



What employers need to know

By **Natasha Adom** - 3 August 2021

Generally, UK law does not allow employers to treat employees more favourably because of their race, gender or other protected characteristic and so doing so will amount to discrimination. There are, however, limited circumstances where employers are allowed to take targeted steps to address disadvantages suffered by under-represented groups. When can employers do this and how does it work?

General positive action

Employers can take positive action in favour of under-represented groups if they reasonably believe that group either suffers a disadvantage, has different needs to others, or their participation in an activity is disproportionately low. However, you should be aware that:

1. Employers must be able to show why they have this belief and that it is reasonable.
2. The employer’s actions must be proportionate to reduce the disadvantage, meet the group’s needs or increase their participation. This might include offering networking groups or mentoring for example.
3. Employers cannot use this provision to recruit or promote staff. When it comes to recruitment or promotion decisions employers can only take positive action in a **tiebreak situation** (see below).

Recruitment/promotion - Tiebreak situation

Employers can recruit or promote a person from an under-represented group over another candidate but only if that the candidate is as qualified as the other candidate. There must also be no general policy of doing this and, again, the employer must be acting proportionately.



Managing risk

This is a developing and complex area of law. As well as this, as [recent cases](#) have shown, taking positive action could lead to other employees complaining that they have been treated less favourably, so employers should take advice before relying on these provisions.

This summary is for information only and is not legal advice. It reflects the position as of 3 August 2021. For any questions, please get in touch with [Natasha Adom](#) or your normal GQ|Littler contact.

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