

Disability Discrimination

REQUIREMENTS

The Disability Discrimination Act 1995 has required freedom from discrimination in employment and training since December 1996 and fair access to goods and services since October 1999.

DEFINITIONS

- A disability is 'a physical or mental impairment, which has a substantial and long-term adverse effect on [a person's] ability to carry out normal day-to-day activities'.
 - Physical impairment includes a weakening of the body caused through illness, accident or congenitally, for example blindness, deafness, heart disease, paralysis.
 - Mental impairment can include learning disabilities and all clinically well-recognised mental illnesses.
 - Long term means that the impairment has lasted or is likely to last for 12 months or more or the rest of the person's life.
 - Day to day activities include normal activities carried out by most people regularly involving one of the following: mobility, manual dexterity, physical co-ordination, continence, ability to lift carry or move ordinary objects, speech, hearing, eyesight, memory or ability to concentrate, learn or understand, or being able to recognize danger.
- Discrimination is less favourable treatment without objective justification

UNLAWFUL DISCRIMINATION

Unlawful discrimination occurs when a disabled person is treated less favourably than a non-disabled person for a reason related to the disability. Employers must not discriminate against disabled persons in connection with recruitment and retention, promotion or transfers, training or development, pay or benefits.

Employers can discriminate against disabled persons in two ways:

Treating a worker or applicant less favourably for reasons related to the disability in a way that cannot be justified.

Failing to make reasonable adjustments to working arrangements or physical features of the premises in order to accommodate an employee or applicant without objective justification.

EXEMPTIONS

Persons suffering from alcoholism or drug abuse are not classed as disabled, although physical or mental conditions arising from drug or alcohol abuse may be classed as a disability (e.g. liver damage from alcohol abuse)

Prison officers, fire fighters, police officers, members of the armed forces and people who work on board ships, aircraft or hovercraft or largely outside of Great Britain are not covered by the Disability Discrimination Act.

RECRUITMENT

You should avoid any form of discrimination during the recruitment process including:

Advertising must not unreasonably discriminate against disabled persons.

- It is good practice to encourage disabled persons to apply.
- It is good practice to avoid making unnecessary statements about fitness

Interviewing arrangements

- Ask applicants if they have any special requirements for the interview
- Ensure that interviewers are aware of obligations under the Disability Discrimination Act.

Selection criteria and Assessment Techniques

- Draw up clear job criteria and make sure these are justified.
- Avoid setting fitness criteria, which unnecessarily discriminate against disabled persons.
- Seek advice about reasonable adjustments and funding (e.g. from the local Job Centre or the DRC Helpline)
- Do not use assessment methods which put a disabled person at a disadvantage.

Consider pre-appointment training if appropriate

If the disabled applicant would be the best applicant for the job, but for the disability, you must see if any necessary reasonable adjustments can be made which will enable that person to perform the role. You must not reject the applicant for reasons connected with the disability without proper consideration of reasonable adjustments and whether your refusal can be objectively justified.

RETENTION, PROMOTION, TRANSFERS, TRAINING AND DEVELOPMENT

Selection for promotion should be without discrimination. Refer to 'Recruitment' above.

Discuss any changes in the individual's capability to identify if further adjustments are necessary. Deteriorating conditions may require constant review.

Seek advice about reasonable adjustments and funding (e.g. from the local Job Centre or the DRC Helpline)

Ensure that all employees and workers are aware of the obligation not to discriminate. As the employer, you can be held liable for the actions of your employees and workers. This is best achieved by having a clear policy, which is well communicated to your staff.

REASONABLE ADJUSTMENTS

In many instances a person's disability will have little or no impact upon the job. Where there are problems arising from the disability, the employer is still required to make reasonable adjustments to enable a disabled worker or applicant to perform his/her duties without detriment. The reasonableness of the steps an employer might need to make have to be judged, taking into account the practicability of the adjustment, the costs involved and the effectiveness of the adjustment in relation to the expenditure. The extent of the employer's resources and the availability of financial and other assistance are also factors as to whether the adjustments are reasonable. When considering the costs of adjustments for existing employees, it may be helpful to include consideration of how much would otherwise be spent on recruiting a replacement. Adjustments might include the following:

Adjustments to the working environment.

