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Equality and diversity guidance for work-based learning

Guidance

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Equality and diversity guidance for work-based learning

Audience

The document is aimed at work-based learning providers.

Overview

This document provides guidance to work-based learning providers on how they should address equality and diversity issues following the introduction of the new Equality Act 2010.

It provides advice on preparing an equality and diversity policy, monitoring its impact and ensuring an inclusive approach to work-based learning delivery.

Action required

Providers of work-based learning to ensure that their equality and diversity policies comply with this guidance, and with their contractual obligations as set out in the Programme Specification 2011/14.

Further information

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Additional copies

This document can also be accessed from the Welsh Government's website at www.wales.gov.uk/educationandskills

Related documents

Guidance on the Programme Specification for Welsh Government Work based Learning Programmes

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Contents

1.	Introduction	1
2.	Summary of the new Equality Act 2010	2
3.	Guidance on preparing an equality and diversity policy	4
4.	Leadership and management	6
5.	Staff development	9
6.	Learning delivery	10
7.	Recording and monitoring	12
8.	Resources/links	15

1. Introduction

1.1 The majority of the Equality Act 2010 came into force on 1 October 2010. It brings together for the first time all the legal requirements on equality for organisations in the private, public and voluntary sectors. It replaces previous legislation (including the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995 and the Equal Pay Act 1970) and ensures consistency in what organisations need to do to make their workplace a fair environment and to comply with the law. The Public Sector Equality Duty (set out in Section 129 of the 2010 Act) came into force on 5 April 2011.

1.2 From 1 August 2011, the Welsh Government has introduced a contractual requirement for work-based learning (WBL) providers to have their own policies for equality and diversity. This reflects the Programme for Government's commitment to **reduce inequality in education and skills, health, housing and employment outcomes for people with protected characteristics.** The Welsh Government is currently developing its own Strategic Equality Plan, which will detail how the Government is fulfilling its duties under the Equality Act 2010.

1.3 This document is not a legal framework and it should not be relied upon as a statement of the law. This document sets out good practice guidance to help WBL providers to develop equality and diversity policies, monitor their compliance with the Equality Act 2010, and consider how they can offer inclusive services to all learners and employers.

1.4 The guidance draws on best practice from the equality and diversity policies submitted by WBL providers in their 2010 tenders, along with information and resources published by the Equality and Human Rights Commission.

2. Summary of the new Equality Act 2010

2.1 The Equality Act covers the same groups that were protected by previous equality legislation: age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity. However, it extends some protections to groups not previously covered, and also strengthens particular aspects of equality law:

- it changes the definition of gender reassignment, by removing the requirement for medical supervision
- increases protection for people discriminated against because they are perceived to have, or are associated with someone who has, a protected characteristic, thus providing new protection for people like carers
- clearer protection for breastfeeding mothers
- introducing a new concept of 'discrimination arising from disability', and making it more difficult for disabled people to be unfairly screened out when applying for jobs, by restricting the circumstances in which employers can ask job applicants questions about disability or health
- applying the detriment model to victimisation protection (aligning with the approach in employment law)
- making pay secrecy clauses unenforceable in relation to specified circumstances, the intention of the 2010 Act being to ensure that there is greater transparency and dialogue within workplaces about pay
- introducing new powers for employment tribunals to make recommendations to employers which benefit the wider workforce (such recommendations would concern specified steps to reduce the adverse effect of any matter to which the tribunal proceedings related)
- harmonises and extends the role of positive action in recruitment and promotion.

General equality duty

2.2 Section 149 of the Equality Act 2010 contains a general public sector equality duty which came into force on 5 April 2011. The general duty says that public bodies are required to have 'due regard' to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Act
- advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- foster good relations between people who share a relevant protected characteristic and those who do not.

2.3 Public bodies include central and local government, the National Health Service, schools and other educational institutions (including further education institutions), the police and fire service, and organisations which act on behalf of those public bodies.

Welsh-specific equality duties

2.4 Section 153 of the Equality Act 2010 gives the Welsh Government (through Welsh Ministers) the power to impose specific equality duties on certain public bodies in Wales to enable them to carry out the public sector equality duty more effectively.

