as lack of requisite qualifications or experience.

Re-definition of disability

The definition of disability will be broadened under the new Equality Act. The object is to



make it simpler for all parties involved, such as employers, service providers and individuals' with disabilities to understand the implications of the new Act. The Government has until recently been consulting on statutory guidance to determine whether someone is considered to be disabled for the purposes of the Act. The guidance will chiefly be aimed at adjudicating bodies, such as tribunals and courts but will have important implications within the rail sector for both employers and disabled employees.

Disability related discrimination

The Equality Act 2010 will change the widely criticised notion of disability related discrimination by replacing it with two new methods of making claims. The Act has introduced the concept of discrimination arising from a disability and also from indirect discrimination. Indirect discrimination is when the effect of certain requirements, conditions or practices imposed by an objective employer has an adverse impact disproportionate to one specific group. This usually occurs when a rule or condition which is applied to everyone can only be met by a considerably smaller proportion of people from a particular group. This is in practice usually found where racial groups are affected, in victimisation or in vicarious liability.

Objective justification tests

Under current legislation there are different tests in place in order to establish an objective justification for discrimination. The equality act will create a single objective justification test to replace the use of different tests. As a result of making a decision in areas of discrimination employers will be required to show that their conduct is a proportionate means of achieving a legitimate aim. The consequence of this will be that it will be more difficult for employers to justify treatment essentially unfavourable to an individual. Service providers (under the new objective justification test) will potentially be able to use a wider range of criteria to justify their conduct than is now possible under the present reasonable criterion. To be considered proportionate, the decision should be significantly outweighed by the importance and benefits of the legitimate aim. The legitimate aim may carry many factors that must be considered reasonable such as safety or legislative prohibition.

Summary

This short summary of the act has concentrated on a very small area of a large legal package which may impact occupational health and its provision in the workplace. This will follow through to impact subsequent decisions and advice given to employers by occupational health providers. ■



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