



Gender is a Spectrum: Landmark UK Ruling Expands the Equality Act

Insights

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A UK employment tribunal has decisively expanded years of ambiguity surrounding the definition of “gender-reassignment” in the Equality Act to include non-binary gender identities.

The Equality Act of 2010 protects people against discrimination based on the protected characteristics of age, disability, gender reassignment, marriage, civil partnership, pregnancy, maternity, race, religion, sex, and sexual orientation. In a September 16, 2020 decision, the tribunal extended these protections to include protection for persons who identify as non-binary or gender-fluid.

The case was brought by a non-binary worker who alleged they were harassed and directly discriminated against based on gender reassignment. The employee provided examples of challenges in the workplace, including the use of toilet facilities and lack of managerial support. The employer argued that the employee’s non-binary identity precluded them from falling within the definition of gender reassignment under the Equality Act. The employee countered that gender reassignment does not only include changing one’s gender from male to female but also a variety of gender identities, including non-binary.

The tribunal upheld the employee’s claim, stating “gender is a spectrum and that it is ‘beyond any doubt’ that the Claimant’s identity fell within the definition [of gender reassignment].” The tribunal cited the 2009 Parliamentary Debates for the Equality Bill where the Solicitor General referred to gender as a “[s]pectrum” and stated that gender-reassignment “[c]oncerns a personal journey of moving a gender away from birth sex.”

UK Employers should be aware that this decision means that many other gender identities beyond transgender may also fall within the definition of gender reassignment under the Equality Act. We recommend that employers with operations in the UK should evaluate their policies and practices in light of this decision to ensure that all workers are protected from discrimination based on gender identity no matter where on the spectrum they may identify.

For additional guidance on complying with the Equality Act in light of this decision, employers may reach out to any member of Fisher Phillips’ International Practice Group.

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