

2. Your rights to equality at work: working hours, flexible working and time off.

Equality Act 2010 Guidance for employees.
Vol. 2 of 6.



Equality and
Human Rights
Commission

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Introduction

This guide is one of a series written by the Equality and Human Rights Commission to explain your rights under equality law. These guides support the introduction of the Equality Act 2010. This Act brings together lots of different equality laws, many of which we have had for a long time. By doing this, the Act makes equality law simpler and easier to understand.

There are six guides giving advice on your rights under equality law when you are at work, whether you are an employee or in another legal relationship to the person or organisation you are working for. The guides look at the following work situations:

1. When you apply for a job
2. Working hours and time off
3. Pay and benefits
4. Promotion, transfer, training and development
5. When you are being managed
6. Dismissal, redundancy, retirement and after you've left

Other guides and alternative formats

We have also produced:

- A separate series of guides which explain your rights in relation to people and organisations providing services, carrying out public functions or running an association.
- Different guides explaining the responsibilities people and organisations have if they are employing people to work for them or if they are providing services, carrying out public functions or running an association.

If you require this guide in an alternative format and/or language please contact the relevant helpline to discuss your needs.

England

Equality and Human Rights Commission Helpline

FREEPOST RRLG-GHUX-CTR

Arndale House, Arndale Centre, Manchester M4 3AQ

Telephone: 0845 604 6610

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Scotland

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The legal status of this guidance

This guidance applies to England, Scotland and Wales. It has been aligned with the Codes of Practice on Employment and on Equal Pay. Following this guidance should have the same effect as following the Codes and may help employers and others avoid an adverse decision by a tribunal in proceedings brought under the Equality Act 2010.

This guide is based on equality law as it is at 1 October 2010. Any future changes in the law will be reflected in further editions.

This guide was last updated in July 2011. You should check with the Equality and Human Rights Commission if it has been replaced by a more recent version.

1. Your rights to equality at work: working hours, flexible working and time off

What's in this guide

If your employer is making decisions about the hours you work, whether you can work flexibly or have time off, equality law applies to what they are doing.

Equality law applies:

- whatever the size of the organisation
- whatever sector you work in
- whether your employer has one worker or ten or hundreds or thousands
- whether or not your employer uses any formal processes or forms to help them make decisions.

This guide tells you what your employer must do to avoid all the different types of unlawful discrimination. It recognises that smaller and larger employers may operate with different levels of formality, but makes it clear how equality law applies to everyone, and what this means for the way every employer (and anyone who works for them) must do things.

It covers the following situations and subjects (we tell you what any unusual words mean as we go along):

- Decisions about hours of work and flexible working
 - Avoiding direct and indirect discrimination
 - Making reasonable adjustments to remove barriers for disabled people and avoiding discrimination arising from disability
 - Requests for changes to hours of work or flexible working on the basis of association with a protected characteristic
 - Requests for changes to hours of work or flexible working relating to a worker's religion or belief
 - Requests for changes to hours of work or flexible working relating to a worker's gender reassignment

- Decisions relating to time off
 - Avoiding direct and indirect discrimination
 - The specific age exception allowing different levels of annual leave based on length of service of up to five years
 - Reasonable adjustments to remove barriers for disabled people and avoiding discrimination arising from disability
 - Requests for time off relating to religion or belief
 - Requests for time off relating to gender reassignment
 - Pregnancy-related absences
 - Sickness absence
 - Ante-natal care
 - Maternity, paternity, adoption and parental leave

What else is in this guide

This guide also contains the following sections, which are similar in each guide in the series, and contain information you are likely to need to understand what we tell you about working hours, flexible working and time off:

- Information about when an employer is responsible for what other people do, such as workers employed by them.
- Information about reasonable adjustments to remove barriers if you are a disabled person.
- Advice on what to do if you believe you've been discriminated against.
- A Glossary containing a list of words and key ideas you need to understand this guide – all words highlighted in **bold** are in this list. They are highlighted the first time they are used in each section and sometimes on subsequent occasions. These words are explained further in the glossary.
- Information on where to find more advice and support.

Your rights not to be discriminated against at work: what this means for how your employer must behave towards you

Are you a worker?

This guide calls you a **worker** if you are working for someone else (who this guide calls your **employer**) in a work situation. Most situations are covered, even if you don't have a written **contract of employment** or if you are a **contract worker** rather than a **worker** directly employed by your employer. Other types of worker such as **trainees**, **apprentices** and **business partners** are also covered. Sometimes, equality law only applies to particular types of worker, such as employees, and we make it clear if this is the case.

Protected characteristics

Make sure you know what is meant by:

- **age**
- **disability**
- **gender reassignment**
- **marriage and civil partnership**
- **pregnancy and maternity**
- **race**
- **religion or belief**
- **sex**
- **sexual orientation.**

These are known as **protected characteristics**.

What is unlawful discrimination?

Unlawful discrimination can take a number of different forms:

- Your employer must not treat you worse than another worker because of a protected characteristic (this is called **direct discrimination**).

For example:

An employer is considering two requests for flexible working from workers who do not qualify for the statutory employment **right to request flexible working**. One worker is a Christian and the other is not. The employer decides to agree only to the Christian's request, believing they will use the time in a more worthwhile way. This will probably be direct discrimination against the non-Christian because of religion or belief. The correct approach is for the employer to consider the requests by looking at the impact of the proposed working pattern on the organisation, and not at the protected characteristics of the person making the request. This may or may not lead to the same result, but the decision would not have been made because of the protected characteristic of religion or belief, so neither worker would have a claim for unlawful discrimination because of their religion or belief.

- If you are a woman who is **pregnant** or on **maternity leave**, the test is not whether you are treated worse than someone else, but whether you are treated **unfavourably** from the time you tell your employer you are pregnant to the end of your maternity leave (which equality law calls the **protected period**) because of your pregnancy or a related illness or because of maternity leave.
- Your employer must not do something which has (or would have) a worse impact on you and on other people who share your particular protected characteristic than on people who do not have that characteristic. Unless your employer can show that what they have done, or intend to do, is **objectively justified**, this will be **indirect discrimination**. 'Doing something' can include making a decision, or applying a rule or way of doing things.

For example:

An employer says that senior managers at an office cannot work flexibly. Although this rule is applied to male and female managers, it is likely to have a worse impact on women who are more likely to be combining work with childcare responsibilities. Unless the employer can objectively justify the requirement, this may be indirect discrimination because of sex.

- If you are a disabled person, your employer must not treat you **unfavourably** because of something connected to your disability where they cannot show that what they are doing is **objectively justified**. This only applies if an employer knows or could reasonably have been expected to know that you are a disabled person. This is called **discrimination arising from disability**.

For example:

An employer insists that all workers have to be in the office by 9am or face disciplinary action. A worker has a mobility impairment that makes travelling in the rush hour difficult. Unless the employer can objectively justify the requirement to be in at that time, this may be discrimination arising from disability, because the disabled worker would be treated unfavourably (being disciplined) for something connected to their disability (the inability to travel in the rush hour). This may also be a failure to make reasonable adjustments.

- Your employer must not treat you worse than another worker because you are **associated with** a person who has a protected characteristic.

For example:

An employer allows all staff with children to leave work early one afternoon before Christmas to attend their children's school play or show. They assume that a worker with a disabled child will not need this time off so do not give them the same concession. This is likely to be direct discrimination because of disability on the basis of the worker's association with their disabled child.

- Your employer must not treat you worse than another worker because they incorrectly think you have a protected characteristic (**perception**).
- Your employer must not treat you badly or **victimise** you because you have complained about discrimination or helped someone else complain or done anything to uphold your own or someone else's equality law rights.

For example:

When a worker asks to work flexibly, their employer refuses because the worker helped a colleague with a complaint about discrimination. This is almost certainly victimisation.

- Your employer must not **harass** you.

For example:

A worker is given permission by their manager to take annual leave but only after offensive questioning related to their sexual orientation which has made them feel humiliated. This is likely to be harassment.

In addition, if you are a disabled worker, to make sure that you have the same access, as far as is reasonable, to everything that is involved in doing a job (including flexible working and time off) as a non-disabled worker, your employer must make **reasonable adjustments**.

For example:

An employer has a written policy which covers all types of leave, including what to do if workers are too ill to come to work, how decisions will be made about when annual leave is taken, and on flexible working. As a reasonable adjustment for a disabled worker who has a visual impairment, the employer reads the policy onto a CD and gives it to the worker.

Your employer must make reasonable adjustments to what they do as well as the way that they do it.

For example:

A worker who has a learning disability has a contract to work from 9am to 5.30pm but wishes to change these hours. This is because the friend who accompanies the worker to work is no longer available before 9am. Allowing the worker to start later is likely to be a reasonable adjustment for that employer to make.

You can read more about reasonable adjustments to remove **barriers** for disabled people in Chapter 3.

Situations where equality law is different

Sometimes there are situations where equality law applies differently. This guide refers to these as **exceptions**.

There are two exceptions which are relevant to decisions about working hours, flexible work and time off. These apply to all employers:

- The possibility that direct age discrimination can be **objectively justified**.
- Special treatment for women in connection with pregnancy and maternity.

We only list the exceptions that apply to the situations covered in this guide. There are more exceptions which apply in other situations, for example, when an employer is recruiting someone to do a job. These are explained in the relevant guide in the series.

In addition to these exceptions, equality law allows your employer to:

- Treat disabled people better than non-disabled people.
- Use voluntary **positive action** in the way workers are managed. While positive action is most often seen as applying in recruitment, promotion and training, it can also be helpful in addressing workers' different needs when managing them.

Age

Age is different from other protected characteristics. If they can show that it is **objectively justified**, your employer can make a decision based on someone's age, even if this would otherwise be direct discrimination.

For example:

An employer decides to allow workers over the age of 55 to ask to work flexibly, regardless of whether they qualify for the **right to request flexible working**. This is so that they can keep the skills of their older workers in the organisation for longer, while also fitting in with the older workers' desire to work fewer hours. A younger worker says that they should also be able to work flexibly even if they do not qualify for the right to request. Provided the employer can **objectively justify** their decision, equality law would allow this difference of treatment based on age.

There is a specific age exception allowing different levels of benefits, eg annual leave based on length of service of up to five years.

Special treatment in connection with pregnancy and maternity

It is not sex discrimination against a man to provide special treatment for a woman in connection with pregnancy or childbirth.

For example:

An employer allows a pregnant worker to have time off not just for ante-natal appointments (which is a legal requirement) but also to attend fitness classes for pregnant women at a nearby gym. The worker makes up the lost hours at another time, which she would not have to do for an ante-natal appointment. It would not be sex discrimination to refuse a man's request to go to a fitness class during working hours.

Positive action

'Positive action' means the steps that your employer can take to address the different needs or past track record of disadvantage or low participation of people who share a particular protected characteristic.

Although most often thought of in the context of recruitment, promotion or training, positive action is available to your employer in all employment situations, although they have to go through a number of tests to show that positive action is needed.

Taking positive action is voluntary. Your employer does not have to take positive action. However:

- Meeting the different needs of the workforce can help make staff more productive.
- If an employer is a **public authority**, positive action may help them meet the **public sector equality duty**.

If you want to know more about what it might mean for you if your employer takes voluntary positive action in relation to how they manage you and their other workers, read the Equality and Human Rights Commission's guide: *Your rights to equality at work: how you are managed*.

Treating disabled workers better than non-disabled workers

As well as these exceptions, equality law allows an employer to treat a disabled worker better – or **more favourably** – than a non-disabled worker. This can be done even if the disabled worker is not at a specific disadvantage because of their disability in the particular situation. The reason the law was designed this way is to recognise that in general disabled people face a lot of barriers to participating in work and other activities.

What's next in this guide

The next part of this guide tells you more about how your employer can avoid all the different types of unlawful discrimination in the following situations:

- Decisions about hours of work and flexible working
 - Avoiding direct and indirect discrimination
 - Reasonable adjustments to remove barriers for disabled people and avoiding discrimination arising from disability
 - Requests for changes to hours of work or flexible working on the basis of association with a protected characteristic
 - Requests for changes to hours of work or flexible working relating to religion or belief
 - Requests for changes to hours of work or flexible working relating to gender reassignment
 - A helpful approach for your employer to take
- Decisions relating to time off
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 - Sickness absence
 - Ante-natal care
 - Maternity, paternity and adoption leave.

Decisions about hours of work and flexible working

Flexible working and the ‘right to request’

What is ‘flexible working’?

By ‘flexible working’, this guide means any change from the usual working week of 35 or more hours worked between set times and at a set place. In practice, this might mean a worker:

- working part-time, working only during term time, or working from home some of the time
- adjusting their start and finish times
- adopting a particular shift pattern or working extended hours on some days with time off on others.

For more information on how flexible working can benefit you and your employer, see the Equality and Human Rights Commission’s *Working Better* report. Contact details for the Equality and Human Rights Commission are at the beginning of this guide.

What is ‘the right to request’?

This guide only tells you about equality law. There are other laws giving many employees with caring responsibilities for children or particular adults the right to have a request for flexible working considered according to set procedures (this is the ‘right to request’).

If you have worked for your employer for at least 26 weeks and qualify for the right to request flexible working, your employer can refuse only on one of the business-related grounds set out in the statutory rules. If your employer does not follow the set procedures, they risk being taken to an Employment Tribunal and possibly having to pay compensation.

You will find more information on the right to request at Directgov. Although the information by Directgov is generally provided for people who live in England and Wales, the law on this is the same in Scotland.

Contact details for Directgov are in Chapter 5: *Further sources of information and advice*.

Your employer must avoid unlawful discrimination when they make decisions about what hours you should work and whether to allow you to work flexibly.

Use the information earlier in this guide to make sure you know what equality law says your employer must do to avoid unlawful discrimination.

This section of the guide covers the following:

- Avoiding direct and indirect discrimination
- Reasonable adjustments to remove **barriers** for disabled people and avoiding discrimination arising from disability
- Requests for changes to hours of work or flexible working on the basis of association with a protected characteristic
- Requests for changes to hours of work or flexible working relating to religion or belief
- Requests for changes to hours of work or flexible working relating to gender reassignment
- A helpful approach for your employer to take.