2.5 The Welsh Government has passed legislation which establish such duties. The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011. The Regulations were approved by the National Assembly for Wales and came into force on 6 April 2011.

The Regulations are designed to enable better performance of the general public sector duty under Section 149 of the 2010 Act. They specify what public bodies (including the Welsh Government) in Wales must do to in order to fulfil their legal obligations.

3. Guidance on preparing an equality and diversity policy

3.1 From 1 August 2011, DfES has introduced a contractual requirement for WBL providers to have a **formal equal opportunities strategy**. As a minimum, the Programme Specification for Welsh Government Apprenticeship, Traineeships and Steps to Employment Programmes (August 2011– 31 July 2014) provides that the strategy must include:

- a policy to ensure compliance with equalities legislation
- clear guidelines to sub-contractors, to staff and to learners on their responsibilities in respect of equality and diversity
- appropriate training for staff on their equality duties, the provider's own policies and where to access advice and best practice
- where necessary, support for its employers to promote equality of opportunity, including sharing good practice
- arrangements for monitoring participation by gender, ethnicity and disability status, including data and analysis from referral agencies, and for benchmarking participation rates against local and national averages, and taking positive action to improve participation by under-represented groups.

3.2 WBL providers are also required to have arrangements in place to address issues of **bullying, discrimination, victimisation or harassment** for both learners and staff.

3.3 The policy should reflect your organisation's responsibilities as an employer and as a service provider. The Equality and Human Rights Commission has published detailed guidance on these areas (see Resources/links section for more information).

3.4 Consultation with stakeholders is essential to test the policy and ensure that it covers all aspects of equality and diversity. It is good practice to seek advice from third sector organisations and campaign groups who understand the needs of groups with protected characteristics, such as:

- **Disability Wales:** www.disabilitywales.org
- **Age UK:** www.ageuk.org.uk
- **Race Equality Foundation:** www.raceequalityfoundation.org.uk

3.5 Opportunities should be taken wherever possible to collaborate with other organisations, which can include transition support for vulnerable young people through joint working with schools, local authorities, the Youth Offending Team and the third sector; or promotion of courses with local schools to tackle gender stereotyping and encourage progression into non-stereotypical routes. See the link in the Resources/links section to access the Equality Exchange at the Equality and Human Rights Commission.

3.6 Your policy should be a 'living' document which is regularly reviewed and updated. It may need to be revised to reflect new legislation, changes to your other policies, and feedback from staff, learners or employers.

Checklist: drafting an equality and diversity policy

- ☑ Outline the type of work environment your organisation aims to create, including what is and is not acceptable behaviour at work. You could also consider including references to conduct near the workplace and at work-related social functions where relevant.
- ☑ Explain how the policy relates to other organisational policies and how it supports the requirements of the Equality Act 2010
- ☑ As a minimum, your policy must cover disability, gender, race, age, religion/belief and sexual orientation. You could also consider including other protected characteristics such as pregnancy and maternity, parental status, political belief, ex-offender background, cultural/linguistic background, social background, trade union activity and HIV status.
- ☑ Set out how the policy will be put into action, including how you will deal with any breaches of the policy, and how concerns and complaints will be dealt with, whether these come from your staff, learners, employers or partner organisations.
- ☑ Outline the responsibilities of managers, staff, learners, sub-contractors, employers and partner organisations.
- ☑ Consider how the policy can be made available in different formats, e.g. large print, Easy-Read, audio cassette, Braille and in different languages.
- ☑ State who the owner of the E&D policy is, when it was last updated, when it is due to be reviewed and the version number.
- ☑ Include:
    - a named person, telephone number and an e-mail address for any E&D queries
    - the telephone number of the Equality and Human Rights Commission (0845 6048810), or info@equalityhumanrights.com if anyone wishes to seek independent advice
    - a list of relevant web sites for further information (see the Resources/links section).

4. Leadership and management

4.1 For equality and diversity to be taken seriously, there needs to be commitment to the policy from the very top of your organisation. Leaders and managers should lead by example, and should make it clear that discrimination, bullying or harassment will not be tolerated.

