

Positive action

Briefing for the homelessness
sector workforce on positive action
in the workplace

Introduction

About this briefing

The Equality Act 2010 makes provisions to allow employers to take **positive action** to advance equality in the workplace for those who are disadvantaged due to a protected characteristic. This briefing is designed to give an overview of positive action and how organisations/employers may employ positive action in the workplace.

This briefing also gives an overview of **positive discrimination** which is illegal under the Equality Act.

Who is this briefing for?

This briefing has been created for all staff to recognise both the opportunities and the limitations of 'positive action' as defined in the Equality Act 2010.

Further reading

For comprehensive guidance on implementing positive action within the law, including steps that should be taken ahead of taking positive action and a checklist, organisational leaders should read the government guidance on implementing positive action within the law.

www.gov.uk/government/publications/positive-action-in-the-workplace-guidance-for-employers/positive-action-in-the-workplace#foreword

This guidance was developed from the Equality and Human Rights Commission (EHRC) Statutory Code of Practice on Employment which can be found here:

www.equalityhumanrights.com/equality/equality-act-2010/codes-practice/employment-code-practice-0

What is positive action?

Positive action enables employers to take **proportionate action** that aims to reduce disadvantage, meet the different needs of protected groups and/or increase or encourage participation of protected groups in an activity. Action may be taken when any one or all of these conditions exist. Sometimes the conditions will overlap.

There are 2 types of positive action set out in the Equality Act 2010:

- **General:** action designed to achieve the three aims of positive action (reduce disadvantage, meet different needs, encourage participation)
- **Recruitment or promotion:** actions to reduce disadvantage and/or increase representation specifically when it comes to deciding between equally qualified candidates.

When can general positive action be employed?

Positive action is voluntary. Employers may choose to use positive action to ensure that groups with a particular protected characteristic are not excluded or disadvantaged.

The Equality Act 2010 states that:

“Where an employer reasonably thinks that people who share a protected characteristic:

- a) experience a disadvantage connected to that characteristic; or
- b) have needs that are different from the needs of persons who do not share that characteristic; or
- c) have disproportionately low participation in an activity compared to others who do not share that protected characteristic.

the employer may take any action which is proportionate to meet the aims stated in the Act (the ‘stated aims’).”¹

Reasonably think: An employer must have some level of evidence that disadvantage is occurring, needs are not being met, or disproportionately low participation is occurring. It does not, however, need to be sophisticated statistical data or research. It may simply involve an employer looking at the profiles of their workforce and/or making enquiries of other comparable employers in the area or sector.

Proportionality: ‘Proportionate’ refers to the balancing of competing relevant factors. Employers need to balance the seriousness of the disadvantage experienced, the degree to which the need of the protected group is different or the extent of the low participation in the particular activity against the impact that the proposed action may have on other people.

Timeline: It is important to review whether any positive action taken has achieved the aims it sets out to meet. If positive action continues indefinitely, without any review, it may no longer be proportionate, as the action taken may have already remedied the situation which had been a precondition for positive action. Similarly, the evidence that led the employer to reasonably think a disadvantage was occurring may be out of date.

Positive action in practice

Examples of positive action are:

- providing a leadership scheme to help an underrepresented group achieve more senior positions in an organisation or providing tailored training for a group because they have specific requirements.
- hosting an open day specifically for under-represented groups to encourage them to get into a particular field.
- including statements in job adverts to encourage applications from under-represented groups, such as:

¹ Equality Act (2010) s.158(1)(a)

“We particularly encourage ethnically minoritised people, and people with disabilities to apply for this role, as they are currently underrepresented in our workforce. We will guarantee an interview to anyone with these characteristics who meets the minimum criteria for a role”.

What is positive discrimination?

Positive discrimination is where a person is treated more favourably than another because they have a protected characteristic.

Positive discrimination is illegal under the Equality Act. It is therefore important that organisations have established a basis for taking positive action and are clear about what they are intending to achieve, and how they are intending to achieve it.

Some examples of initiatives that would probably constitute unlawful discrimination are:

- recruiting or promoting a person solely because they have a relevant protected characteristic;
- setting quotas (as opposed to targets) to recruit or promote a particular number or proportion of people with protected characteristics irrespective of merit;
- creating schemes to benefit those with a particular protected characteristic, without any evidence that the group in question is at a disadvantage or has different needs.

Normally, the Equality Act protects everyone in relation to a particular characteristic. For example, it is unlawful to discriminate against a woman in favour of a man, or against a man in favour of a woman.

There is, however, an exception for disability. The Equality Act 2010 does not make it unlawful to discriminate against a non-disabled person in favour of a disabled one. In other words, an employer could choose to employ or promote a disabled person over a non-disabled person, even if they were not the strongest candidate for a role, recognising the general and specific employment disadvantage that a disabled person may face.

What can frontline staff and managers do?

Positive action measures are led by employers rather than staff. There are, however, actions that staff can take to support positive action:

- Support data gathering exercises to evidence need.
- Support and promote programmes of positive action.

Homeless Link have developed guidance for frontline staff and managers to consider how they can deliver more inclusive services and practice:

<https://homeless.org.uk/areas-of-expertise/meeting-diverse-needs/>

What We Do

Homeless Link is the national membership charity for frontline homelessness services. We work to improve services through research, guidance and learning, and campaign for policy change that will ensure everyone has a place to call home and the support they need to keep it.

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Let's End Homelessness Together

