

GUIDANCE

Your Rights to Equality at Work: Pay and Benefits

Equality Act 2010 Guidance for
Employees

Volume 3 of 6

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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 us to discuss your needs. Contact details are available at the end of the publication.

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 6 April 2014. Any future changes in the law will be reflected in further editions.

This guide was last updated in May 2014. You should check with the Equality and Human Rights Commission if it has been replaced by a more recent version.

What's in this guide?

If your employer is making decisions about the level of pay they set or the benefits they give you in return for working for them, 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.

Pay and benefits include:

- basic pay
- non-discretionary bonuses
- overtime rates and allowances
- performance-related benefits
- severance and redundancy pay

- access to pension schemes
- benefits under pension schemes
- hours of work
- company cars
- sick pay
- 'fringe benefits' such as travel allowances.

Your employer cannot stop you discussing your pay with someone else if this is for the purpose of finding out if there may be unlawful pay discrimination, for example, where you are trying to find out whether you are being paid differently from someone from a different ethnic background.

Specific rules apply where the pay or benefits are part of a worker's contract of employment and any difference is because of the worker's sex, in other words, where there are differences between women's pay and men's pay. This is usually called 'equal pay'.

There are also some differences in the procedures that apply if you bring an Employment Tribunal case against your employer for equal pay, including different rules about the time limits for making a claim. Unlike other discrimination claims about work you can bring an equal pay claim in the county court or High Court (or in Scotland the Court of Session or sheriff court) instead of the Employment Tribunal.

This guide covers the following situations and subjects (we explain what any unusual words mean as we go along):

- When your employer decides what pay and benefits workers will receive
 - Who is responsible for a service that an employer gives workers as a benefit
 - Bonuses
 - Occupational pension schemes
 - Health insurance and disabled workers
 - Pay discussions
- When they decide pay and benefits for women and men ('equal pay')
 - Sex equality clause
 - Equal work
 - Like work
 - Work that is rated as equivalent
 - Work that is of equal value
 - The employer's defence of 'material factor'

- Pay protection schemes
- Pay, benefits and bonuses during maternity leave
- What to do if you believe you are being paid less than someone else because of a protected characteristic
 - What the Employment Tribunal has to decide in an equal pay case
 - Which claims the Employment Tribunal can hear
 - Time limits
 - Burden of proof
 - Assessment as to whether the work is of equal value
 - What the Employment Tribunal can decide in cases where money is owed
 - Pension cases.

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 pay and benefits:

- 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.
- Information on where to find more advice and support.

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

Don't forget that specific rules apply to equal pay between women and men where pay or benefits are part of your contract of employment. If the reason for a difference in pay or benefits is or might be your sex, in other words, the fact that you are a man or a woman, you should read 'When your employer decides about pay and benefits', on [page 21](#) to understand what the rules are.

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. If you are not sure, check under 'work situation' in the list of words and key ideas. 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

Continued...

- 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**).

Example — An employer is deciding how much to pay two trainees who are starting work. Both trainees will be doing the same job. If the employer decided to pay one of the trainees less because they were a disabled person, this would almost certainly be unlawful discrimination because of disability.

- 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 protected 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.

Example — An employer provides a company car only to workers for whom insurance costs are below a certain limit. Because insurance costs for younger drivers are generally higher, this may mean that younger workers are not eligible for a company car. Unless the employer can objectively justify their company car policy, this may be indirect discrimination because of age.

- 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 your employer knows or could reasonably have been expected to know that you are a disabled worker. The required knowledge is of the facts of your disability but an employer does not also need to realise that those particular facts are likely to meet the legal definition of disability. This is called **discrimination arising from disability**.

Example — An employer gives workers a bonus if they have not taken more than three days off sick in the previous year. They do not separately record time off for sickness and time off for medical appointments taken by disabled people. A worker who is a newly disabled person because of an amputation has to attend a clinic once a month to have their prosthetic leg checked. They have to take half a day's leave each time and this has been recorded as six days' sickness absence over the course of the year. Unless the employer can objectively justify using sickness absence as a test for whether workers receive the bonus, this is likely to be discrimination arising from disability, as the disabled worker has been treated unfavourably (not receiving the bonus) for a reason connected with or arising from their disability (the need for time off for the appointments).

