

Employment

Disability, Health and Employment

A short guide for small and
medium sized employers



Why should you bother about disability?

Many smaller employers find employment law difficult and feel that it poses a threat to their business. However, disability is more common than people often think and being a flexible employer can mean you get the best out of your staff. Whether it's understanding childcare needs, flexibility for people with disabilities and long-term health conditions or days off for religious observance, on the whole, you get back what you put in.

Making sure that you can recruit and retain the one in five people of working age who are disabled in the terms of the Disability Discrimination Act (DDA) isn't something you should do just because there's a law about it or because it's a good thing to do. It can:

- make your workforce more representative of the community it serves
- attract and keep able staff
- avoid undervaluing, under-using or losing able staff
- avoid the costs and worry of recruiting and training someone new when you could have kept an employee – and kept valuable business expertise
- improve staff morale and productivity
- improve the way all staff are managed, including in areas like health and safety and absence
- help to develop good practice that improves customer care as well as your employment practice.

What does the law say?

It is against the law for an employer of any size to discriminate against someone that meets the definition of a 'disabled person' in the DDA because of their disability or long-term health condition.

You cannot discriminate against someone with a disability or health condition:

- in the recruitment process
- in their terms and conditions of employment
- in chances for promotion, transfer, training or other benefits
- by dismissing them
- by treating them less fairly than other workers
- by subjecting them to harassment or victimisation.

What does 'discriminate' mean?

The DDA describes the following kinds of discrimination:

- a) direct discrimination
- b) failure to comply with the duty to make reasonable adjustments
- c) disability-related less favourable treatment.

In addition, the following actions are unlawful:

- d) subjecting a disabled person to harassment
- e) victimisation of a disabled person (or a non-disabled person).

a) Direct discrimination

The Act says that an employer's treatment of a disabled person

amounts to direct discrimination if:

- the treatment is on the grounds of his/her disability and
- the treatment is less favourable than the way in which a person not having that particular disability is (or would be) treated, if their circumstances are the same or not materially different.

For example, if a cafe had a blanket ban on everyone with diabetes and turned someone down for a job purely on this basis without looking at whether they could do the job, that would be direct discrimination.

b) Failure to comply with a duty to make reasonable adjustments

Employers have a duty to make reasonable adjustments for disabled job applicants or staff when a policy, practice or something about their premises places the disabled person at a substantial disadvantage.

Some examples of reasonable adjustments are given below:

- altering the person's working hours
- allowing absences during working hours for medical treatment
- giving additional training
- getting special equipment or modifying existing equipment
- changing instructions or reference manuals
- changing an open plan working policy to accommodate someone with an anxiety condition or autism
- providing additional supervision or support
- making adjustments to premises.

Changes of this kind are usually low or no cost and are part of being a good employer.

When is it 'reasonable' for me to make an adjustment?

The law lists factors that may affect whether it is reasonable for an employer to make a particular adjustment. These are:

- how effective the adjustment is in preventing the disadvantage
- how practical it is
- the financial and other costs and the extent of any disruption
- the extent of the employer's financial or other resources
- the availability to the employer of financial or other help to make the adjustment
- the size and type of business.

For example, if you run a small shop, it may not be reasonable for you to adapt the interior of the shop completely to enable you to employ a wheelchair user as a counter assistant.

However, many disabled people are not wheelchair users and will be able to work in the shop – for example someone with a hearing impairment could be employed or retained if you installed an induction loop and the lighting was good.

c) Disability-related less favourable treatment

The law says that an employer's treatment of a disabled person amounts to discrimination if:

- the treatment is for a reason related to their disability

- the treatment is less favourable than the way others would be treated and
- the treatment is not justified.

For example, a call centre refuses to employ a visually impaired person with an assistance dog. They have been refused employment because of the dog; they would not have a dog if it was not for their disability and so this is less favourable treatment for a reason relating to their disability. This type of treatment can be justified but only if the reason for it is material and substantial. If a reasonable adjustment would remove any material and substantial reason, then the treatment cannot be justified.

d) Harassment

Harassment occurs when, for a reason which relates to a person's disability, another person engages in unwanted conduct which may violate the disabled person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for that disabled person. As an employer, you are responsible for the behaviour of your staff.

e) Victimisation

It is unlawful to victimise someone because they have taken part in legal proceedings under the DDA; or have alleged in good faith that someone else could be in breach of the Act; or have done anything else 'by reference' to the Act (such as accompanying a person bringing a

claim to the tribunal). This form of disability discrimination is the only one for which the DDA gives protection to non-disabled people.

Who is disabled?

Disabled people aren't just those who use wheelchairs or guide dogs. There are many types of disability and health conditions that mean someone could be covered by the DDA. And you often can't tell just by looking at someone whether they meet this definition. In fact, around half of those with rights under the DDA don't describe themselves as a 'disabled person'. The fact is, most employers will already be employing someone who might be protected by the law. The employer may not realise it – and the person themselves may not realise that they have rights or could ask for support to do their job better.

A 'disabled person' is legally defined as someone with 'a physical or mental impairment that has a substantial and long-term adverse effect on his/her ability to carry out normal day-to-day activities'. What matters is that their impairment or health condition has an impact – not what their diagnosis is.

Normal-day-to-day activities include:

- mobility – eg being able to walk to the local shop
- manual dexterity – eg typing
- physical co-ordination
- continence
- ability to lift, carry or otherwise move everyday objects

- speaking, hearing or seeing
- memory or ability to concentrate, learn or understand
- perception of the risk of physical danger.

The law can cover people with facial disfigurements and ‘hidden’ disabilities like dyslexia, epilepsy, schizophrenia and depression. It can also cover people with progressive conditions, such as HIV, cancer or multiple sclerosis (soon this will be from the point of diagnosis rather than onset of symptoms).

People who have had a disability in the past are also covered, even if they have recovered – for example, those who have had episodes of mental ill health. People who have severe back pain or arthritis can be covered by the law if that condition means that their ability to do normal activities is adversely affected.

Many people experience the effects of conditions such as these – particularly as they get older. It doesn’t mean that people aren’t able to do a range of jobs. Often they bring important skills and life experiences, such as negotiation, patience and problem-solving. There is also nothing in the DDA to make you employ someone who is incapable, even with reasonable adjustments, of doing the job.

More information

The DRC provides information and advice on the DDA to disabled people, employers and service providers. You will also find more detailed information on our website: www.drc-gb.org

If you can’t find what you need there, or need further help, you can contact our Helpline which is open between 8am and 8pm Monday to Friday:
Tel: 08457 622 633
Textphone: 08457 622 644
Fax: 08457 778 878
Email: enquiry@drc-gb.org

DRC Helpline, Freepost MID 02164, Stratford upon Avon CV37 9BR.

We can provide free information and advise you on what the law means in general terms but cannot give you advice on individual cases.

Money and help



Access to Work is a government scheme operated by your local job centre. It provides practical advice and support to disabled people and their employers to help overcome work-related obstacles. It can pay a grant towards certain extra employment costs resulting from disability, such as fares to work if transport is difficult; a communicator at a job interview for someone with a hearing impairment; a support worker, such as a reader if someone has a visual impairment; specialist equipment, such as voice activated software and adaptations to premises, such as installing an accessible toilet.


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