Avoiding direct and indirect discrimination

Unless the situation comes into one of the exceptions where your employer is specifically allowed to take your protected characteristic(s) into account, they must not base their decision about your working hours or flexible working on your protected characteristic(s).

If your employer does this, it is likely to be direct discrimination, which cannot be justified (unless the protected characteristic is **age** – this is explained at page 10).

For example:

An employer bases their decision whether to agree to a request to work flexibly on the worker's sex. The employer agrees a mother's request to work flexibly but refuses a father's request just because he is a man and the employer believes it is less important for him. This is probably direct sex discrimination and it would also be a breach of the right to request flexible working if the father had applied under that procedure.

Your employer must not make a decision that has a worse impact on you and other people who share a particular protected characteristic than it has on people who do not share it. Unless your employer can show that what they have done is **objectively justified**, this will be indirect discrimination.

For example:

A woman returns from maternity leave and asks to work part-time using the right to request flexible working, for which she qualifies. Her employer turns down the request because none of the jobs at the organisation similar to hers are done part-time. The employer must:

- follow the procedures set out in the law on the right to request flexible working, including basing the decision on business reasons, and
- be able to **objectively justify** the refusal, as the decision not to allow people in similar jobs to the woman's to work part-time has a worse impact on her and on other women compared with men, as women are more likely to be combining paid work with caring responsibilities. If the employer cannot objectively justify the refusal and the application of the rule (about no part-time work in that job), this is likely to be indirect discrimination because of sex.
- A woman who is caring for her young child applies to work flexibly using the right to request, for which she qualifies. She is turned down. She makes another request six months later, suggesting a different working pattern that could easily be accommodated. Her employer does not have to use the procedures set out under the right to request, because these requests only have to be considered at 12 month intervals. However, if the employer refuses to look at her request altogether or if they refuse her again, this may be indirect discrimination because of sex, unless the employer can objectively justify what they have done. This is because a refusal to consider a change in the woman's working arrangements has a worse impact on both the individual woman and on women generally compared with men, because they are more likely to have to combine paid work with caring responsibilities.
- A woman who works part-time is required by her employer to change to full-time hours when her job-share partner resigns. She is told that if she does not work full-time she will be dismissed. The employer does not consider recruiting another job-share partner and argues that there are business reasons for no longer allowing her to work part-time. This may be indirect sex discrimination if there is not a very strong reason for refusing to allow the woman to continue working part-time, because the requirement to work full-time has a worse impact on women than on men.

These rules apply to existing workers, whether or not they qualify for the 'right to request' under the flexible working procedure. They also apply to job applicants and new starters.

If a rule about working hours prevents more women than men from *applying* for a job, this may be unlawful sex discrimination, unless the employer can **objectively justify** the rule. This may result in an employer having to agree to a request to work flexibly from the time a woman starts working for them.

For example:

- A woman is unable to apply for a job for which she is well-qualified because the employer requires all staff to work a rotating shift pattern. The woman is unable to work during all the shift patterns because she needs to look after her 80-year-old mother at particular times of the day. No allowances are made because of this need. Such a requirement would put the woman and other women at a disadvantage because women are more likely than men to need to combine paid work with caring responsibilities. The employer will have indirectly discriminated against the woman because of her sex unless the requirement can be objectively justified.
- A woman is put off applying for a job to work in a small newsagent's and convenience store because the job requires working hours of 7am to 3pm, and she cannot combine the early start with her childcare responsibilities. Because the very nature of the business is to open early, it is likely that the employer would be able to objectively justify the requirement for the early start.

However, the woman and a friend in a similar situation apply to do the job between them. One will take on the early morning childcare for both of them one week while the other works, and then they will swap over. In this situation, if they are between them the best person for the job, it may be indirect discrimination for the employer to refuse to allow this arrangement, unless the employer can objectively justify the refusal. Of course, as a matter of good practice, the employer themselves could open the job up to flexible working of this kind.

Although it is more likely that women rather than men will be combining paid work with caring responsibilities, employers must avoid making assumptions about who has responsibilities for caring for children or adults. If an employer acts on an assumption based on a person's protected characteristics, for example, that a gay man's request for particular working hours is less important than a straight woman's, this may result in direct or indirect discrimination.

Reasonable adjustments to remove barriers for disabled workers and avoiding discrimination arising from disability

If you are a disabled person, it may be a reasonable adjustment for your employer to allow you to work flexibly if this removes a barrier to your being able to do the job. If the change in hours is a reasonable adjustment, your employer must agree to it.

Your employer must make the change from the first point at which the duty to make reasonable adjustments arises, in other words, either when you start working for them or (if you are already working for them) when you become a disabled person, provided your employer knew or ought reasonably to have known this.

For example:

A disabled worker has to eat at set times to manage their blood sugar for their diabetes, which is only possible by taking their breaks at slightly different times (and therefore working slightly different hours) from those that usually apply within an organisation. This does not have a negative impact on the worker's ability to do the job; quite the opposite, it removes a barrier which would otherwise stop them doing the job. If this is a reasonable adjustment, the employer must allow the change in hours.

It does not matter whether or not your employer would allow a non-disabled person to work flexibly in the particular job, as:

- your employer is under a duty to make reasonable adjustments, and
- your employer is allowed to treat a disabled person better than a non-disabled person.

If you are a disabled person, to avoid discrimination arising from disability, your employer must also avoid treating you **unfavourably** when making a decision about your working hours or considering your request to work flexibly if:

- this is because of something connected to your disability, and
- your employer cannot show that what they are doing is **objectively justified**, and
- your employer knows or could reasonably be expected to know that you are a disabled person.

Requests for changes to hours of work or flexible working on the basis of association with a protected characteristic

The duty to make reasonable adjustments to remove barriers for disabled people does not apply to non-disabled workers who require adjustments to take care of a disabled person with whom they are associated. People in this position, and those assisting children or older relatives (whether or not disabled) with their day-to-day care needs, are often referred to as carers.

Most carers will qualify for the right to request flexible working once they have worked for their employer for at least 26 weeks.

An employer also needs to think about whether refusing a request for flexible working may be direct or indirect sex discrimination, as explained at the beginning of this chapter.

The protected characteristic of the person with whom a worker is associated may be relevant if an employer makes a decision based on that protected characteristic.

For example:

An employer offers flexible working to all staff. Requests are supposed to be considered on the basis of the business needs of the organisation, but a manager decides that a man's request to work flexibly to care for his 90-year-old father is more important than another man's to care for his 50-year-old wife. If the manager's decision is based on the age of the person being cared for, this is almost certainly discrimination because of age by association. (It would not be unlawful if the decision was objectively justified, since direct discrimination because of age, unlike because of other protected characteristics, is allowed if justified.)

If the manager made their decision based on the fact the person with whom the worker was associated was a disabled person rather than an older person, that too might be direct discrimination by association because of whichever protected characteristic lost out. The manager should base any decision on the business needs of the organisation, not on the protected characteristics of the people making the requests.

Requests for changes to hours of work or flexible working relating to religion or belief

Some religions or beliefs may require their followers to pray at certain times of day, or to have finished work by a particular time.

For example:

Some Jews will finish work before sunset on Friday in order to avoid working on the Jewish Sabbath, and will not work again until after sunset on Saturday.

If your employer applies a rule like this, such as refusing to allow a worker to take particular rest breaks or to finish work by a particular time, they need to **objectively justify** what they are doing, as otherwise this may be indirect discrimination because of religion or belief.

For example:

- An employer imposes a permanent work rota requiring occasional Sunday working. One employee is an active Christian. When the woman accepted the job six months earlier she had told her company that she was unable to work on a Sunday because of her faith. This was accepted at the time. She resigns when told that the change to working Sundays is non-negotiable. This rule has a worse impact on the woman and other Christians for whom Sunday observance is a manifestation of their religion. Applying the rule will be indirect discrimination because of religion or belief unless the employer can objectively justify it.
- A small manufacturing company needs its staff to take their breaks at set times because of the manufacturing process which requires that a process has to be complete before equipment can be left. A worker for whom praying at particular times of the day is a requirement of their religion asks if they can take their breaks at the times when they need to pray, making up the time over the course of the rest of the day. The company considers the request by looking at the impact on the business. Refusing the request may be indirect discrimination because of religion or belief unless the employer can objectively justify it, which it may be able to do if, for example, there is no alternative way of doing the work.

Some religions require extended periods of fasting. If your employer chooses to make special arrangements to support workers through a fasting period, this would be a matter of good practice and may in some circumstances be required.

For example:

A large catering company employs a large number of Muslim workers. During Ramadan, when the Muslim workers are fasting as an integral part of their religion, the employer allows them to take additional breaks.

Requests for changes to hours of work or flexible working relating to gender reassignment

If your request to work flexibly is because you propose to undergo, are undergoing or have undergone gender reassignment, your employer should consider your request on the same basis as they would consider any similar request which was not made under the right to request flexible working.

Employers should not refuse a request or treat it less seriously because it is being made by a **transsexual** person.

For example:

A transsexual person asks their employer if they can compress their working hours into 9 days out of every 10. This is so that on the tenth day they can attend an appointment related to the process of gender reassignment. The employer decides to agree to the request. This is because they have looked at their organisation's needs and would have agreed such a request if it had been made by someone who was not undergoing gender reassignment. If they had refused because the worker is a transsexual person, this would be direct discrimination because of gender reassignment.

A helpful approach for your employer to take

One important way an employer can avoid discrimination when deciding who can change their working hours or work flexibly is to set up a process which does not start by looking at the reason for the worker's request, but first considers whether their organisation would still be able to carry out its purpose if they agreed the request.

For example:

An employer does not need to know that it is important to a worker to accompany a relative to kidney dialysis sessions on a Wednesday afternoon, just that they wish to adjust their hours to avoid working at that time.

So, if you make a request, your employer should look at the impact on your work and on their organisation, not at the impact on your personal circumstances. Once your employer looks into the matter with an open mind, they may well find that your request causes fewer problems than they initially feared.

In some situations, however, an employer cannot avoid considering the worker's reasons for the request – for example, if a worker requests a reasonable adjustment because they have a disability.

The employer must also consider a worker's reasons for the request if they are thinking about refusing it in a situation which might be **indirect discrimination**. In other words, the employer is applying a rule to the worker which would disadvantage them and also tend to disadvantage others with the same protected characteristic, eg other women or other workers of the same religion.

To avoid **indirect discrimination**, the employer must be able to objectively justify what they are doing. This means that the rule they are applying must be **proportionate**. The impact on a worker of the employer saying 'no' is weighed up against the employer's needs. The greater the problems caused for the worker (and other workers with the same protected characteristic), the better justification the employer needs for refusing the worker's flexible working request.

This is the approach your employer must take if you are using the right to request flexible working under employment law.

But it is also a helpful approach for an employer to take if flexible working is available to a wider range of workers.

Decisions relating to time off

How employment law and equality law interact

Employment law (rather than the equality law which is explained in this guide) sets out people's rights to:

- A minimum number of days of paid time off
- Paid and unpaid maternity leave
- Paid paternity leave
- Paid and unpaid adoption leave
- Unpaid parental leave
- Unpaid family emergency leave in certain circumstances (for example, if a worker's usual childcare or care for other family members who depend on them is not available at short notice)
- Paid or unpaid time off for public duties and trade union responsibilities.

You can find out more about these rights at Directgov, whose contact details are in Chapter 5: *Further sources of information and advice*.

In general, equality law applies not to whether you have a right to time off, but how your employer makes decisions about:

- who gets to take time off, when and how much
- whether the time off should be paid or unpaid
- how your employer records different types of absence.

Exceptions to this, where equality law does affect whether someone has a right to time off, are:

- Time off as a reasonable adjustment to remove barriers for disabled people
- Gender reassignment leave
- Pregnancy-related absence.

These situations are explained in the next section of this guide.

Your employer must avoid unlawful discrimination when making a decision about time off. Decisions about time off might range from who takes their holiday when to how your employer records workers' absences.

Use the information earlier in this guide to make sure you know what equality law says your employer must do to avoid unlawful discrimination.

This section of the guide covers the following:

- Direct and indirect discrimination
 - the specific age exception allowing different levels of annual leave based on length of service of up to five years
- Reasonable adjustments to remove barriers for disabled people and avoiding discrimination arising from disability
- Requests for time off relating to religion or belief
- Requests for time off relating to gender reassignment
- Pregnancy-related absences
 - sickness absence
 - ante-natal care
- Maternity, paternity, adoption and parental leave.

Some types of leave, such as holiday, count as a benefit and are treated in the same way as pay. You can read more about what this means in the Equality and Human Rights Commission guide: *Your rights to equality at work: pay and benefits*.

Direct and indirect discrimination

If your employer:

- refuses a request for leave because of a protected characteristic, or
- pays some people more than others during their time off because of a protected characteristic, or
- gives some people more leave than others because of a protected characteristic

this is likely to be direct discrimination, unless employment law or equality law specifically allows an employer to do this (as it does with maternity leave, for example).

If your employer:

- says that everyone has to take leave at a particular time of year, or
- sets conditions on when someone qualifies for extra leave

this may have a worse impact on a person with a particular protected characteristic and others with the same characteristic than it would have on people who do not have it. Unless your employer can **objectively justify** what they are doing, this may be indirect discrimination.

The specific age exception allowing different levels of annual leave based on length of service of up to five years

Equality law allows an employer to make a distinction between workers in pay and benefits based on length of service, including how much annual leave they get.

An employer can give workers with less than five years' service different holiday entitlements to those with more than five years without having to objectively justify this.

For example:

To encourage workers to stay with them for more than two years, an employer gives workers an extra day's paid annual leave for each complete year of service, up to five years. The exception allows the employer to do this without having to objectively justify the practice. This applies even though it is harder for younger employees to qualify for the extra leave and is therefore, on the face of it, indirect age discrimination against the younger workers.

Length of service can be worked out in one of two ways:

- by the length of time that the employee has been working for the employer at or above a particular level, or

- by the length of time the employee has been working for the employer in total.

If an employer uses length of service of more than five years to award or increase a benefit, this falls outside the exception.