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

Example — A small chain of fast food restaurants gives staff with children vouchers so that they can take their children for cheap meals. One member of staff has a disabled child and does not receive the vouchers because their manager assumes that the child will not be able to go to the restaurant. This is probably direct discrimination because of disability by association.

- 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 have done anything to uphold your own or someone else's equality law rights.

Example — A worker who complains unsuccessfully but in good faith of sexual harassment by their manager is not given a bonus at the end of the year. If the reason for denying them the bonus is the complaint, this would almost certainly be victimisation.

This also includes treating you badly because you have discussed with anyone (including a colleague, former colleague or trade union representative) whether you are paid differently because of a protected characteristic.

Example — A worker who is of Bangladeshi origin thinks he may be being underpaid because of his race compared with a white colleague. He asks the white colleague and the colleague tells him, even though his contract forbids him from disclosing his pay to other staff. The employer takes disciplinary action against the white colleague as a result and dismisses him. This would be treated as victimisation.

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

Example — A worker is denied a bonus because she rejects her manager's sexual advances and instead reports him. The withholding of the bonus is a further act of harassment under the equality law definition as it is less favourable treatment because she has rejected his advances.

In addition, if you are a disabled worker, to make sure that you have the same access, to everything that is involved in doing a job as a non-disabled worker, your employer must make **reasonable adjustments**.

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

You can read more about reasonable adjustments to remove barriers for disabled people in [Chapter 3](#).

You must not be discriminated against in the ways described above even after your employment relationship with them ends if what they are doing arises out of and is closely connected to the employment relationship that you had with them.

Situations where equality law is different

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

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 you are applying for a job or are receiving a redundancy payment. These are explained in the relevant guide in the series.

There are specific exceptions in relation to pay and benefits for:

- Young workers
- Differences in pay and benefits linked to length of service
- Marriage and civil partnership.

Young workers

If you are aged between 16 and 21 and your employer wants to pay you differently from other workers according to your age, they can do this, but only if their pay structures are based on the age bands set out in the National Minimum Wage Regulations 1999. You can find the current national minimum age rates at: www.gov.uk/national-minimum-wage-rates.

These Regulations set minimum wage rates and have lower minimum wage rates for younger workers aged 16 and 17, and for those aged 18 to 21.

Your employer can either use the rates of pay set out in the Regulations or they can pay you higher wages as long as they are linked to the same age bands.

The rates of pay themselves do not have to be related to the national minimum wage. In other words, the differences between the different bands do not have to relate to the level of the national minimum wage in that band.

Example — A supermarket decides to review its pay scales. It must pay at least the national minimum wage. If it decides to pay more, and to pay different rates to younger employees. It can do this, as long as it bases what it does on the age

bands used for the national minimum wage. The supermarket opts for the following rates which would be allowed:

- 16–17 years of age – 20p per hour more than the national minimum wage for employees in that age band
- 18–21 years of age – 45p per hour more than the national minimum wage for employees in that age band, and
- 22 years of age or over – 70p per hour more than the national minimum wage for employees aged 22 or over.

Always remember that specific rules apply where pay or benefits are part of your contract of employment and women and men are being paid differently. If this is the case (for example, if you have reason to think that the jobs for which your employer is paying younger workers at different rates are mainly done by young women or mainly done by young men), you should also read the information at [page 21](#) 'When your employer decides about pay and benefits'.

Differences in pay and benefits linked to length of service

Your employer may be allowed to give you different pay and benefits based on how long you have worked for them, even though this would otherwise be indirect discrimination because of age (as younger workers are likely to have been at work for a shorter time).

For length of service up to five years, your employer does not have to justify differences at all.

Example — For junior office staff, an employer operates a five point pay scale to reflect growing experience over the first five years of service. Equality law would allow this.

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

- by the length of time you have been working for your employer at or above a particular level, or
- by the length of time you have been working for your employer in total.

If your 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: your employer may still be able to use length of service to set pay and benefits after workers have been with them for more than five years 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, your employer must still have evidence on which to base their belief.

Always remember that specific rules apply where pay or benefits are part of your contract of employment and women and men are being paid differently. If, for example, the jobs for which your employer is providing increased pay or benefits based on length of service are mainly done by men, so that they end up significantly better off than women workers do, you should also read the information at [page 21](#): 'When your employer decides about pay and benefits for women and men'.

