

FAQs: Positive Action



The Race Relations Act does not allow positive discrimination or affirmative action - in other words, an employer cannot try to change the balance of the workforce by selecting someone mainly because she or he is from a particular ethnic group. This would be discrimination on racial grounds, and unlawful. However under Section 37 of the Race Relations Act the law recognises that organisations can struggle in recruiting from all sections of the community, and the employer and others can take positive action to prevent discrimination, or to overcome past discrimination.

Where over the previous twelve months no-one from a particular ethnic group, or only very few persons from that group, have been doing a certain type of work then it is lawful to offer training only for people from that group or to encourage people from that ethnic group to apply. For example, an employer with no Black managers but a high proportion of Black junior staff, can arrange training for staff seeking promotion, encourage Black staff to apply for vacancies at that grade when advertising vacancies, or print leaflets in relevant minority languages to encourage them to apply.

The aim of positive action is to ensure that people from previously excluded ethnic minority groups can compete on equal terms with other applicants. It is intended to make up for the accumulated effects of past discrimination. Selection itself must be based on merit and treat all applicants equally. The law does not compel employers to take positive action, but allows them to do so.

Positive action can also be taken by trade unions; by any organisation which provides training courses; and by education providers, who can take positive action by providing for special educational or training needs; such as special classes in English as a second language. It is also lawful to take positive action to meet the special welfare needs of members of a particular racial group, for example a special health screening service for African Caribbeans to detect sickle cell.

Is it legal to advertise or to promote job opportunities to a specific group?

No job advertisement should discriminate on the basis of any of the protected grounds, unless there is objective evidence that the discrimination is lawful. Here are a few examples:

- Stating a preference for a man or woman or a person from a specific racial group in a job advertisement is unlawful. The exception to that would be if the requirements of the particular job mean that it is lawful to employ only a man or a woman. Gender-specific job titles, such as 'handyman' or 'salesgirl', should therefore be avoided. It is also likely to be unlawful to use language that indirectly implies the job is suited to one sex or other.
- Advertisements should not include age limits, unless these can be objectively justified. Phrases in job advertisements that describe candidates such as 'young and dynamic' or 'mature' would not be lawful. These could result in a complaint of age discrimination since they suggest an employer is looking for applicants from a particular age group.
- It could be discriminatory to restrict the advertisement of a job to a particular religious publication, since potential candidates who belong to other religious or belief groups would be much less likely to have the opportunity to see it.

The Equality and Human Rights Commission can take action against employers it believes have placed discriminatory advertisements.

There are a limited set of circumstances when employers can target specific groups with advertising: for instance, if the job has a genuine occupational requirement for someone from a particular community, or if a specific community can be shown to have been under-represented in an area of work. For example, it would be lawful to organize a positive action programme of advertising that is specifically directed at members of a particular minority group, or providing training opportunities for women or men to help them gain employment or promotion in job sectors traditionally dominated by one sex.



Source: adapted from The Equality & Human Rights Commission (www.equalityhumanrights.com)