But there is a further difference: an employer may still be able to use length of service of more than five years to make decisions about holiday entitlement if they reasonably believe that using length of service in this way fulfils a business need. They may believe it rewards higher levels of experience, encourages loyalty, or increases or maintains workers' motivation.

This is a less difficult test than the general test for **objective justification** for indirect discrimination. However, an employer still has to have evidence to support their belief that it did fulfil a business need.

For example:

An employer wants to give an extra five days' annual leave to workers after 10 years' service. The employer can only do this if they reasonably believe this practice fulfils a business need.

Reasonable adjustments to remove barriers for disabled workers and avoiding discrimination arising from disability

Employers sometimes use workers' sickness absence records to help them make decisions about things like:

- promotion
- bonuses
- redundancy
- references.

If you are a disabled person and your employer treats time off taken by you which relates to your disability in exactly the same way as they treat sickness absence taken by a worker who is not disabled, this may result in your being treated worse than another worker because of something arising from your disability.

For example:

A worker who is a disabled person requires a day off every month for physiotherapy related to their condition. The employer records these days off as sickness absence.

When the employer is deciding which staff to pay an annual bonus to, one of the tests is having had fewer than five days' sickness absence in the year. The disabled person is therefore not eligible for the bonus. They have been treated worse than other workers because of something arising from their disability (the need to take time off for physiotherapy). To avoid this being unlawful, the employer must be able to **objectively justify** it.

Instead of trying to objectively justify the application of the rule in this way, the employer decides to record the absence related to the worker's disability separately from ordinary sickness absence. The employer excludes these days from the worker's sickness absence record when working out eligibility for the bonus. Recording the leave separately like this would probably be a reasonable adjustment.

Once your employer knows that you come within the definition of a disabled person, to avoid:

- direct or indirect discrimination because of disability, or
- discrimination arising from disability

and to make sure that they have complied with the duty to make reasonable adjustments your employer should:

- Record your disability-related time off separately from general sick leave. This will mean that they are not calculating bonuses or making other pay or employment decisions in a way that may unlawfully discriminate against you.
- Stay in touch if you are absent for a long period to find out how you are and to tell you what's happening at work (though they should make it clear they don't expect you to come back to work before you are ready).
- Think about a plan for your return to work, for example, arranging for you to start work again gradually or to do some work at home before you come into the office, if this is possible in your job.
- Consider reasonable adjustments with you and, if necessary, use expert advice to work out what reasonable adjustments can be made for when you are ready to return to work. If a change is reasonable, your employer must make it.

Your employer does not have to pay sick pay beyond what they normally pay just because your time off is disability-related. But it may be a reasonable adjustment to:

- extend your sick pay
- offer unpaid 'disability leave', or

- allow you to take the extra time off as annual leave.

If the reason you are absent is because of a delay by your employer in implementing a reasonable adjustment that would enable you to return to the workplace, maintaining full pay may well be a further reasonable adjustment for your employer to make.

For example:

A woman who has a visual impairment needs work documents to be enlarged. Her employer fails to make arrangements to provide her with these. As a result, she has a number of absences from work because of eye-strain. After she has received full sick pay for four months, the employer is considering a reduction to half-pay in line with its sickness policy. It is likely to be a reasonable adjustment to maintain full pay as her absence is caused by the employer's delay in making the original adjustment.

Your employer could also change the targets expected of someone so that that person has an equal chance of earning bonuses.

For example:

A worker in sales takes every Thursday afternoon as unpaid leave for a disability-related reason. As a reasonable adjustment, their employer reduces their sales target to reflect their absence. Their team's target is also reduced by a proportionate amount.

Requests for time off relating to religion or belief

If a worker's religion or belief has special festival or spiritual observance days, they may ask for time off at a particular time in order to celebrate festivals or attend ceremonies.

If your employer refuses to allow you time off for a religious observance day because they want everyone working that day, this may be indirect discrimination unless the employer can objectively justify their refusal. Although the employer may have strong reasons for needing you to come into work on a particular day, they should remember that it may be extremely important to you that you do not work on the relevant day.

General rules regarding when annual leave can be taken or annual shut-downs, can indirectly discriminate against workers if they coincide with religious holidays and the employer does not allow you to have time off on the relevant dates.

Similarly, a rule that workers cannot take their leave all at one time may discriminate against you if you want to go on a religious pilgrimage. In all cases, to avoid a refusal being indirect discrimination, the employer needs to be able to objectively justify saying no.

Requests for time off relating to gender reassignment

If you are a transsexual person your employer must not treat you worse for being absent from work because you propose to undergo, are undergoing or have undergone gender reassignment than they would treat them:

- if you were absent because you were ill
- if you were absent for any other reason, and it is unreasonable to treat you worse.

This includes not treating you worse when your employer makes a decision about what time off you should have. If your employer would agree to a request for time off for someone to recover from an injury, then they should not refuse your request for time off for part of a process of gender reassignment. The request does not have to relate to a medical process. It could, for example, be for electrolysis to remove hair or for counselling.

Pregnancy-related absences

Sickness absence

Special rules apply to sickness absence which is related to a woman's pregnancy or to her having given birth.

Employers should record pregnancy-related illness separately from other kinds of illness and should not count it towards someone's total sickness record.

An employer should not pay a woman who is absent for a pregnancy-related illness less than the contractual sick pay she would receive if she was absent for any other illness with a statement of fitness to work ('fit note').

An employer must not take into account a period of absence due to pregnancy-related illness, or maternity leave, when making a decision about a woman's employment, for example, for disciplinary purposes or if they are selecting workers for redundancy. Sickness absence associated with a miscarriage should be treated as pregnancy-related illness.

For example:

A worker has been off work because of pregnancy complications since early in her pregnancy. Her employer has now dismissed her in accordance with the sickness policy which allows no more than 20 weeks' continuous absence. This policy is applied regardless of sex or pregnancy and maternity. The dismissal is unfavourable treatment and would be unlawful pregnancy discrimination even if a man would be dismissed for a similar period of sickness absence, because the employer took into account the worker's pregnancy-related sickness absence in deciding to dismiss.

You can find out more about what employers should do in this situation using the Equality and Human Rights Commission's *Guidance on managing new and expectant parents*.

You can read more about pay during pregnancy and maternity leave in the Equality and Human Rights Commission guide: *Your rights to equality at work: pay and benefits*.

Ante-natal care

An employer must give a pregnant employee time off for ante-natal care. Ante-natal care can include medical examinations, relaxation and parenting classes.

For example:

A pregnant employee has booked time off to attend a medical appointment related to her pregnancy. Her employer insists this time must be made up for through flexi-time arrangements or her pay will be reduced to reflect the time off. This is unlawful: a pregnant employee is under no obligation to make up time taken off for ante-natal appointments and an employer cannot unreasonably refuse paid time off to attend such appointments.

The right for paid time off does not extend to the partners of pregnant women, although an employer could choose, as a matter of good practice, to allow someone to take annual leave or unpaid leave or to work flexibly to support their partner.

If an employer does allow this, they should make sure that they do not discriminate unlawfully in their approach.

For example:

An employer allows a man whose female partner is pregnant to take annual leave to attend ante-natal appointments with her. The employer refuses a similar request from a woman whose female partner is pregnant. This is likely to be direct discrimination because of sexual orientation.

Maternity, paternity, adoption and parental leave

When dealing with workers who request or take maternity, paternity, adoption or parental leave, your employer must make sure they do not discriminate against a person because of a protected characteristic.

For example:

A lesbian has asked her employer for unpaid parental leave. She and her partner adopted a child two years ago and she wants to be able to look after her child for part

of the summer holidays. The worker made sure the time she has requested does not conflict with parental leave being taken by other workers. In exercising their discretion whether to grant parental leave, the woman's line manager refuses her request because they do not agree with same-sex couples being allowed to adopt children. This is likely to be direct discrimination because of sexual orientation.

You may be interested in the practical guidance for employers on managing maternity, paternity, adoption and parental leave in the Equality and Human Rights Commission's *New and expectant parents toolkit*.

Your questions answered

Q. As a woman, do I have a right to time off to have fertility treatment?

A. Neither equality law nor employment law gives a woman a right to paid time off for in vitro fertilisation (IVF) or other fertility treatment. But in responding to any request, the employer must not treat a woman worse than they would treat a man making an equivalent request for time off.

For example:

A female worker who is undergoing IVF treatment has to take time off sick because of its side effects. Her employer treats this as ordinary sickness absence and pays her contractual sick pay that is due to her. Had contractual sick pay been refused, this could amount to sex discrimination.

Of course, after a fertilised embryo has been implanted, a woman is legally pregnant and from that point is protected from unfavourable treatment because of pregnancy, including pregnancy-related sickness. She would also be entitled to time off for ante-natal care.

It is good practice (though not a legal requirement) for an employer to treat sympathetically any request for time off for IVF or other fertility treatment, and consider working out a procedure to cover this situation. This could include allowing women to take annual leave or unpaid leave when receiving treatment and designating a member of staff whom they can inform on a confidential basis that they are undergoing treatment.

2. When your employer is responsible for what other people do

It is not just how your employer personally behaves that matters.

If another person who is:

- employed by your employer, or
- carrying out your employer's instructions to do something (who the law calls your employer's agent)

does something that is unlawful discrimination, **harassment** or **victimisation**, your employer can be held legally responsible for what they have done.

This part of the guide explains:

- When your employer can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation
- How your employer can reduce the risk that they will be held legally responsible
- When workers employed by your employer or your employer's agents may be personally liable
- What happens if a person instructs someone else to do something that is against equality law
- What happens if a person helps someone else to do something that is against equality law
- What happens if an employer tries to stop equality law applying to a situation

When your employer can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation

Your employer is legally responsible for acts of discrimination, harassment and victimisation carried out by workers employed by them in the course of their employment.

Your employer is also legally responsible as the 'principal' for the acts of their agents done with their authority. Their agent is anyone your employer has instructed to do something on their behalf, even if your employer does not have a formal contract with them.

As long as:

- the worker was acting in the course of their employment – in other words, while they were doing their job, or
- the agent was acting within the general scope of their principal's authority – in other words, while they were carrying out your employer's instructions

it does not matter whether or not your employer:

- knew about, or
- approved of

what their worker or agent did.

For example:

- A shopkeeper goes abroad for three months and leaves a worker employed by him in charge of the shop. This worker harasses a colleague with a learning disability, by constantly criticising how they do their work. The colleague leaves the job as a result of this unwanted conduct. This could amount to harassment related to disability and the shopkeeper could be responsible for the actions of the worker.
- An employer engages a financial consultant to act on their behalf in dealing with their finances internally and with external bodies, using the employer's headed notepaper. While working on the accounts, the consultant sexually harasses an accounts assistant. The consultant would probably be considered an agent of the employer and the employer is likely to be responsible for the harassment.

However, your employer will not be held legally responsible if they can show that:

- they took **all reasonable steps** to prevent a worker employed by them acting unlawfully
- an agent acted outside the scope of their authority (in other words, that they did something so different from what your employer asked them to do that they could no longer be thought of as acting on your employer's behalf).

How your employer can reduce the risk that they will be held legally responsible

Your employer can reduce the risk that they will be held legally responsible for the behaviour of workers employed by them or their agents if they tell them how to behave so that they avoid unlawful discrimination, harassment or victimisation.

This does not just apply to situations where your employer and their other staff are dealing face-to-face with you, but also to how your employer and the people who work for them plan what happens in your workplace.

When your employer or their workers or agents are planning what happens to you in a work situation, your employer needs to make sure that their decisions, rules or ways of doing things are not:

- **direct discrimination**, or
- **indirect discrimination** that they cannot **objectively justify**, or
- **discrimination arising from disability** that they cannot **objectively justify**, or
- **harassment**,

and that they have made **reasonable adjustments** for you if you are a disabled person.

So it is important for your employer to make sure that their workers and agents know how equality law applies to what they are doing.

When your employer's workers or agents may be personally liable

A worker employed by your employer or your employer's agent may be personally responsible for their own acts of discrimination, harassment or victimisation carried out during their employment or while acting with the employer's authority. This applies where either:

- your employer is also liable as their employer or principal, or
- your employer would be responsible but they show that:
 - they took **all reasonable steps** to prevent their worker discriminating against, harassing or victimising you, or
 - that their agent acted outside the scope of their authority.

For example:

A factory worker racially harasses their colleague. The employer would be liable for the worker's actions, but is able to show that they took all reasonable steps to stop the harassment. The colleague can still claim compensation against the factory worker in an employment tribunal.

But there is an exception to this. A worker or agent will *not* be responsible if their employer or principal has told them that there is nothing wrong with what they are doing and the worker or agent reasonably believes this to be true.

It is a criminal offence, punishable by a fine, for an employer or principal to make a false statement which an employee or agent relies upon to carry out an unlawful act.

What happens if a person instructs someone else to do something that is against equality law

An employer or principal must not instruct, cause or induce a worker employed by them or their agent to discriminate against, harass or victimise another person, or to attempt to do so.

'Causing' or 'inducing' someone to do something can include situations where someone is made to do something or persuaded to do it, even if they were not directly instructed to do it.

Both:

- the person who receives the instruction or is caused or induced to discriminate against, harass or victimise, and
- the person who is on the receiving end of the discrimination, harassment or victimisation

have a claim against the person giving the instructions if they suffer loss or harm as a result of the instructing or causing or inducing of the discrimination, harassment or victimisation.

This applies whether or not the instruction is actually carried out.

What happens if a person helps someone else to do something that is against equality law

A person must not help someone else carry out an act which the person helping knows is unlawful under equality law.

However, if the person helping has been told by the person they help that the act is lawful and they reasonably believe this to be true, they will not be legally responsible.

It is a criminal offence, punishable by a fine, to make a false statement which another person relies on to help to carry out an unlawful act.

What happens if an employer tries to stop equality law applying to a situation

An employer cannot stop equality law applying to a situation if it does in fact apply. For example, there is no point in an employer making a statement in a contract of employment that equality law does not apply. The statement will not have any legal effect. That is, it will not be possible for the employer to enforce or rely on a term in a contract that tries to do this. This is the case even if the other person has stated they have understood the term and/or they have agreed to it.