4.2 Consider how you could incorporate equality and diversity into your mission statement, strategic aims and objectives; this is an opportunity to articulate what kind of organisation you want to be, and the way your staff, learners and other service users can expect to be treated. Work-based learning often reaches the most disadvantaged individuals, including those who have low levels of basic skills, who have not achieved in the educational system, who have been unemployed for long periods or who have other barriers to engagement in learning. Your approach to equality and diversity should recognise what your organisation is already doing to promote equal opportunities, and how you could build on this.

4.3 The Equality Act 2010 confers responsibilities on work-based learning providers as employers and as service providers, as well as specific requirements for further education institutions. To ensure that these are fully addressed, you need to consider how equality and diversity should be built into your business processes; for example, staff recruitment, capital investment plans, learner induction and continuing professional development.

4.4 There needs to be extensive promotion of your policy, both within your organisation and to potential staff, learners, suppliers, sub-contractors and employers. For example, you could plan positive action campaigns in order to raise awareness of equality issues, use your intranet to promote equality and diversity toolkits, develop relevant teaching and learning support materials and themed staff development events.

Estyn's approach to inspecting equality and diversity

Estyn's Common Inspection Framework reviews each provider's **ethos, equality and diversity** (aspect 2.4.1 of the framework). Inspectors make their judgments based on the provider's policies, its approach to promoting positive attitudes to diversity and the accessibility of its physical environment.

The self-assessment manual published by Estyn for work-based learning providers sets out a series of questions that providers should ask themselves about their approach to equality and diversity:

- ☑ Do we establish a provider ethos that is inclusive?
- ☑ Do we take into account and value the diversity of learners' backgrounds, and act appropriately on this information?
- ☑ Do we offer equal access to the programmes and challenge stereotypes in learners' attitudes, choices, expectations and achievements?

- ☑ Do we develop tolerant attitudes and ensure that all learners and staff are free from harassment?
- ☑ Do we promote the prevention and elimination of oppressive behaviour, including bullying, sexism, racism, ageism, disability harassment and homophobia?
- ☑ Are our policies and procedures effective in dealing with specific instances of discrimination or oppressive behaviour?
- ☑ Do we take reasonable steps to ensure that current and prospective disabled learners do not suffer less favourable treatment in provider or on employers' premises?
- ☑ Do we have a well-understood equality scheme and action plan that promotes equal opportunities and human rights? Does our policy meet statutory requirements?
- ☑ Do we have an action plan that ensures delivery of the policy?
- ☑ Do we provide appropriate equality training for staff and employers where appropriate?
- ☑ Do we keep employers aware of the provider's requirements regarding equality and diversity?
- ☑ Do we ensure that employers are fully aware of their responsibilities for equality and diversity?
- ☑ Do we monitor and effectively address any related issues or complaints that arise?

Learner involvement

4.5 Work-based learning providers are required to have formal strategies in place to involve learners in decision-making; DfES issued good practice guidance on learner involvement in 2010. Learners should have the opportunity to contribute to the development of your equality and diversity policy, either through existing mechanisms such as course representative structures or focus groups; or by participating in any specific groups or committees established to oversee equality and diversity. Learner views should also be taken into account in monitoring the effectiveness of your policy (see Section 7 of this document).

4.6 The learner involvement strategy guidance directs providers to ensure that learners from under-represented groups, and those who may find it more difficult to have their voice heard, are included in decision-making processes. This might include learners who have low levels of basic skills; are in employment or on work placement; are not first-language English or Welsh speakers; have learning difficulties; are disabled; or who have other barriers to engagement that may affect their confidence or ability to articulate their views. You may need to use a range of strategies to ensure that their views are heard.

Good practice

Depending on the size and structure of your organisation, consider setting up a steering group to oversee your equality and diversity strategy. This approach is particularly important for work-based learning consortia, to help ensure a consistent approach across the members. The group should include representation from across the provider or consortium, including staff with expertise in human resources, learning delivery, quality assurance and data. It should also include learners and other service users. There should be mechanisms for the group to make recommendations which will feed directly into the Board or senior management team.