- Access to the work place or facilities
- Work aids, modifications to equipment, lighting, noise, seating, working heights
- Level of supervision or provision of a support worker
- Emergency arrangements and other health and safety issues which might arise from risk assessments

Adjustments to the work

- Modification of tasks and responsibilities or alternative work
- Modifications to the expected work rate or level of responsibility
- Review of standard operating methods

Adjustments to hours to accommodate the disability or treatment schedule

- Shorter or flexible hours
- Shift working
- Time off for appointments

PAY AND BENEFITS

You should not discriminate against disabled persons in respect of pay and benefits. You can however reduce pay if hours or responsibilities are permanently reduced as a reasonable adjustment with the employees consent. You must not prohibit disabled employees from becoming members of a pension scheme due to their disability and all occupational pension schemes are deemed to have a non-discrimination rule. This may be particularly important where a permanent health insurance scheme is attached to the pension scheme.

DISMISSAL

Employers must not dismiss a disabled employee without objective justification. This includes for example, dismissal due to absence caused by a disability.

Dismissal may be justified under the Disability Discrimination Act:

- If the objective justification is both material and substantial
 - Material means relevant to the case in hand.
 - Substantial means not trivial or unimportant.
- If all reasonable adjustments have been considered and prove to be inadequate in allowing the employee to fulfill his/her role.
 - After seeking all relevant information and advice
 - After considering alternative employment
- Taking account of the resources of the employer
- Employees with over one year's service can also claim unfair dismissal, so fair procedures must be followed.

Awards of compensation at Employment Tribunal for disability discrimination have no upper limit. For this reason we would wish to re-emphasize that it is essential to contact the Helpline Service to take advice over any issues that arise in this regard.

ENFORCEMENT

Complaints about disability discrimination are made through the Employment Tribunal system.

Claims should be made within 3 months of the discrimination.

Applicants may also ask for completion by the employer of a formal questionnaire asking for the reasons for the treatment about which they are complaining.

Many disputes can however be resolved through internal grievance procedures and ACAS may be asked to conciliate either before or after a formal application is made to an Employment Tribunal.

FURTHER ADVICE AND INFORMATION

Codes of Practice and advice on individual situations are available from the Disability Rights Commission: DRC Helpline, FREEPOST, MIDO 2164, Stratford-upon-Avon CV37 9BR
Telephone: 08457 622 633; Fax: 08457 778 878; Textphone: 08457 622 644
Website: <http://www.drc-gb.org>

The Code of Practice for the elimination of discrimination in the field of employment against disabled persons or persons who have had a disability is also available from HMSO in printed format (ISBN 0 11 270954 0) or on audio cassette (ISBN 0 76 000009 3) Tel: 01603 723011; Website: <http://www.hmso.gov.uk/>

There is an employers' forum on disability at: <http://www.employers-forum.co.uk/www/index.htm>

The Governments disability web site is at www.disability.gov.uk

Disabled Employment Advisor (Local Job Centre)

VOLUNTARY BODIES

ROYAL NATIONAL INSTITUTE FOR THE BLIND (RNIB)

224, Great Portland Street, LONDON W1N 6AA

Telephone: 020 7388 1266, Fax: 020 7388 2034
email: helpline@rnib.org.uk; Website: www.rnib.org.uk

ROYAL NATIONAL INSTITUTE FOR THE DEAF (RNID)

19-23, Featherstone Street, LONDON EC1Y 8SL

Tel: 020 7296 8000, Fax: 020 7296 8199, Minicom: 020 7296 8001
email: helpline@rnid.org.uk; Website: www.rnid.org.uk

WEBSITES

<http://www.abilitynet.org.uk/> Includes advice for adapting computer equipment

<http://www.afbp.org/> (Association for Blind Persons) Includes resource packs for employment

<http://www.alzheimers.org.uk/>

<http://www.arthritiscare.org.uk/>

<http://www.britishdeafassociation.org.uk/>

<http://www.diabetes.org.uk/>

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