For example:

- A worker's contract includes a term saying that they cannot bring a claim in an Employment Tribunal. Their employer sexually harasses them. The term in their contract does not stop them bringing a claim for sexual harassment in the Employment Tribunal.
- A business partner's partnership agreement contains a term that says 'equality law does not apply to this agreement'. The partner develops a visual impairment and needs reasonable adjustments to remove barriers to their continuing to do their job. The other partners instead ask them to resign from the partnership. The partner can still bring a claim in the Employment Tribunal for a failure to make reasonable adjustments and unlawful disability discrimination.
- An applicant for a job is told 'equality law does not apply to this business, it is too small'. She still agrees to go to work there. When she becomes pregnant, she is dismissed. She can still bring a claim in the Employment Tribunal for pregnancy discrimination.

3. The employer's duty to make reasonable adjustments to remove barriers for disabled people

Equality law recognises that bringing about equality for disabled people may mean changing the way in which employment is structured, the removal of physical barriers and/or providing extra support for a disabled **worker** or **job applicant**.

This is the **duty to make reasonable adjustments**.

The duty to make reasonable adjustments aims to make sure that as a **disabled person**, you have, as far as is reasonable, the same access to everything that is involved in getting and doing a job as a non-disabled person.

When the duty arises, your **employer** is under a positive and proactive duty to take steps to remove or reduce or prevent the obstacles you face as a disabled worker or job applicant.

The employer only has to make adjustments where they are aware – or should reasonably be aware – that you have a disability.

Many of the adjustments your employer can make will not be particularly expensive, and they are not required to do more than it is reasonable for them to do. What is reasonable depends, among other factors, on the size and nature of your employer's organisation.

If, however,

- you are a disabled worker, and
- you can show that there were barriers your employer should have identified and reasonable adjustments your employer could have made, and
- your employer does nothing,

you can bring a claim against your employer in the Employment Tribunal, and your employer may be ordered to pay you compensation as well as make the reasonable adjustments. A failure to make reasonable adjustments counts as unlawful discrimination. You can read more about what to do if you believe you've been discriminated against in Chapter 4.

In particular, if you are a disabled person, the need to make adjustments for you as a worker or job applicant:

- must not be a reason not to promote you if you are the best person for the job with the adjustments in place
- must not be a reason to dismiss you
- must be considered in relation to every aspect of your job

provided the adjustments are reasonable for your employer to make.

Many factors will be involved in deciding what adjustments to make and they will depend on individual circumstances. Different people will need different changes, even if they appear to have similar impairments.

It is advisable for your employer to discuss the adjustments with you, otherwise any adjustments they make may not be effective.

The rest of this section looks at the detail of the duty and gives examples of the sorts of adjustments your employer could make. It looks at:

- Which disabled people does the duty apply to?
- How can your employer find out if you are a disabled person?
- The three requirements of the duty
- Are you at a substantial disadvantage as a disabled person in that work situation?
- Changes to policies and the way an organisation usually does things
- Dealing with physical barriers
- Providing extra equipment or aids
- Making sure an adjustment is effective
- Who pays for reasonable adjustments?
- What is meant by 'reasonable'

- Reasonable adjustments in practice
- Specific situations
 - Employment services
 - Occupational pensions
- Questions about health or disability

Which disabled people does the duty apply to?

The duty applies to you if you:

- are working for an employer, or
- apply for a job with an employer, or
- tell an employer you are thinking of applying for a job with them.

It applies to all stages and aspects of employment. So, for example, where the duty arises your employer must make reasonable adjustments to disciplinary or dismissal procedures and decisions. It does not matter if you were a disabled person when you began working for them, or if you have become a disabled person while working for them.

The duty may also apply after you have stopped working for an employer.

The duty also applies in relation to **employment services**, with some differences which are explained later in this part of the guide.

Reasonable adjustments may also be required in relation to occupational pension schemes. This is explained later in this part of the guide.

How can your employer find out if you are a disabled person?

Your employer only has to make these changes where they know or could reasonably be expected to know that you are a disabled person and are – or are likely to be – at a substantial disadvantage as a result. This means your employer must do everything they can reasonably be expected to do to find out.

For example:

A worker's performance has recently got worse and they have started being late for work. Previously they had a very good record of punctuality and performance. Rather than just telling them they must improve, their employer talks to them in private. This allows the employer to check whether the change in performance could be for a disability-related reason. The worker says that they are experiencing a recurrence of depression and are not sleeping well which is making them late. Together, the employer and the worker agree to change the worker's hours slightly while they are in this situation and that the worker can ask for help whenever they are finding it difficult to start or complete a task. These are reasonable adjustments.

This does not mean, however, that an employer should be asking intrusive questions or ones that violate your dignity. Employers must still think about privacy and confidentiality in what they ask and how they ask it.

The three requirements of the duty

The duty contains three requirements that apply in situations where a disabled person would otherwise be placed at a **substantial** disadvantage compared with people who are not disabled.

- The first requirement involves changing the way things are done (equality law talks about where the disabled job worker is put at a substantial disadvantage by a **provision, criterion or practice** of their employer).

For example:

An employer has a policy that designated car parking spaces are only offered to senior managers. A worker who is not a manager, but has a mobility impairment and needs to park very close to the office, is given a designated car parking space. This is likely to be a reasonable adjustment to the employer's car parking policy.

- The second requirement involves making changes to overcome barriers created by the **physical features** of a workplace.

For example:

Clear glass doors at the end of a corridor in a particular workplace present a hazard for a visually impaired worker. Adding stick-on signs or other indicators to the doors so that they become more visible is likely to be a reasonable adjustment for the employer to make.

- The third requirement involves providing extra equipment (which equality law calls an **auxiliary aid**) or getting someone to do something to assist you (which equality law calls an **auxiliary service**).

For example:

An employer provides specialist software for a member of staff who develops a visual impairment and whose job involves using a computer.

Each of these requirements is looked at in more detail later in this part of the guide.

Are you at a substantial disadvantage as a disabled person?

The question an employer needs to ask themselves is whether:

- the way they do things
- any **physical feature** of their workplace
- the absence of an auxiliary aid or service

puts you, as a disabled worker or job applicant, at a substantial disadvantage compared with a person who is not disabled.

Anything that is more than minor or trivial is a substantial disadvantage.

If a substantial disadvantage does exist, then the employer must make reasonable adjustments.

The aim of the adjustments the employer makes is to remove or reduce the substantial disadvantage.

But the employer only has to make adjustments that are reasonable for them to make. There is more information about how to work out what is reasonable a bit later in this part of the guide.

Changes to policies and the way an organisation usually does things

The first requirement involves changing the way things are done (equality law talks about where the disabled job worker is put at a substantial disadvantage by a **provision, criterion or practice** of their employer).

This means the employer must look at whether they need to change some written or unwritten policies, and/or some of the ways they usually do things, to remove or reduce **barriers** that would place you at a **substantial** disadvantage, for example, by stopping you working for that employer or applying for a job with that employer or stopping you being fully involved at work.

This includes your employer's processes for deciding who is offered a job, criteria for promotion or training, benefits, working conditions and contractual arrangements.

For example:

- Supervisors in an organisation are usually employed on a full-time basis. The employer agrees to a disabled person whose impairment causes severe fatigue working on a part-time or job share basis. By doing this, the employer is making a reasonable adjustment.
- The design of a particular workplace makes it difficult for a disabled person with a hearing impairment to hear, because the main office is open plan and has hard flooring, so there is a lot of background noise. Their employer agrees that staff meetings should be held in a quieter place that allows that person to fully participate in the meeting. By doing this, the employer is making a reasonable adjustment.

Dealing with physical barriers

The second requirement involves making changes to overcome barriers created by the **physical features** of an employer's workplace.

This means your employer may need to make some changes to their building or premises.

Exactly what kind of change the employer makes will depend on the kind of barriers the premises present to you. The employer will need to consider the whole of their premises. They may have to make more than one change.

Physical features include: steps, stairways, kerbs, exterior surfaces and paving, parking areas, building entrances and exits (including emergency escape routes), internal and external doors, gates, toilet and washing facilities, public facilities (such as telephones, counters or service desks), lighting and ventilation, lifts and escalators, floor coverings, signs, furniture, and temporary or movable items (such as equipment and display racks). Physical features also include the sheer scale of premises (for example, the size of a building). This is not an exhaustive list.

- A physical feature could be something to do with the structure of the actual building itself like steps, changes of level, emergency exits or narrow doorways.
- Or it could be something about the way the building or premises have been fitted out, things like heavy doors, inaccessible toilets or inappropriate lighting.
- It could even be the way things are arranged inside the premises such as fixtures and fittings like shelf heights in storage areas or fixed seating in canteens.

For example:

An employer has recruited a worker who is a wheelchair user and who would have difficulty negotiating her way around the office. In consultation with the new worker, the employer rearranges the layout of furniture in the office. The employer has made reasonable adjustments.

Providing extra equipment or aids

The third requirement of the duty involves providing extra equipment – which equality law calls **auxiliary aids** – and **auxiliary services**, where someone else is used to assist you, such as a reader, a sign language interpreter or a support worker.

This means an employer may need to provide some extra equipment, auxiliary aids or services for you if you work for them or apply for a job with them.

An auxiliary aid or service may make it easier for you to do your job or to participate in an interview or selection process. So the employer should consider whether it is reasonable to provide this.

The kind of equipment or aid will depend very much on:

- you as an individual disabled person and
- the job you are or will be doing or what is involved in the recruitment process.

You may well have experience of what you need, or you and your employer may be able to get expert advice from some of the organisations listed in Chapter 5: *Further sources of information and advice*.

Making sure an adjustment is effective

It may be that several adjustments are required in order to remove or reduce a range of disadvantages and sometimes these will not be obvious to the employer. So your employer should work, as much as possible, with you to identify the kind of disadvantages or problems that you face but also the potential solutions in terms of adjustments.

But even if you don't know what to suggest, your employer must still consider what adjustments may be needed.

For example:

A disabled worker has been absent from work as a result of depression. Neither the worker nor their doctor is able to suggest any adjustments that could be made. Nevertheless the employer should still consider whether any adjustments, such as working from home for a time or changing working hours or offering more day-to-day support, would be reasonable.

You and/or your employer may be able to get expert advice from some of the organisations listed in Chapter 5: *Further sources of information and advice*.

Who pays for reasonable adjustments?

If something is a reasonable adjustment, your employer must pay for it. The cost of an adjustment can be taken into account in deciding if it is reasonable or not.

However, there is a government scheme called Access to Work which can help you if your health or disability affect your work. They help by giving advice and support. Access to Work can also help with extra costs which would not be reasonable for your employer to pay.

For example, Access to Work might pay towards the cost of getting to work if you cannot use public transport, or for assistance with communication at job interviews.

You may be able to get advice and support from Access to Work if you are:

- in a paid job, or
- unemployed and about to start a job, or
- unemployed and about to start a Work Trial, or
- self-employed

and

- your disability or health condition stops you from being able to do parts of your job.

You should make sure your employer knows about Access to Work. Although the advice and support are given to you, your employer will obviously benefit too. Information about Access to Work is in Chapter 5: *Further sources of information and advice*.

What is meant by 'reasonable'

Your employer only has to do what is reasonable.

Various factors influence whether a particular adjustment is considered reasonable. The test of what is reasonable is ultimately an objective test and not simply a matter of what you or your employer may personally think is reasonable.

When deciding whether an adjustment is reasonable an employer can consider:

- how effective the change will be in avoiding the disadvantage you would otherwise experience
- its practicality
- the cost
- their organisation's resources and size
- the availability of financial support.

Your employer's overall aim should be, as far as possible, to remove or reduce any substantial disadvantage faced by you as a worker which would not be faced by a non-disabled person.

Issues your employer can consider:

- Employers are allowed to treat disabled people better or 'more favourably' than non-disabled people and sometimes this may be part of the solution.
- The adjustment must be effective in helping to remove or reduce any disadvantage you are facing. If it doesn't have any impact at all or only a very minor one, then there is no point.
- In reality it may take several different adjustments to deal with that disadvantage but each change must contribute towards this.
- The employer can consider whether an adjustment is practical. The easier an adjustment is, the more likely it is to be reasonable. However, just because something is difficult doesn't mean it can't also be reasonable. The employer needs to balance this against other factors.

- If an adjustment costs little or nothing and is not disruptive, it would be reasonable unless some other factor (such as impracticality or lack of effectiveness) made it unreasonable.
- Your employer's size and resources are another factor. If an adjustment costs a significant amount, it is more likely to be reasonable for your employer to make it if your employer has substantial financial resources. Your employer's resources must be looked at across their whole organisation, not just for the branch or section where you are or would be working. This is an issue which the employer has to balance against the other factors.
- In changing policies, criteria or practices, the employer does not have to change the basic nature of the job, where this would go beyond what is reasonable.
- What is reasonable in one situation may be different from what is reasonable in another situation.
- If they are a larger rather than a smaller organisation, the employer is also more likely to have to make certain adjustments such as redeployment or flexible working patterns which may be easier for an organisation with more staff.
- If advice or support is available, for example, from Access to Work or from another organisation (sometimes charities will help with costs of adjustments), then this is more likely to make the adjustment reasonable.
- If making a particular adjustment would increase the risks to the health and safety of anybody, including yours, then the employer can consider this when making a decision about whether that particular adjustment or solution is reasonable. But the employer's decision must be based on a proper assessment of the potential health and safety risks. The employer should not make assumptions about risks which may face certain disabled workers.

If, taking all of the relevant issues into account, an adjustment is reasonable, then the employer must make it happen.

If you do not agree with them about whether an adjustment is reasonable or not, in the end, only an Employment Tribunal can decide this. You can read more about what to do if you believe you've been discriminated against in Chapter 4. This includes if an employer has failed to make what you believe are reasonable adjustments to remove barriers you are facing.

Providing information in an alternative format

Equality law says that where providing information is involved, the steps which it is reasonable for the employer to take include steps to make sure that the information is provided in an accessible format.

For example:

- A manual worker asks for the health and safety rules to be read onto an audio CD and given to them. This is likely to be a reasonable adjustment that the employer must make.