Equality Champions can be used to in each centre/region to monitor issues and to collate and disseminate best practice. Their role can also include:

- maintaining the equality and diversity information displayed across the centre
- coordinating the promotion and embedding of equality and diversity good practice
- signposting services for staff and learners
- networking with other organisations and advisory boards to raise equality and diversity standards.

See Annex B of the Learner Involvement Strategy guidance for a case study on Coleg Ceredigion's use of Equality and Diversity focus groups.

5. Staff development

5.1 Your staff development plan should include:

- induction training to ensure all staff are familiar with the provider's ethos of equality and diversity, the contents of the policy, what it means and what their responsibilities are
- regular continuing professional development to reinforce and refresh equality and diversity issues, and to reflect new legislation and guidance.

5.2 This will also give you the opportunity to use the outcomes of your monitoring (see Section 7) to highlight any areas of concern, inconsistency or good practice; for example, from reviews of learner complaints about discrimination, incidents of bullying or harassment, or analysis of attainment by learners by age, gender or ethnicity characteristics.

5.3 You should consider using a combination of methods to deliver training, including online resources and external agencies such as ACAS, the Equality and Human Rights Commission, third sector organisations and campaign groups.

5.4 Staff appraisal can also be used to encourage staff to evaluate what they have done to improve their own, and their learners', awareness of equality and diversity issues.

Good practice

A4e uses an e-learning programme covering E&D for staff, which includes a test at the end – see below for further details:
www.grassroots.uk.com/web/guest/diversity-awareness-training

Coleg Menai uses the Learning Business online learning solution to deliver training on equality and diversity and Welsh awareness to staff at the college. One of the advantages for adopting this package was due to the fact that it was one of the few packages that offered a completely Bilingual Solution. See the link below for a video presentation which presents an overview of the Equality and Human Rights module. Staff also have access to on-line briefings and pamphlets and publications issued by the Equality and Human Rights Commission:

http://mdl.thelearningbusiness.com

Some providers offer accredited Equality and Diversity qualifications for staff at Levels 2 and 3; for further information please see link below:

http://register.ofqual.gov.uk/Qualification

See link below to see an example of the level 2 qualification in Equality and Diversity:

www.ncfe.org.uk/QualificationFinderDetail/tabid/258/Default.aspx?id=256

6. Learning delivery

6.1 Providers need to ensure that their learning environment helps learners to succeed as well as they can. An inclusive community of learning ensures that all learners receive equal access to all areas of provision and support. In the most effective providers, there is a clear emphasis on recognising, respecting and celebrating diversity.

6.2 Learners must be made aware of their responsibilities in respect of equality and diversity at induction, and given information on who to contact if they have any concerns, questions or complaints. Awareness can be raised in a number of other ways, for example:

- working with groups of learners to agree 'ground rules' for behaviour, including respecting one another and challenging discrimination
- display of posters stating how incidents of bullying and harassment can be reported
- issuing learners with a contact card (business card size) which they can keep on their person. This can have details of staff and other supportive organisations that they may wish to contact if they have concerns about discrimination, harassment or bullying.

6.3 Providers need to consider how equality and diversity can be reinforced throughout the training programme. Estyn's guide What Makes a Good Training Provider? (March 2010) charts the 'learner's journey' from induction through to progression, and highlights the points at which equality messages can be promoted and reinforced. It also includes some examples of good practice identified through Estyn inspections.

6.4 Learners' awareness can be raised through participation in internal, local, national and international events that celebrate diversity. This could include inviting representatives from different groups to speak in learning sessions, e-learning resources and the Moodle Learning Environment.

Good practice

For Apprentices, it would be beneficial if the completion of the work book for Employees Rights and Responsibilities (ERR) could be one of the first activities undertaken by the learners, as well as the units of equality and diversity within the technical certificate and/or in the NVQ.

Learner reviews can be used in a number of ways in order to reinforce understanding; for example, learners could be set activities during the induction process, with scenarios and questions that they need to complete by the first review; knowledge can be tested at the review and the assessor can set the learner tasks to research any missing or weak answers. This can then be followed up on the next review and refresher training delivered as appropriate. Recurring issues identified through reviews could be reported to an Equality Champion to follow through.

