

APPENDIX 4

BASIC PRINCIPLES OF HUMAN RIGHTS ACT 1998, DATA PROTECTION ACT 1998 & DISABILITY DISCRIMINATION ACT 1995



HUMAN RIGHTS ACT 1998

The Human Rights Act 1998 incorporates the principles of the European Convention on Human Rights (1953), and is directly enforceable against state and public authorities. The actions and omissions of private employers will be judged against the standards of the Convention, and all courts, including employment tribunals, will take the Act into consideration when hearing employment/worker related claims.

The Articles of the Convention taken into the Act that are most likely to impact on employment related law are:

- Article 4, prohibition of forced labour and slavery
- Article 6(1), the right to a free trial (both civil and criminal law)
- Article 8, the right to privacy and respect for family life (including correspondence)
- Article 9, freedom of thought, conscience and religion
- Article 10, freedom of expression
- Article 11, freedom of assembly and association
- Article 14, prohibition of discrimination (such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status).

Many of these are subject to exceptions and derogations, and some do not “stand alone” as independent rights, but are limited or qualified in that interference with the right may be lawful for, for example, the protection of the rights and freedoms of others.

Employers would need to be able to argue in defence of any allegation of breach of the Act that such actions were necessary for business reasons. Legal advice should be sought if such an allegation is made.

Employers should review organisational rules and procedures to ensure that the principles of the Act are taken into account. An obvious example would be if an organisation carries out drug tests on workers without having in place a policy making it clear to those workers that they can be drug tested and also making clear why it is necessary for the employer to have this power (for instance where workers are in high risk situations such as pilots, train drivers, oil rig workers).

DATA PROTECTION ACT 1998

The particular points to note in the 1998 Data Protection Act are:

- a broad definition of “data”, including information held both electronically (whether on computer or other electronic means) and in manual or paper-based filing systems regardless of location
- a broad definition of “processing”
- extension of the rights of “data subjects” (workers in this case) to have access to details of data held about them, to know for what purpose information is held, and its relevance to their working life.

There are eight principles governing the processing of personal data:

- personal data shall be processed fairly and lawfully
- personal data shall be obtained only for specified and lawful purposes, and shall not be processed in any manner incompatible with those purposes
- personal data shall be adequate, relevant and not excessive in relation to the purposes for which it is processed
- personal data shall be accurate and, where necessary, kept up to date
- personal data shall be kept for no longer than is necessary for the purposes for which it is processed
- personal data shall be processed in accordance with the rights of data subjects under the Act
- personal data shall be subject to appropriate technical and organisational measures to protect against unauthorised or unlawful processing and accidental loss, destruction or damage
- personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of data protection.

The 1998 Act introduces new restrictions on the holding and processing of what is termed “sensitive personal data”, such as racial or ethnic origin, political opinions, religious or other beliefs, whether a member of a trade union, physical or mental health, sexual life, and any court record, or allegations of such. In addition to being subject to the eight principles above at least one of the following conditions must be complied with – there are others, but most relevant in the context of employment are:

- the worker has given his or her explicit consent to the processing
- the processing is necessary for the purposes of exercising or performing any right or obligation

which is conferred or imposed by law on the employer in connection with employment

- the processing is necessary in connection with any legal proceedings or for the purpose of obtaining legal advice
- the processing is necessary for the administration of justice, for the exercise of functions conferred by statute, or for the exercise of any function of the Crown
- that if the processing relates to sensitive data as to racial or ethnic origin it is necessary for the purpose of monitoring equality of opportunity or treatment between persons of different racial or ethnic origins with a view to enabling such equality to be promoted or maintained; and is carried out with appropriate safeguards for the rights and freedoms of data subjects.

The Act also covers the use of computerised decision making packages, such as those used in recruitment and sifting of applications. The uses of such packages to complement, not replace, human judgement is not in contravention of the Act – it is when they are in sole use that restrictions apply.

Employers should think carefully about what kind of information they ask of their workers. What is the purpose of such information? Who is to have access to it and under what conditions? Unauthorised access to workers’ records should be a disciplinary matter, and may be a criminal offence under Section 55 of the Act. Remember that the worker can access their personal records and demand rectification of errors, and can claim compensation for damage caused by any breach of the Act, and also for distress in certain circumstances. Someone in the organisation must take responsibility for compliance with the Act.

Since October 2001 individuals have been able to see all manual files on them, and been able to make complaints, seek correction or claim recompense.

Enforcement is the responsibility of the Information Commissioner. Full details are available from the Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF, Information line 01625 545700. The Commissioner published a Code of Practice on the Use of Personal Data in Employer/Employee Relationships in early 2001. This Code gives detailed advice for employers and further recommendations for good practice. The website www.ico.gov.uk gives details of the publication of the Code and subsequent Codes of Practice on recruitment and selection, employment records, monitoring at work and medical information.

DISABILITY DISCRIMINATION ACT 1995 (DDA)

The DDA gives disabled people rights in the areas of employment, access to goods, facilities and services and in the management, buying or renting of land or property. From October 2004, the Act applies to all employers. A disabled person is defined in the Act as "anyone with a physical or mental impairment which has a substantial and long-term adverse effect upon his ability to carry out normal day-to-day activities".

However, disability does not necessarily affect someone's health, so insisting on a medical report purely on the basis of the disability may be unlawful discrimination.

Discrimination means treating someone less favourably without any justification, and the Act requires that employers make reasonable adjustments if that will then remove the reason for the unfavourable treatment.

An example of a reasonable adjustment could be the provision of a suitable computer keyboard to an operator who has difficulty through disability in using a conventional keyboard.

In relation to discipline and grievance procedures, employers must clearly ensure they do not discriminate in any area of practice which could lead to dismissal or any other detriment (for example warnings).

The Act also covers people who become disabled during the course of their employment, and this is particularly relevant to the absence handling section of this handbook. It is vital that the employer should discuss with the worker what their needs really are and what effect, if any, the disability may have on future work with the organisation. Any dismissal, including compulsory early retirement, of a disabled employee for a reason relating to the disability would have to be justified, and the reason for it would have to be one which could not be removed or made less than substantial by any reasonable adjustment.

The Disability Rights Commission Helpline

08457 622 633 provides information and advice about all aspects of the Disability Discrimination Act, as well as signposting specialist organisations where necessary. In addition, it can offer good practice advice on the employment of disabled people.

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