Reasonable adjustments in practice

Examples of steps it might be reasonable for an employer to have to take include:

- **Making adjustments to premises.**

For example:

An employer makes structural or other physical changes such as widening a doorway, providing a ramp or moving furniture for a wheelchair user; relocates light switches, door handles, or shelves for someone who has difficulty in reaching; or provides appropriate contrast in decor to help the safe mobility of a visually impaired person.

- **Allocating some of your duties to another person.**

For example:

An employer reallocates minor or subsidiary duties to another worker as a disabled worker has difficulty doing them because of their disability. For example, the job involves occasionally going onto the open roof of a building the employer transfers this work away from a worker whose disability involves severe vertigo.

- **Transferring you to fill an existing vacancy.**

For example:

An employer should consider whether a suitable alternative post is available for a worker who becomes disabled (or whose disability worsens), where no reasonable adjustment would enable the worker to continue doing the current job. This might also involve retraining or other reasonable adjustments such as equipment for the new post or a transfer to a position on a higher grade.

- **Altering your hours of working or training.**

For example:

An employer allows a disabled person to work flexible hours to enable them to have additional breaks to overcome fatigue arising from their disability. It could also include permitting part-time working, or different working hours to avoid the need to travel in the rush hour if this is a problem related to an impairment. A phased return to work with a gradual build-up of hours might also be appropriate in some circumstances.

- **Assigning you to a different place of work or training.**

For example:

An employer relocates the work station of a newly disabled worker (who now uses a wheelchair) from an inaccessible third floor office to an accessible one on the ground floor. If the employer operates from more than one workplace, it may be reasonable to move the worker's place of work to other premises of the same employer if the first building is inaccessible and the other premises are not.

- **Allowing you to be absent during working or training hours for rehabilitation, assessment or treatment.**

For example:

An employer allows a disabled person who has recently developed a condition to have more time off work than would be allowed to non-disabled workers to enable them to have rehabilitation. A similar adjustment would be appropriate if a disability worsens or if a disabled worker needs occasional treatment anyway.

- **Giving, or arranging for, training or mentoring (whether for you or for other people). This could be training in particular pieces of equipment which you will be using, or an alteration to the standard workplace training to reflect your particular impairment.**

For example:

- All workers are trained in the use of a particular machine but an employer provides slightly different or longer training for an employee with restricted hand or arm movements, or training in additional software for a visually impaired person so that they can use a computer with speech output.
- An employer provides training for workers on conducting meetings in a way that enables a Deaf staff member to participate effectively.
- A disabled person returns to work after a six-month period of absence due to a stroke. Their employer pays for them to see a work mentor, and allows time off to see the mentor, to help with their loss of confidence following the onset of their disability.

- **Acquiring or modifying equipment.**

For example:

An employer might have to provide special equipment (such as an adapted keyboard for someone with arthritis or a large screen for a visually impaired person), an adapted telephone for someone with a hearing impairment, or other modified equipment for disabled workers (such as longer handles on a machine).

The employer does not have to provide or modify equipment for personal purposes unconnected with your job, such as providing a wheelchair if you need one in any event but do not have one. This is because in this situation the disadvantages you are facing do not flow from things your employer has control over.

- **Modifying instructions or reference manuals.**

For example:

The format of instructions and manuals might need to be modified for some disabled workers (such as being produced in Braille or on audio CD) and instructions for people with learning disabilities might need to be conveyed orally with individual demonstration or in Easy Read.

- **Modifying procedures for testing or assessment.**

For example:

A worker with restricted manual dexterity who was applying for promotion would be disadvantaged by a written test, so the employer gives that person an oral test instead.

- **Providing a reader or interpreter.**

For example:

An employer arranges for a colleague to read hard copy post to a worker with a visual impairment at particular times during the working day. Alternatively, the employer might hire a reader.

- **Providing supervision or other support.**

For example:

An employer provides a support worker or arranges help from a colleague, in appropriate circumstances, for someone whose disability leads to uncertainty or lack of confidence.

- **Allowing you to take a period of disability leave.**

For example:

A worker who has cancer needs to undergo treatment and rehabilitation. Their employer allows a period of disability leave and permits them to return to their job at the end of this period.

- **Participating in supported employment schemes, such as Work step.**

For example:

A person applies for a job as an office assistant after several years of not working because of depression. They have been participating in a supported employment scheme where they saw the job advertised. As a reasonable adjustment the person asks the employer to let them make private phone calls during the working day to a support worker at the scheme.

- **Employing a support worker to assist a disabled worker.**

For example:

An adviser with a visual impairment is sometimes required to make home visits to clients. The employer employs a support worker to assist them on these visits.

- **Modifying disciplinary or grievance procedures.**

For example:

A worker with a learning disability is allowed to take a friend (who does not work with them) to act as an advocate at a meeting with the person's employer about a grievance. Normally the employer allows workers to be accompanied only by work colleagues. The employer also makes sure that the meeting is conducted in a way that does not disadvantage or patronise the disabled worker.

- **Adjusting redundancy selection criteria.**

For example:

A worker with an autoimmune disease has taken several short periods of absence during the year because of the condition. When their employer is taking the absences into account as a criterion for selecting people for redundancy, they discount these periods of disability-related absence.

- **Modifying performance-related pay arrangements.**

For example:

A disabled worker who is paid purely on their output needs frequent short additional breaks during their working day – something their employer agrees to as a reasonable adjustment. It is likely to be a reasonable adjustment for their employer to pay them at an agreed rate (e.g. their average hourly rate) for these breaks.

It may sometimes be necessary for an employer to take a combination of steps.

For example:

A woman who is blind is given a new job with her employer in an unfamiliar part of the building. The employer:

- arranges facilities for her assistance dog in the new area
- arranges for her new instructions to be in Braille, and
- provides disability equality training to all staff.

In some situations, a reasonable adjustment will not work without the co-operation of other workers. Your employer's other staff may therefore have an important role in helping make sure that a reasonable adjustment is carried out in practice. Your employer must make this happen. It is unlikely to be a valid 'defence' to a claim under equality law for a failure to make reasonable adjustments for an employer to argue that an adjustment was unreasonable because other staff were obstructive or unhelpful when the employer tried to make an adjustment happen. The employer would at least need to be able to show that they took all reasonable steps to try and resolve the problem of the attitude of their other staff.

For example:

An employer makes sure that a worker with autism has a structured working day as a reasonable adjustment. As part of the reasonable adjustment, it is the responsibility of the employer to make sure that other workers co-operate with this arrangement.

If you do not want your employer to involve other workers, the employer must not breach your confidentiality by telling them about your situation.

But if you are reluctant for other staff to know about your impairment, and your employer believes that a reasonable adjustment requires the co-operation of your colleagues, it may not be possible for the employer to make the adjustment unless you are prepared for some information to be shared. It does not have to be detailed information, just enough to explain to other staff what they need to do.

Specific situations

Employment services

An **employment service provider** must not unlawfully discriminate against people who are using or want to use its services. There is more information about what this means in the Glossary.

In addition, an employment service provider has a duty to make reasonable adjustments, except when providing a **vocational service**.

For employment service providers, unlike for employers, the duty is 'anticipatory'. If an organisation is an employment service provider, this means they cannot wait until you or another disabled person wants to use their services, but must think in advance (and on an ongoing basis) about what disabled people with a range of **impairments** might reasonably need, such as people who have a visual impairment, a hearing impairment, a mobility impairment, or a learning disability.

For example:

An employment agency makes sure its website is accessible to disabled people and that it can provide information about job opportunities in a range of **alternative formats**. It also makes sure its staff are trained to assist disabled people who approach it to find out about job opportunities.

Occupational pensions

Occupational pension schemes must not unlawfully discriminate against people. There is more information about what this means in the Equality and Human Rights Commission guide: *Your rights to equality at work: pay and benefits*.

In addition, an occupational pension scheme must make reasonable adjustments to any provision, criterion or practice in relation to the scheme which puts you at a **substantial** disadvantage in comparison with people who are not disabled.

For example:

The rules of an employer's final salary scheme provide that the maximum pension receivable is based on the member's salary in the last year of work. Having worked full-time for 20 years, a worker develops a condition which leads them to reduce their working hours two years before their pension age. The scheme's rules put them at a disadvantage as a result of their disability, because their pension will only be calculated on their part-time salary. The trustees decide to convert the worker's part-time salary to its full-time equivalent and make a corresponding reduction in the period of their part-time employment which counts as pensionable. In this way, their full-time earnings will be taken into account. This is likely to be a reasonable adjustment to make.

4. What to do if you believe you've been discriminated against

If you believe you have been **unlawfully discriminated** against by the **employer**, or by a worker employed by them or by their **agent**, what can you do about it? Or if you have applied for a job (or been stopped from applying) and believe you have been unlawfully discriminated against during the application process, what can you do about it?

This part of this guide covers:

- Your choices
- Was what happened against equality law?
- Complaining to the employer:
 - Asking for feedback
 - Making a complaint
 - Monitoring the outcome
- The questions procedure, which you can use to find out more
- Key points about discrimination cases in a work situation:
 - Where claims are brought
 - Time limits for making a claim
 - The standard and burden of proof
 - What the Employment Tribunal can order your employer to do.
- Where to find out more about making a tribunal claim

Read the whole of this part of the guide before you decide what to do, so you know all the options you have.

It is especially important that you work out when the last day is that you can tell the Employment Tribunal about your complaint, so that you don't miss that deadline, even if you are trying to work things out with your employer first.

Your choices

There are three things you can do:

- Ask for feedback
- Complain to the employer.
- Make a claim to the Employment Tribunal.

You do not have to choose only one of these. Instead, you could try them in turn. If you cannot get the employer to put things right, then you can make a claim to the Employment Tribunal.

Just be aware that if you do decide to make a claim to the Employment Tribunal, you need to tell the tribunal about your claim (by filling in a form) within three months (less one day) of what happened.

You do not have to go first to the employer before making a claim to the Employment Tribunal, but there are advantages in doing so, as long as you don't miss the tribunal time-limit if you are going to go ahead.

You should think carefully about whether making a claim to the Employment Tribunal is the right thing for you personally.

Making a claim may be demanding on your time and emotions, and before starting the process you may want to look at whether or not you have a good chance of succeeding. You may also want to see if there are better ways of sorting out your complaint.

Was what happened against equality law?

Write down what happened as soon as you can after it happened, or tell someone else about it so they can write it down. Put in as much detail as you can about who was involved and what was said or done. Remember, the problem will sometimes be that something was not done.

For example:

- If you are a disabled person and you asked for a **reasonable adjustment** which was not made.
- If someone did not change a decision they had made or stop applying a rule or way of doing things and this had a worse impact on you and other people with the same protected characteristic (**indirect discrimination**).

Read the rest of this guide. Does what happened sound like any of the things we say a person or organisation must or must not do?

Sometimes it is difficult to work out if what happened is against equality law. You need to show that your protected characteristics played a part in what happened. The rest of this guide tells you more about what this means for the different types of unlawful discrimination or for harassment or victimisation.

If you think you need more information from the person or organisation before deciding what to do, then you can use the questions procedure, which we explain at page 72.

If you feel you need to get more advice on whether what happened was against equality law, you will find information on places where you can get help in Chapter 5: *Further sources of information and advice*.

Is your complaint about equality law or is it about another sort of problem at work?

This guide focuses on making a complaint about something that is against equality law.

You may have a complaint about the way the recruitment process was handled which is not related to a **protected characteristic**.

Sometimes it is difficult to work out which laws (if any) apply to a situation.

If you are not sure what to do, you can get advice about your situation from other organisations, particularly the Arbitration and Conciliation Service (Acas) or Citizens Advice or your trade union. Contact details for these and other organisations who may be able to help you are in Chapter 5: *Further sources of information and advice*.

Asking for feedback

Your complaint may be about the way the recruitment process was handled or it may be about the decision not to offer you a job. Some employers explicitly offer feedback for rejected job applicants, especially after the interview stage. Whether or not such feedback was offered, as a first step you could write to the employer and ask for some written feedback about why your job application failed. If you do not get much information back from this informal approach, you can try sending a questionnaire. This is explained below. Make sure you do not miss the tribunal time-limit for bringing a claim while you are awaiting for a reply.

Making a complaint

You can write to the employer making a complaint about the way you were treated during the selection process or about the decision not to choose you for the job. Hopefully you will receive a written response which gives you some idea about what the employer will say about your treatment. If you do not get a reply or there is a long delay, make sure you do not miss the tribunal time-limits for bringing a claim if that is what you want to do.

Monitoring the outcome

Whether the employer decides that there has been unlawful discrimination or not, you must not be treated badly for having complained. For example, if the employer decided that you would not be shortlisted or offered a job if you ever applied for a post with that organisation again, this may be **victimisation**.

If you are not satisfied with what has happened you could bring a claim in the Employment Tribunal. This is explained in the next part of this guide.

The questions procedure

If you think you may have been unlawfully discriminated against, then you can get information from the employer to help you decide if you have a valid claim or not.

There is a set form to help you do this which you can [access](http://www.equalities.gov.uk/news/equality_act_2010_forms_for_ob.aspx) at: http://www.equalities.gov.uk/news/equality_act_2010_forms_for_ob.aspx, but your questions will still count even if you do not use the form, so long as you use the same questions. The form is sometimes called a 'questionnaire'.

If you send the questions to the employer, they are not legally required to reply to the request, or to answer the questions, but it may harm their case in the Employment Tribunal if they do not.

The questions and the answers can form part of the evidence in a case brought under the Equality Act 2010 (in other words, the law explained in this guide).

You can send the employer the questions before you make your claim to the Employment Tribunal, or at the same time, or after you have sent your claim.

If it is before, then you must send the questions to the employer so that they receive them within three months of what you believe was the unlawful discrimination.

If you have already sent your claim to the Employment Tribunal, then you must send the questions to the employer so that they receive them within 28 days of your claim being sent to the Employment Tribunal.

If the employer does not respond to the questionnaire within eight weeks of your sending it to them, the Employment Tribunal can take that into account when making its decision. The Employment Tribunal can also take into account answers which are evasive or unclear.