A ‘bank’ of resources could be developed to promote equality, diversity and inclusion for use in teaching and learning, either on the intranet, Moodle or a library. Schemes of work and lesson observation proformas can also reinforce equality and diversity with specific prompts. Providers should seek to share resources where possible.

Working with employers

6.5 Providers need to work with employers to ensure they comply with their duties under the Equality Act 2010, and that they are aware of their responsibilities to their learners. Employers should be issued with a copy of the provider’s policy and with any relevant supporting materials such as equality and diversity handbooks.

6.6 Providers should seek to actively involve employers in promoting awareness of equality and diversity issues, and in addressing any problems which arise, such as incidents of bullying or learner complaints about discrimination. This could be achieved in a number of ways, including:

- encouraging employers to participate in the discussion on equality and diversity during the review
- incorporating equality and diversity issues and reminders into newsletters and bulletins which are sent to learners and employers
- where appropriate, large employers can be provided with data to enable evaluation of their policy and to enhance their own recruitment policies
- ensuring that feedback is sought from employers via questionnaires and forums in relation to equality and diversity issues, and using the information to inform action planning.

7. Recording and monitoring

7.1 The Equality Act 2010 focuses on outcomes rather than policies and procedures, so you will need to consider how to evaluate the impact of your equality and diversity policy. To inform your evaluation, you will need to collect and analyse relevant data:

- as a service provider, you should monitor the recruitment, retention, success and progression rates of learners with protected characteristics (age, disability, gender and race), for which data is routinely collected for all work-based learners
- as an employer, you should monitor the recruitment, overall numbers, pay, promotion and satisfaction levels of staff with these protected characteristics.

Collecting and using data

7.2 The Equality and Human Rights Commission has published detailed guidance on how employers should monitor equality, including suggestions on the kind of indicators that could be monitored, and advice on what questions can be asked of employees and prospective employees.

7.3 There is no legal requirement for most organisations (including private sector training providers, smaller public bodies, voluntary and community organisations) to monitor and report on their staff profile. However, collecting data on your staff can help to ensure that your processes for recruiting, promoting and remunerating staff are fair. You need to clearly explain to applicants and existing employees why you are asking them for information and what you will use it for. You will still need to ensure that your approach to collecting and storing data complies with the Data Protection Act 1998.

7.4 Targets should be set giving consideration to local and national demographics; you should use the benchmarking tool provided by DfES to analyse learner outcomes by gender, age, (disability?) and ethnicity, as well as looking at national statistics, industry sector standard data and trends over time.

Evaluating impact

7.5 Your equality policy should be reviewed on a regular basis, to assess the impact of the provider's policies and targets and ensure that no one is disadvantaged or treated less favourably because of a protected characteristic.

7.6 The review should draw on information including data on learners and staff with protected characteristics; results of learner and staff surveys; and complaints and their outcomes.

Checklist: monitoring equality and diversity

☑ When drafting your equality and diversity policy, think about how you will measure its impact. How will you know that your policy is working effectively, and if there is anything that needs to be changed?

☑ Consider what data you collect on staff and learners, and how this could be used to set performance indicators. Possible indicators might include, for example:

- recruitment from under-represented groups
- retention and success rates for learners with protected characteristics
- resolution of complaints relating to equality and diversity issues
- numbers of learners and staff using the grievance or harassment and bullying procedures
- satisfaction rates for learners from different groups.

☑ Some indicators may be suitable for monitoring at learning programme, subject area or centre level, whereas others may be set for the organisation as a whole. Where learning is delivered by a consortium or through sub-contractors, performance should be monitored for each organisation that delivers learning, so that any inconsistencies can be identified and addressed.

☑ A 'community scorecard' could be utilised to monitor progress in relation to a series of indicators showing different areas of activity, with an overall quality indicator. These could include participation, range and responsiveness, reputation and influence, community engagement and sustainability.

☑ When you have set your indicators, think about how they can be used to set targets for improvement. How will you address any shortcomings or gaps that are identified?

☑ Who will be responsible for monitoring equality and diversity issues for your organisation? Roles and responsibilities should reflect the structure of your organisation or consortium; you could consider setting up a panel or committee to review performance indicators on a regular basis and approve any changes to the policy.

☑ Equality and diversity monitoring should feed into your annual self-assessment and quality development planning. From April 2012, WBL providers will complete their self-assessments online using the post-16 Ffynnon, which can be used to set and monitor indicators for equality and diversity.

☑ Incorporate relevant actions into your quality development plan, or consider having a dedicated action plan for equality and diversity.

Consortia and subcontractors

7.7 Providers need to ensure consistency across consortium members and subcontractors, where applicable. There needs to be a central point (a designated member of staff, team, group or committee) which is responsible for monitoring compliance and performance against targets for all consortium members and/or sub-contractors. This role should include:

- ensuring there is consistency in how complaints are dealt with
- monitoring data on learner recruitment, outcomes and satisfaction in relation to protected characteristics
- ensuring that all staff are appropriately trained and that they are fully aware of their responsibilities in relation to equality and diversity.

7.8 Providers should also consider setting separate targets for individual consortium members or sub-contractors depending on the nature of their provision and local demographics; for example, a sub-contractor delivering traditionally 'male dominated' routes such as Construction could be given specific actions or targets to promote participation by women.

7.9 In the case of work-based learning consortia, there should be an overarching policy for equality and diversity which sets out strategic aims and arrangements for ensuring consistency across all members. Action plans should identify any actions to be taken by individual members, as well as shared targets and issues which need to be addressed across the consortium as a whole.

8. Resources/links

General guidance on the Equality Act

The Equality Act 2010 (PDF)

The Equality Act - Explanatory Notes

Summary of new Equality Act:

www.lsis.org.uk/Services/Publications/Documents/125935_LSISNewEqualityAct_2.pdf

Equality Act guidance downloads from The Equality and Human Rights Commission:

www.equalityhumanrights.com/search-results/index.html?type=all&page=index&section=index&q=Equality%2BAct%2Bguidance%2Bdownloads&start=10&filter=0

Guidance on Equality legislation:
www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/

Equality and Human Rights Commission Advice and Guidance:

www.equalityhumanrights.com/advice-and-guidance/

Guidance on Welsh specific equality duties:

The essential guide to the public sector equality duty: An overview for listed public authorities in Wales

Guidance for employers

ACAS guidance on the Equality Act 2010:

www.acas.org.uk/index.aspx?articleid=3017

The Equality Act 2010 Acas Quick Start Guide for Employers

Other useful links

Welsh Government Learner Involvement Strategy guidance:

http://wales.gov.uk/docs/dcells/publications/100414learnerinvolvementen.pdf

The LSIS *Leading Inclusion Guide* (2010) includes case study examples of good practice from the lifelong learning and skills sector, including colleges and work-based learning providers:

www.lsis.org.uk/Services/Publications/Documents/LSIS%20Leading%20Inclusion%20Guide.pdf

Equality and Diversity and governance relating to the new equality act 2010 for further education institutions:

www.lsis.org.uk/Services/Publications/Pages/EandDGovernance.aspx

Further resource on Equality and Diversity can be found at the LSIS website:

www.excellencegateway.org.uk/edresource

The LSC Guidance for Colleges and Providers for Equality and Diversity in Self Assessment can be found at:

www.fbfe.org.uk/documents/current/fbfe%20documents/Equality%20and%20Diversity%20in%20Self%20Assessment%20-%20Guidance%20for%20Colleges%20and%20Providers.pdf.

Examples of learning resources for disabled learners from the Joint Information Systems Committee (JISC):

www.jisc.ac.uk/news/stories/2008/06/techdis.aspx

The Equality Exchange is a network that promotes the exchange of effective and innovative employment practice for employers, trainers and consultants committed to achieving equality in the workplace. Over 65 organisations from across Wales are members of the Equality Exchange:

www.equalityhumanrights.com/wales/events/past-events/equality-exchange-conference-09/equality-exchange-network/