- There is an exception to this. The Employment Tribunal cannot take the failure to answer into account if a person or organisation states that to give an answer could prejudice criminal proceedings and this is reasonable. Most of the time, breaking

equality law only leads to a claim in a civil tribunal or court. Occasionally, breaking equality law can be punished by the criminal courts. In that situation, the person or organisation may be able to refuse to answer the questions, if in answering they might incriminate themselves and it is reasonable for them not to answer. If your employer says this applies to them, you should get more advice on what to do.

If you send the employer the questions, the employer must not treat you badly, eg in respect of future job applications, because you have done this. If your employer did, it would almost certainly be **victimisation**.

Key points about discrimination cases in a work situation

The key points this guide explains are:

- Where claims are brought
- Time limits for bringing a claim
- The standard and burden of proof
- What the Employment Tribunal can order your employer to do
- Settling a dispute.

Where claims are brought

An Employment Tribunal can decide a complaint involving unlawful discrimination in a work situation.

Employment Tribunals can also decide cases about:

- Collective agreements, which can cover any terms of employment, such as pay or other benefits or working conditions.
- Equal pay and occupational pensions cases, which you can read more about in the Equality and Human Rights Commission guide: *Your rights to equality at work: pay and benefits*.
- Requirements an employer places on someone to discriminate against people as part of their job, for example, if someone works in a shop, telling them not to serve customers with a particular protected characteristic.

If you want to complain about questions being asked about your health or disability when you were applying for a job, you can bring a claim in the Employment Tribunal if you

believe you were discriminated against because of disability, or for a reason connected with your disability and it relates to the answers you gave to those questions.

For example:

A job applicant who is a disabled person is asked questions about their health and disability during their interview. They do not get the job. They believe this is because of the answers they gave to the questions. They can bring a claim in the Employment Tribunal.

You cannot bring a case against the employer just for asking the questions if these had no impact on you personally, for example, if it is clear why you did not get the job and this does not relate to the answers you gave to those questions. Of course, if other unlawful discrimination happened, you can still bring a case.

Only the Equality and Human Rights Commission can take up the wider case (in the County Court in England or Wales, and the Sheriff Court in Scotland) to challenge the employer just for asking the questions if no individual was unlawfully discriminated against.

If you are a member of the armed services, you can only bring your complaint to the Employment Tribunal after your **service complaint** has been decided.

Time limits for bringing a claim

You must bring your claim within three months (less one day) of the claimed unlawful discrimination taking place.

For example:

An employer unlawfully discriminates against a worker. The discrimination took place on 5 May. The worker must tell the Employment Tribunal about their claim using the proper form by 4 August at the latest.

There are two situations where this is slightly different:

- in equal pay cases, different time limits apply – see the Equality and Human Rights Commission guide: *Your rights to equality at work: pay and benefits*, and
- for cases involving the armed forces, the time limit is six months (less one day).

If you bring your a claim after the date has passed, it is up to the Employment Tribunal to decide whether it is fair to everyone concerned, including both you and the employer, to allow your claim to be brought later than this.

Do not assume they will allow you to bring a late claim. They may not, in which case, you will have lost any chance to get the situation put right by the Employment Tribunal.

When a claim concerns something that was not a one-off incident, but which has happened over a period of time, the time limit starts when the period has ended.

If you are complaining about a failure to do something, for example, a failure to make **reasonable adjustments**, then the three months begins when the employer made a decision not to do it.

If there is no solid evidence of when they made a decision, then the decision is assumed to have been made either:

- when the person who failed to do the thing does something else which shows they don't intend to do it, or
- at the end of the time when they might reasonably have been expected to do the thing.

For example:

A visually impaired job applicant hears about a job and asks the employer to send the application pack recorded on an audio tape. The employer does not refuse to do this, but just doesn't get around to doing it. Once the closing date for applications has passed, the employer clearly does not intend to send the tape. The applicant should probably count the three months from the day before the closing date, which is the last day when the employer could have ensured the tape got to the applicant in time to apply.

A tribunal can hear a claim if it is brought outside the time limit if the tribunal thinks that it would be 'just and equitable' (fair to both sides) for it to do this.

The standard and burden of proof

The standard of proof in discrimination cases is the usual one in civil (non-criminal) cases. Each side must try to prove the facts of their case are true on the balance of probabilities, in other words, that it is more likely than not in the view of the tribunal that their version of events is true.

If you are claiming unlawful discrimination, harassment or victimisation against the employer, then the burden of proof begins with you. There are two situations in which the burden of proof will shift onto the employer:

1. If you prove enough facts from which the tribunal can decide, without any other explanation, that the discrimination, harassment or victimisation has taken place, or

2. If your complaint is that you have not been offered a job because the employer found out about your disability having asked questions which they were not allowed to ask under the rules against **pre-employment health or disability enquiries**.

In either of these situations, the burden then shifts onto the employer to show that they or someone for whose actions or omissions they were responsible did not discriminate against, harass or victimise you.

What the Employment Tribunal can order the employer to do

If you win your case, the tribunal can order what is called a 'remedy'.

The main remedies available to the Employment Tribunal are to:

- Make a declaration that your employer has discriminated.
- Award compensation to be paid for the financial loss you have suffered (for example, loss of earnings), and damages for injury to your feelings.
- Make a recommendation, requiring your employer to do something specific within a certain time to remove or reduce the bad effects which the claim has shown to exist on the individual.

For example:

Providing a reference or reinstating you to your job, if the tribunal thinks this would work despite the previous history.

The Employment Tribunal can also make a recommendation requiring your employer to do something specific within a certain time to remove or reduce the bad effects which the claim has shown to exist on the wider workforce (although not in equal pay cases). This might be particularly applicable where you have already left that employer so any individual recommendation would be pointless.

For example:

- introducing an equal opportunities policy
- ensuring its harassment policy is more effectively implemented
- setting up a review panel to deal with equal opportunities and harassment/grievance procedures
- re-training staff, or

- making public the selection criteria used for transfer or promotion of staff.

If your employer does not do what they have been told to do in a recommendation relating to you, the tribunal may order them to pay you compensation, or an increased amount of compensation, instead.

In cases of **indirect discrimination**, if your employer can prove that they did not intend what they did to be discriminatory, the tribunal must consider all of the remedies before looking at damages.

The tribunal can also order your employer to pay your legal costs and expenses, although this does not often happen in Employment Tribunal cases.

Settling a dispute

Taking legal proceedings can be a stressful and time consuming experience. It may be in your best interest to try to settle your dispute i.e. reach an agreement with your employer where possible to avoid going to an employment tribunal hearing (or the court where the case relates to an occupational pension scheme). There are three ways in which you can settle a dispute:

- Agreement between you and the employer
- Acas conciliation service
- Qualifying compromise agreement.

Agreement between you and the employer

Before you issue a claim in the employment tribunal, you can agree to settle a dispute directly with your employer. An agreement to settle a dispute can include any terms that you agree with the employer and can cover compensation, future actions by the employer and other lawful matters.

Example

A worker raises a grievance with her employers alleging a failure to make reasonable adjustments. The employer investigates the worker's complaint and upholds her grievance. The employer agrees with the worker to put the reasonable adjustments in place and offers her a written apology, which she accepts.

Acas

You may also seek assistance from Acas which offers a conciliation service for parties in dispute, whether or not you have already made a claim to an employment tribunal.

Example

A worker raises a grievance with her employer alleging sex discrimination. The employer dismisses her grievance. She makes a claim to the tribunal but before the hearing she seeks assistance from Acas to conciliate in the dispute. As a result of the conciliation, the worker and her employer agree to settle the claim on terms which are agreeable to both of them.

Qualifying compromise agreement

A worker can also settle a claim or potential claim to the employment tribunal by way of a 'qualifying compromise contract'. There are specific conditions which you must satisfy if you choose to settle your claim in this way:

- the agreement must be in writing
- the conditions in the agreement must be tailored to the circumstances of the claim
- you must have received legal advice about the terms of the agreement from an independent advisor who is insured against the risk of a claim arising from that advice
- the person who provides you with independent legal advice on the compromise agreement must be a lawyer; a trade union representative with written authority from the trade union or an advice centre worker with written authority from the centre to give this advice;.

If you are represented by a legal advisor in relation to a claim and you subsequently settle it through a compromise agreement, the same advisor can also advise you on the compromise agreement.

Where to find out more about making a tribunal claim

You can find out more about how to bring an Employment Tribunal case against your employer from the Employment Tribunal itself. They have information that tells you how to fill in the right form, and what to expect once you have made a claim.

This applies to England, Scotland and Wales, although occasionally tribunal procedures themselves are different in England and Wales and in Scotland.

You can find contact details for the Employment Tribunal in Chapter 5: *Further sources of information and advice*.

5. Further sources of information and advice

Equality and Human Rights Commission: The Equality and Human Rights Commission is the independent advocate for equality and human rights in Britain. It aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights. The Equality and Human Rights Commission helplines advise both individuals and organisations such as employers and service providers.

Website: www.equalityhumanrights.com

Helpline – England

Email: info@equalityhumanrights.com

Telephone: 0845 604 6610

Textphone: 0845 604 6620

Fax: 0845 604 6630

08:00–18:00 Monday to Friday

Helpline – Wales

Email: wales@equalityhumanrights.com

Telephone: 0845 604 8810

Textphone: 0845 604 8820

Fax: 0845 604 8830

08:00–18:00 Monday to Friday

Helpline – Scotland

Email: scotland@equalityhumanrights.com

Telephone: 0845 604 5510

Textphone: 0845 604 5520

Fax: 0845 604 5530

08:00–18:00 Monday to Friday

Acas – The Independent Advisory, Conciliation and Arbitration Service:

Acas aims to improve organisations and working life through better employment relations. It provides impartial advice, training, information and a range of problem resolution services.

Website: www.acas.org.uk

Telephone: 08457 47 47 47 (Monday–Friday: 08:00–20:00; Saturday: 09:00–13:00)

Access to Work:

Access to Work can help disabled people or their employers if their condition or disability affects the ease by which they can carry out their job or gain employment. It gives advice and support with extra costs which may arise because of certain needs.

Website:

www.direct.gov.uk/en/disabledpeople/employmentsupport/worksschemesandprogrammes

London, East England and South East England:

Telephone: 020 8426 3110

Email: **atwosu.london@jobcentreplus.gsi.gov.uk**

Wales, South West England, West Midlands and East Midlands:

Telephone: 02920 423 29

Email: **atwosu.cardiff@jobcentreplus.gsi.gov.uk**

Scotland, North West England, North East England and Yorkshire and Humberside:

Telephone: 0141 950 5327

Email: **atwosu.glasgow@jobcentreplus.gsi.gov.uk**

Advicenow:

An independent, not-for-profit website providing accurate, up-to-date information on rights and legal issues.

Website: **<http://www.advicenow.org.uk/>**

Advice UK:

A UK network of advice-providing organisations. They do not give out advice themselves, but the website has a directory of advice-giving agencies.

Website: **www.adviceuk.org.uk**

Telephone: 020 7469 5700

Fax: 020 7469 5701

Email: **mail@adviceuk.org.uk**

Association of Disabled Professionals (ADP):

The ADP website offers advice, support, resources and general information for disabled professionals, entrepreneurs and employers.

Website: **www.adp.org.uk**

Telephone: 01204 431638 (answerphone only service)

Fax: 01204 431638

Email: **info@adp.org.uk**

Carers UK:

The voice of carers. Carers provide unpaid care by looking after an ill, frail or disabled family member, friend or partner.

England

Website: www.carersuk.org

Telephone: 020 7378 4999

Email: info@carersuk.org

Scotland

Website: www.carerscotland.org

Telephone: 0141 445 3070

Email: info@carerscotland.org

Wales

Website: www.carerswales.org

Telephone: 029 2081 1370

Email: info@carerswales.org

ChildcareLink:

ChildcareLink provides details of local childcare providers for employees and employers, as well as general information about childcare.

Website: www.childcarelink.gov.uk

Telephone: 0800 2346 346

Citizens Advice:

Citizens Advice Bureaux provide free, confidential and independent advice in England and Wales. Advice is available face-to-face and by telephone. Most bureaux offer home visits and some also provide email advice. To receive advice, contact your local Citizens Advice Bureau, which you can find by visiting the website.

Website: www.citizensadvice.org.uk

Telephone: (admin only) 020 7833 2181

Fax: (admin only) 020 7833 4371

The Adviceguide website is the main public information service of Citizens Advice. It covers England, Scotland and Wales.

Website: www.adviceguide.org.uk/

Citizens Advice Scotland:

Citizens Advice Scotland is the umbrella organisation for bureaux in Scotland. They do not offer advice directly but can provide information on Scottish bureaux.

Website: **www.cas.org.uk**

Community Legal Advice:

Community Legal Advice offers free, independent and confidential legal advice in England and Wales.

Website: **www.communitylegaladvice.org.uk**

Telephone: 0845 345 4 345

Directgov:

Directgov is the UK government's digital service for people in England and Wales. It delivers information and practical advice about public services, bringing them all together in one place.

Website: **www.direct.gov.uk**

Disability Law Service (DLS):

The DLS is a national charity providing information and advice to disabled and Deaf people. It covers a wide range of topics including discrimination, consumer issues, education and employment.

Website: **www.dls.org.uk**

Telephone: 020 7791 9800

Minicom: 020 7791 9801

Gender Identity Research and Education Society (GIRES):

GIRES provides a wide range of information and training for Trans people, their families and professionals who care for them.

Website: **www.gires.org.uk**

Telephone: 01372 801 554

Fax: 01372 272 297

Email: **info@gires.org.uk**

Government Equalities Office (GEO):

The GEO is the Government department responsible for equalities legislation and policy in the UK.

Website: **www.equalities.gov.uk**

Telephone: 0303 444 0000

Law Centres Federation:

The Law Centres Federation is the national co-ordinating organisation for a network of community-based law centres. Law centres provide free and independent specialist legal advice and representation to people who live or work in their catchment areas. The Federation does not itself provide legal advice, but can provide details of your nearest law centre.

Website: **www.lawcentres.org.uk**

Telephone: 020 7842 0720

Fax: 020 7842 0721

Email: **info@lawcentres.org.uk**

The Law Society:

The Law Society is the representative organisation for solicitors in England and Wales. Their website has an online directory of law firms and solicitors. You can also call their enquiry line for help in finding a solicitor. They do not provide legal advice.

Website: **www.lawsociety.org.uk**

Telephone: 020 7242 1222 (general enquiries)

They also have a Wales office:

Telephone: 029 2064 5254

Fax: 029 2022 5944

Email: **wales@lawsociety.org.uk**

Scottish Association of Law Centres (SALC):

SALC represents law centres across Scotland.

Website: **www.scotlawcentres.blogspot.com**

Telephone: 0141 561 7266

Mindful Employer:

Mindful Employer provides information, advice and practical support for people whose mental health affects their ability to find or remain in employment, training, education and voluntary work.

Website: www.mindfulemployer.net

Telephone: 01392 208 833

Email: info@mindfulemployer.net

NHS Carers Direct:

NHS Carers Direct gives information about carers' rights in employment and beyond, as well as the services available to them.

Website: www.nhs.uk/carersdirect

Telephone: 0808 802 0202

The Office of the Pensions Advisory Service (OPAS):

OPAS provides free advice on pensions including help with problems.

Website: www.opas.org.uk

Telephone: 0845 601 2923

Email: enquiries@opas.org.uk

Pay and Work Rights Helpline:

The Pay and Work Rights Helpline provides advice on government enforced employment rights.

Website: www.payandworkrightscampaign.direct.gov.uk/index.html

Telephone: 0800 917 2368

People First Ltd:

People First is a charity run by and for people with learning difficulties. It provides information on self advocacy and provides training and consultancy for organisations and employers.

Website: www.peoplefirstltd.com

Telephone: 020 7820 6655

Email: general@peoplefirstltd.com

Press for Change (PfC):

PfC is a political lobbying and educational organisation. It campaigns to achieve equality and human rights for all Trans people in the United Kingdom, through legislation and social change. It provides a free legal advice service for Trans people.

Telephone: 0161 432 1915 (10:00–17:00, Thursdays only until further notice)

Website: www.transequality.co.uk / www.pfc.org.uk

Email: transequality@pfc.org.uk

Sainsbury Centre for Mental Health:

The Sainsbury Centre for Mental Health works to improve the quality of life for people with mental health conditions. They carry out research, policy work and analysis to improve practice and influence policy in mental health as well as public services.

Website: **www.scmh.org.uk**

Telephone: 020 7827 8300

Email: **contact@scmh.org.uk**

Stonewall:

Stonewall is the UK's leading lesbian, gay and bisexual charity and carries out campaigning, lobbying and research work as well as providing a free information service for individuals, organisations and employers.

Website: **www.stonewall.org.uk**

Telephone: 08000 50 20 20

Email: **info@stonewall.org.uk**

TUC – the Trades Union Congress (England and Wales):

With 59 member unions representing over six and a half million working people, the TUC campaigns for a fair deal at work and for social justice at home and abroad.

Website: **www.tuc.org.uk**

Telephone: 020 7636 4030

Scottish Trades Union Congress (STUC):

Website: **www.stuc.org.uk**

Telephone: 0141 337 8100

Email: **info@stuc.org.uk**

Working Families:

Working Families is a work–life balance organisation, helping children, working parents and carers and their employers find a better balance between responsibilities at home and work.

Website: **www.workingfamilies.org.uk**

Telephone: 0800 013 0313

Email: **office@workingfamilies.org.uk**

WorkSMART:

WorkSMART aims to help everyone at work – whether or not they are union members – to get a good deal from their working life. Available to help when things go wrong at work or simply to give help for planning for the future. Website: **www.worksmart.org.uk**

6. Glossary

accessible venue	A building designed and/or altered to ensure that people, including disabled people, can enter and move round freely and access its events and facilities.
Act	A law or piece of legislation passed by both Houses of Parliament and agreed to by the Crown, which then becomes part of statutory law (ie is <i>enacted</i>).
affirmative action	Positive steps taken to increase the participation of under-represented groups in the workplace. It may encompass such terms as positive action and positive discrimination. The term, which originates from the United States of America, is not used in the Equality Act.
age	This refers to a person belonging to a particular age group, which can mean people of the same age (e.g. 32-year-olds) or range of ages (e.g. 18–30-year-olds, 'middle-aged people' or people over 50).
agent	A person who has authority to act on behalf of another ('the principal') but who is not an employee or worker employed by the employer.
alternative format	Media formats which are accessible to disabled people with specific impairments, for example Braille, audio description, subtitles and Easy Read.
armed forces	Refers to military service personnel.
associated with	This is used in a situation where the reason a job applicant or worker is discriminated against is not because they have a particular protected characteristic, but because they are 'associated with' another person who has that protected characteristic, eg the other person is their friend or relative. For example, an employer decides not to recruit a non-disabled worker because they have a disabled child. This is sometimes referred to as discrimination 'by association'.

association, by	As in 'discrimination by association'. See associated with .
auxiliary aid	Usually a special piece of equipment to improve accessibility.
auxiliary service	A service to improve access to something often involving the provision of a helper/assistant.
barriers	In this guide, this term refers to obstacles which get in the way of equality for disabled workers and other workers put at a disadvantage because of their protected characteristics. Unless explicitly stated, 'barriers' does not exclusively mean physical barriers. For more on barriers in relation to disabled workers, see duty to make reasonable adjustments .
Bill	A draft Act, not passed by Parliament.
burden of proof	This refers to whether, in an Employment Tribunal, it is for the worker to prove that discrimination occurred or it is for the employer to disprove it. Broadly speaking, a worker must prove facts which, if unexplained, indicate discrimination. The burden of proof then shifts to the employer to prove there was no discrimination. If the employer cannot then prove that no discrimination was involved, the worker will win their case.
charity	A body (whether corporate or not) which is for a statutory charitable purpose that provides a benefit to the public.
Code of Practice	A statutory guidance document which must be taken into account by courts and tribunals when applying the law and which may assist people to understand and comply with the law.
comparator	Direct discrimination occurs when an employer treats a job applicant or worker less favourably than they treat or would treat another worker in similar circumstances because of a protected characteristic. The worker with whom the job applicant or worker compares their treatment is called a 'comparator'. Sometimes there is no actual comparator, but the worker can still claim that another worker without their protected characteristic

would have been treated better by the employer. This is a 'hypothetical' comparator.

contract worker

Under the Equality Act, this has a special meaning. It means a person who is sent by their employer to do work for someone else (the 'principal'), under a contract between the employer and the principal. For example, a person employed by an agency to work for someone else ('an end-user') or a person employed by a privatised company to work on contracted out services for a public authority, may be a contract worker. The Equality Act makes it unlawful for the principal to discriminate against the contract worker.

data protection

Safeguards concerning personal data are provided for by statute, mainly the Data Protection Act 1998.

direct discrimination

Less favourable treatment of a person compared with another person because of a protected characteristic. This may be their own protected characteristic, or a protected characteristic of someone else, eg someone with whom they are **associated**. It is also direct discrimination to treat someone less favourably because the employer wrongly perceives them to have a protected characteristic.

disability

A person has a disability if they have a physical or mental impairment which has a **substantial** and long-term adverse effect on that person's ability to carry out normal day-to-day activities.

disabled person

Someone who has a physical or mental impairment that has a **substantial** and long-term adverse effect on their ability to carry out normal day-to-day activities.

disadvantage

A detriment or impediment – something that the individual affected might reasonably consider changes their position for the worse.

discrimination arising from disability

When a person is treated unfavourably because of something arising in consequence of their disability, eg an employer dismisses a worker because of the length of time they have been on sick leave. The reason the worker has been off sick is because of their disability. If it is **objectively justifiable** to treat a person

unfavourably because of something arising from their disability, then the treatment will not be unlawful. It is unlikely to be justifiable if the employer has not first made any **reasonable adjustments**.

disproportionately low

Refers to situations where people with a protected characteristic are under-represented compared to their numbers in the population or in the relevant workplace.

diversity

This tends to be used to refer to a group of people with many different types of protected characteristic, eg people of all ages, religions, ethnic background etc.

duty to make reasonable adjustments

This duty arises where
(1) a physical feature of the workplace or
(2) a provision, criterion or practice applied by an employer puts a disabled worker or job applicant at a **substantial** disadvantage in comparison with people who are not disabled. It also applies where a worker or job applicant would be put at a substantial disadvantage but for the provision of an auxiliary aid. The employer has a duty to take reasonable steps to avoid that disadvantage by (i) changing provisions, criteria or practices, (ii) altering, removing or providing a reasonable alternative means of avoiding physical features, and (iii) providing auxiliary aids. In many situations, an employer must treat the disabled worker or job applicant more favourably than others as part of the reasonable adjustment. More detail of the law and examples of reasonable adjustments are set out in sub-section 3 of this guide.

educational establishments

Schools, colleges and higher educational institutions.

employee

In this guide, the word 'employee' is used only to refer to the definition in the Employment Rights Act 1996, ie a person who works under a contract of employment. This definition is fairly limited. It is only employees in this sense who have certain rights, eg to have a written statement of employment particulars; to use the formal procedure to request flexible working; and to claim unfair dismissal.

The Equality Act uses the word 'employee' more widely,

to include a person working on a contract of employment or a contract of apprenticeship or a contract personally to do work; or a person who carries out work for the Crown or a relevant member of the Houses of Parliament staff. To avoid confusion with the narrower definition of 'employee' applicable under the Employment Rights Act, this guide refers to someone in this wider category of workers covered by equality law as a 'worker'. See **worker**.

employer

A person who makes work available under a contract of employment, a contract of service, a contract of apprenticeship, the Crown or a relevant member of the Houses of Parliament staff.

employment service provider

A person who provides vocational training and guidance, careers services and may supply employers with workers.

employment services

Vocational training and guidance, finding employment for people, supplying employers with workers.

Employment Tribunal

Cases of discrimination in work situations (as well as unfair dismissal and most other employment law claims) are heard by Employment Tribunals. A full Hearing is usually handled by a three person panel – a Judge and two non-legal members.

equal pay audit

An exercise to compare the pay of women and men who are doing equal work in an organisation, and investigate the causes of any pay gaps identified; also known as an 'equal pay review'. The provisions in the Equality Act directly relating to equal pay refer to sex equality but an equal pay audit could be applied to other protected characteristics to help an employer equality proof their business.

equal work

A woman's work is equal to a man's in the same employment (and vice versa) if it is the same or broadly similar (like work); rated as equivalent to his work under a job evaluation scheme or if she can show that her work is of equal value to his in terms of the demands made of her.

equality clause	A sex equality clause is read into a person's contract of employment so that where there is a term which is less favourable than that enjoyed by someone of the opposite sex doing equal work, that term will be modified to provide equal terms.
equality policy	A statement of an organisation's commitment to the principle of equality of opportunity in the workplace.
equality training	Training on equality law and effective equality practice.
ET	Abbreviation for Employment Tribunal .
exceptions	Where, in specified circumstances, a provision of the Act does not apply.
flexible working	Alternative work patterns, such as working different hours or at home, including to accommodate disability or childcare commitments. See also right to request flexible working .
gender reassignment	The process of changing or transitioning from one gender to another. The Equality Act prohibits discrimination against a person who is proposing to undergo, is undergoing or has undergone a process, or part of a process, for the purpose of reassigning their sex. See also transsexual person.
gender recognition certificate	A certificate issued under the Gender Recognition Act to a transsexual person who has, or has had gender dysphoria, has lived in the acquired gender throughout the preceding two years, and intends to continue to live in the acquired gender until death.
guaranteed interview scheme	This is a scheme for disabled people which means that an applicant will be invited for interview if they meet the essential specified requirements of the job.
harass	To behave towards someone in a way that violates their dignity, or creates a degrading, humiliating, hostile, intimidating or offensive environment for them.
harassment	Unwanted behaviour that has the purpose or effect of violating a person's dignity or creates a degrading,

	humiliating, hostile, intimidating or offensive environment for them. <i>See also</i> sexual harassment .
impairment	A functional limitation which may lead to a person being defined as disabled according to the definition under the Act. <i>See also</i> disability .
indirect discrimination	Where an employer applies (or would apply) an apparently neutral practice, provision or criterion which puts people with a particular protected characteristic at a disadvantage compared with others who do not share that characteristic, unless applying the practice, provision or criterion can be objectively justified by the employer.
instruction to discriminate	When someone who is in a position to do so instructs another to discriminate against a third party. For example, if a GP instructed their receptionist not to register anyone who might need help from an interpreter, this would amount to an instruction to discriminate.
job evaluation scheme	See job evaluation study
job evaluation study	This is a study undertaken to assess the relative value of different jobs in an organisation, using factors such as effort, skill and decision-making. This can establish whether the work done by a woman and a man is equal, for equal pay purposes. <i>See also</i> equal work .
judicial review	A procedure by which the High Court supervises the exercise of public authority power to ensure that it remains within the bounds of what is lawful.
less favourably	Worse – so ‘less favourable treatment’ means the same as ‘worse treatment’.
liability	Legal responsibility. An employer is legally responsible for discrimination carried out by workers employed by you or by your agents, unless you have taken all reasonable preventative steps.
like work	See equal work .
marriage and civil partnership	Marriage is defined as a 'union between a man and a woman'. Same-sex couples can have their relationships

legally recognised as 'civil partnerships'. Civil partners must not be treated less favourably than married couples.

maternity

See **pregnancy and maternity**.

maternity leave

Leave which a woman can take whilst she is pregnant and after the birth of her child. Statutory maternity leave is divided into compulsory, ordinary and additional maternity leave. How much leave a woman is entitled to, and how much of it is paid, will vary, but all women employees are entitled to 52 weeks.

monitoring

Monitoring for equality data to check if people with protected characteristics are participating and being treated equally. For example, monitoring the representation of women, or disabled people, in the workforce or at senior levels within organisations.

monitoring form

A form which organisations use to collect equality monitoring data – from, for example, job applicants or service users. It records information about a person's sex, age, disability, race, religion, or sexual orientation. It is kept separately from any identifying information about the person.

more favourably

To treat somebody better than someone else. This is unlawful under the Act if it is because of a protected characteristic except in very limited circumstances. The law requires an employer to make reasonable adjustments for a disabled person to remove any disadvantage caused by their disability, and this often *requires* treating them more favourably. An employer can also *chose* to treat a disabled worker more favourably in other ways, eg by automatically shortlisting them for a job, even if they are not at a particular disadvantage on the relevant occasion. The law can also require pregnant workers to be treated more favourably in some circumstances.

national security

The security of the nation and its protection from external and internal threats, particularly from activities such as terrorism and threats from other nations.

normal retirement age	This is the retirement age at which, in practice, employees in a particular job and workplace would normally expect to retire. Normal retirement age can differ from the contractual retirement age. If it is under 65, it must be objectively justified.
objective justification	See objectively justified .
objectively justified	This phrase is a shorthand way of referring to the legal test of objective justification, ie that the employer's treatment of the worker must be a proportionate means of achieving a legitimate aim. The Act uses this test in several situations. For example, once a worker has proved that the employer has treated them unfavourably because of something arising from their disability, or that the employer has indirectly discriminated against them or that the employer has directly discriminated against them because of age, the employer can defend the claim by proving their treatment (i) is in order to achieve a legitimate aim, and (ii) is proportionate, ie appropriate and necessary. If there is a less discriminatory way of achieving the same aim, it should be adopted. See also proportionate .
occupational health	Occupational health has no legal meaning in the context of the Equality Act, but it can be used to refer to the ongoing maintenance and promotion of physical, mental and social wellbeing for all workers. The phrase is often used as a shorthand way of referring to occupational health services provided by the employer.
occupational health practitioner	A health professional providing occupational health services.
occupational health service	This usually refers to doctors or nurses employed in-house by an employer or through an external provider who the employer may ask to see workers and give medical advice on their health when workplace issues arise.
occupational pension	A pension which an employee may receive after retirement as a contractual benefit.

occupational requirement	An employer can discriminate against a worker in very limited circumstances where it is an 'occupational requirement' to have a particular protected characteristic and the application of the requirement is objectively justified . There are two particular occupational requirement exceptions where employment is for the purposes of an organised religion or the employer has an ethos based on religion or belief, but very specific requirements need to be fulfilled.
office-holders	There are personal and public offices. A personal office is a remunerated office or post to which a person is appointed personally under the direction of someone else. A person is appointed to a public office by a member of the government, or the appointment is recommended by them, or the appointment can be made on the recommendation or with the approval of both Houses of Parliament, the Scottish Parliament or the National Assembly for Wales.
palantypist	Also known as 'Speech to Text Reporter'. A palantypist reproduces speech into a text format onto a computer screen at verbatim speeds for Deaf or hard of hearing people to read.
past disability	A person who has had a disability as defined by the Equality Act.
perception	This refers to a belief that someone has a protected characteristic, whether or not they do have it. Discrimination because of a perceived protected characteristic is unlawful. The idea of discrimination because of perception is not explicitly referred to in the Equality Act, but it is incorporated because of the way the definition of direct discrimination is worded.
physical barriers	A physical feature of a building or premises which places disabled people at a substantial disadvantage compared to non-disabled people when accessing goods, facilities and services or employment. See <i>also</i> physical features .
physical features	Anything that forms part of the design or construction of a place of work, including any fixtures, such as doors,

stairs etc. Physical features do not include furniture, furnishings, materials, equipment or other chattels in or on the premises.

positive action

If an employer reasonably thinks that people sharing a certain protected characteristic suffer a disadvantage connected to that characteristic or have different needs, or if their participation in work or other activity is disproportionately low, an employer can take any action (which would otherwise be discrimination against other people) which is a proportionate means of enabling or encouraging those people to overcome or minimise their disadvantage or to participate in work or other activities or meeting their needs. For example, an employer can put on training courses exclusively for workers with a particular protected characteristic. An employer is not allowed to give preference to a worker in recruitment or promotion because they have a protected characteristic.

positive discrimination

Treating someone with a protected characteristic more favourably to counteract the effects of past discrimination. It is generally not lawful, although more favourable treatment of workers because of their disability is permitted if the employer so wishes. Moreover, the duty to make reasonable adjustments may require an employer to treat a worker more favourably if that is needed to avoid a disadvantage.

pre-employment disability and health enquiries

Generally, an employer must not ask about disabilities or the health of a job applicant before they have been offered the job. If the employer does ask such questions and then fails to offer the applicant the job, the fact that the employer made such enquiries will shift the **burden of proof** if the applicant brings a claim for disability discrimination. The Equality and Human Rights Commission can also take legal action against the employer if such enquiries are wrongly made. More detail is set out in the guide, 'What equality law means for you as an employer: when you recruit someone to work for you'.

pregnancy and maternity

Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after

the birth, and is linked to maternity leave in the employment context where special protections apply.

principal

In the context of a **contract worker**, this is someone who makes work available for a worker who is employed by someone else and supplied by that employer under a contract between the employer and the principal. See **contract worker**.

procurement

The term used in relation to the range of goods and services a public body or authority commissions and delivers. It includes sourcing and appointment of a service provider and the subsequent management of the goods and services being provided.

proportionate

This refers to measures or actions that are appropriate and necessary. Whether something is proportionate in the circumstances will be a question of fact and will involve weighing up the discriminatory impact of the action against the reasons for it, and asking if there is any other way of achieving the aim.

protected characteristics

These are the grounds upon which discrimination is unlawful. The characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

protected period

This refers to the time in a work context when the specific prohibition against unfavourable treatment of expectant and new mothers applies. The period begins at the start of a woman's pregnancy and continues until the end of her maternity leave.

provision, criterion or practice

Identifying a provision, criterion or practice is key to establishing **indirect discrimination**. It can include, for example, any formal or informal policies, decisions, rules, practices, arrangements, criteria, conditions, prerequisites or qualifications.

public authority

For the purposes of this Guidance a 'public authority' means: government departments, local authorities, courts and tribunals, health authorities and hospitals, schools, prisons, and police.

Note that only those public authorities listed in Schedule 19 to the Equality Act 2010 are subject to the public sector equality duty.

public bodies

For the purpose of this Guidance 'public bodies' includes public authorities (as above) as well as organisations which have a role in the processes of national governments but are not a government department or part of one. They operate to a greater or lesser extent at arm's length from Ministers.- departmental government body or an inspectorate. This is not an exhaustive list.

public functions

A 'public function' for the purposes of this Guidance is any act or activities of a public nature carried out by a public authority or public body or by the private or voluntary sectors which is not already covered by the other sections of the Act dealing with services, housing, education and employment. Specifically, in relation to the private and voluntary sectors it is any act or activities carried out on behalf of the state.

Examples of public functions include: determining frameworks for entitlement to benefits or services; law enforcement; receiving someone into prison or immigration detention facility; planning control; licensing; parking controls; trading standards; environmental health; regulatory functions; investigation of complaints; child protection. This is not an exhaustive list.

Any act or activity undertaken by a public authority in relation to delivery of a public service or carrying out duties or functions of a public nature e.g. the provision of policing and prison services, including, government policy-making or local authority planning services.

public sector equality duty

The duty on a public authority when carrying out its functions to have due regard to the need to eliminate unlawful discrimination and harassment, foster good relations and advance equality of opportunity.

qualifications bodies

An authority or body which can confer qualifications.

questionnaire

See **questions procedure**.

questions procedure	A discrimination law procedure whereby written pre-action questions are issued to the respondent, i.e. the person or organisation against whom a discrimination claim may be made. The questions are usually put onto a standard written form which is often called a 'questionnaire'.
race	Refers to the protected characteristic of race. It refers to a group of people defined by their colour, nationality (including citizenship), ethnic or national origins.
rated as equivalent	An equal pay concept – see equal work .
reasonable adjustment	See the duty to make reasonable adjustments .
regulations	Secondary legislation made under an Act of Parliament (or European legislation) setting out subsidiary matters which assist in the Act's implementation.
religion or belief	Religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief (e.g. atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition.
religion or belief organisations	An organisation founded on an ethos based on a religion or belief. Faith schools are one example of a religion or belief organisation. See also religion or belief .
religious organisation	See religion or belief organisations .
retirement age	The age at which an employee retires or is expected to retire. This may be the default retirement age of 65 (until abolished on 1 October 2011), or an age which is set in the employee's contract of employment or the normal retirement age in that employment. The employer may also impose a retirement age on workers who are not employees, but this must be objectively justified even if it is 65 or above.
right to request flexible working	Employees with at least 26 weeks' service have the right to request flexible working under a formal procedure in order to care for children or certain adult relatives. This is simply an entitlement to go through a formal procedure to have the request considered in a

meeting and to receive written reasons for any refusal. The substantive right to be allowed to work flexibly for care reasons applies more widely to workers and is covered by indirect sex discrimination law under the Equality Act.

same employment

An equal pay concept (see **equal work**). Generally, women and men can compare their pay and other conditions with those employed by the same or an **associated employer**.

service complaint

Where the discrimination occurred while the worker was serving as a member of the armed forces, an employment tribunal cannot decide the claim unless the worker has made a service complaint about the matter which has not been withdrawn.

service provider

Someone (including an organisation) who provides services, goods or facilities to the general public or a section of it.

sex

This is a protected characteristic. It refers to whether a person is a man or a woman (of any age).

sexual harassment

Any conduct of a sexual nature that is unwanted by the recipient, including verbal, non-verbal and physical behaviour, and which violates the victim's dignity or creates an intimidating, hostile, degrading or offensive environment for them.

sexual orientation

Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.

single-sex facilities

Facilities which are only available to men or to women, the provision of which may be lawful under the Equality Act.

stakeholders

People with an interest in a subject or issue who are likely to be affected by any decision relating to it and/or have responsibilities relating to it.

substantial

This word tends to come up most in connection with the definition of disability and the duty to make reasonable adjustments for disabled workers. The Equality Act says only that 'substantial' means more than minor or trivial. This means that disabled workers do not need to be put

at a huge disadvantage before an employer's equality duties are triggered.

terms of employment

The provisions of a person's contract of employment, whether provided for expressly in the contract itself or incorporated by statute, custom and practice or common law etc.

textphone

A type of telephone for Deaf or hard of hearing people which is attached to a keyboard and a screen on which the messages sent and received are displayed.

third party harassment

This is where workers are harassed by members of the public (such as customers) or by other people who the employer does not employ (such as suppliers). If an employer is aware that one of their workers has been subjected to harassment by third parties on at least two occasions, the employer will be legally responsible for any further third party harassment unless the employer takes all reasonable steps to prevent it.

trade unions

These are organisations formed to represent workers' rights and interests to their employers, for example in order to improve working conditions, wages or benefits. They also advocate more widely on behalf of their members' interests and make recommendations to government, industry bodies and other policy makers.

transsexual person

Refers to a person who has the protected characteristic of **gender reassignment**. This may be a woman who has transitioned or is transitioning to be a man, or a man who has transitioned or is transitioning to be a woman. The law does not require a person to undergo a medical procedure to be recognised as a transsexual person. Once a transsexual person has acquired a **gender recognition certificate**, it is probably the case that they should be treated entirely as their acquired gender.

tribunal

See **Employment Tribunal**

two ticks symbol

A sign awarded by Jobcentre Plus to employers who are positive about employing disabled people and are committed to employing, keeping and developing disabled staff.

UK Text Relay Service	Text Relay is a national telephone relay service for deaf, deafened, hard of hearing, deafblind and speech-impaired people. It lets them use a textphone to access any services that are available on standard telephone systems.
unfavourably	The term is used (instead of less favourable) where a comparator is not required to show that someone has been subjected to a detriment or disadvantage because of a protected characteristic – for example in relation to pregnancy and maternity discrimination, or discrimination arising from disability.
vicarious liability	This term is sometimes used to describe the fact that an employer is legally responsible for discrimination carried out by its employees. See also liability .
victimisation	Subjecting a person to a detriment because they have done a protected act or there is a belief that they have done a protected act i.e. bringing proceedings under the Equality Act; giving evidence or information in connection with proceedings under the Act; doing any other thing for the purposes or in connection with the Act; making an allegation that a person has contravened the Act; or making a relevant pay disclosure.
victimise	The act of victimisation.
vocational service	A range of services to enable people to retain and gain paid employment and mainstream education.
vocational training	Training to do a particular job or task.
work of equal value	See equal work .
WORKSTEP	The WORKSTEP employment programme provides support to disabled people facing complex barriers to getting and keeping a job. It also offers practical assistance to employers.
worker	In this guide, ‘worker’ is used to refer to any person working for an employer, whether they are employed on a contract of employment (ie an ‘ employee ’) or on a contract personally to do work, or more generally as a

contract worker. In employment law, the term 'worker' has a similar meaning to those people covered by the Equality Act. However, it is not quite identical to that and has its own definition; the term is used, for example, to people covered by the Working Time Regulations and the law on the minimum wage.

Contact us

The Equality and Human Rights Commission aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights.

You can find out more or get in touch with us via our website at **www.equalityhumanrights.com** or by contacting one of our helplines below. If you require this publication in an alternative format and/or language please contact the relevant helpline to discuss your needs.

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Textphone: 08456 046 620

Fax: 08456 046 630

8am–6pm, Monday to Friday

Equality and Human Rights Commission helpline – Scotland

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Equality and Human Rights Commission helpline – Wales

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This guide is one of a series written by the Equality and Human Rights Commission to explain your rights as an employee under equality law.

There are 6 guides:

1. Your rights to equality at work: when you apply for a job
2. Your rights to equality at work: working hours, flexible working and time off
3. Your rights to equality at work: pay and benefits
4. Your rights to equality at work: training, development, promotion and transfer
5. Your rights to equality at work: how you are managed
6. Your rights to equality at work: dismissal, redundancy, retirement and after you have left a job

We have also produced:

- A separate series of guides which explain your rights in relation to people and organisations providing services, carrying out public functions or running an association
- Different guides explaining the responsibilities people and organisations have if they are employing people to work for them or if they are providing services, carrying out public functions or running an association

If you would like a copy of any of these guides or require this guide in an alternative format, please call our helpline on **0845 6046610** Monday to Friday 8am to 6pm or see our website **www.equalityhumanrights.com**.