Marriage and civil partnership

If you are married or in a civil partnership, your employer must not treat you worse than they treat workers who are not married or not in a civil partnership.

However, they can treat you better. This will not be unlawful discrimination against workers who are not married or in a civil partnership.

But your employer must treat workers who are married to a person of the opposite sex and workers who are in a civil partnership the same. They must also treat workers who are married to a person of the same sex in the same way as they treat workers married to a person of the opposite sex.

Example — An employer gives an additional week's honeymoon leave to a woman who is getting married. Last year, her lesbian colleague who was celebrating a civil partnership was given only one extra day's leave to go on honeymoon. This is almost certainly unlawful discrimination because of sexual orientation.

If your employer also gives benefits to workers' partners, for example, allowing them to drive a company car, or giving them staff discounts on services, these benefits must be offered on the same terms to same-sex partners and opposite-sex partners.

Your employer must be consistent about whether they require partners to be married or in a civil partnership to receive a benefit. If they give benefits to unmarried

opposite-sex partners, they must give them on the same terms to same-sex partners who are not in a civil partnership or who are not married. Not to do so would almost certainly be unlawful discrimination because of sexual orientation.

The only exception to this is if a benefit was provided just for married workers before 5 December 2005 or applies to a time when someone was working for an employer before that date.

Always remember that specific rules apply where pay or benefits are part of your contract of employment and women and men are being paid differently. If, for example, the jobs for which your employer is providing a benefit based on whether a worker is married or in a civil partnership are mainly done by women or mainly done by men, so that people of one sex end up significantly better off than the other, you should also read the information at [page 21](#): 'When your employer decides about pay and benefits for women and men'.

Treating disabled workers better than non-disabled workers

As well as these exceptions, equality law allows your 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.

The public sector equality duty and human rights

Public sector employers must have what the law calls 'due regard' to the need to eliminate the types of conduct which are prohibited under the Equality Act 2010 discussed in this guide and to advance equality of opportunity and foster good relations between those who have particular protected characteristics and those who don't. This is called the 'public sector equality duty'. Other bodies who carry out public functions on behalf of public authorities also have to comply with the public sector equality duty, in relation to those particular functions.

The three aims of the duty apply to all protected characteristics apart from marriage and civil partnership, which is only relevant to the first aim (eliminating discrimination). Thus a body subject to the duty must have due regard to the need to eliminate discrimination where it is prohibited under the Equality Act 2010 because of marriage or civil partnership in the context of employment.

In addition, public sector employers will be required to comply with the Human Rights Act 1998 and their employees may have rights against them under the Act.

Further information about the public sector equality duties and the Human Rights Act is available from the Equality and Human Rights Commission.

What's next in this guide?

The next part of this guide looks first at the general rules on avoiding unlawful discrimination when setting levels of pay and benefits. It then explains the specific rules on equal pay between women and men, what to do if you believe you are being paid less than someone else, and the specific rules that apply in equal pay cases. It covers:

- When your employer decides what pay and benefits workers will receive
 - Who is responsible for a benefit
 - Bonuses
 - Occupational pension schemes
 - Health insurance and disabled workers
 - Pay discussions
- When your employer decides pay and benefits for women and men ('equal pay')
 - Sex equality clause
 - Equal work
 - Like work
 - Work that is rated as equivalent
 - Work that is of equal value
 - The employer's defence of 'material factor'
 - Pay protection schemes
 - Pay, benefits and bonuses during maternity leave
- What to do if you believe you are being paid less than someone else because of a protected characteristic
 - What the Employment Tribunal has to decide in an equal pay case
 - Which claims can the Employment Tribunal hear?
 - Time limits
 - Burden of proof

Continued...

- Assessment as to whether the work is of equal value
- What the Employment Tribunal can decide in cases where money is owed
- Pension cases.

When your employer decides about what pay and benefits workers will receive

There are different ways your employer might decide what to pay you and what benefits to provide, such as:

- the going rate for the job in your sector and/or area
- the skills and qualifications needed by you when you do the job
- your performance in the job.

Your employer must make sure that the way they work out and apply these criteria does not discriminate unlawfully. Use the information earlier in this guide to make sure you know what equality law says your employer must do to avoid unlawful discrimination.

Always remember that specific rules apply where pay or benefits are part of your contract of employment and women and men are being paid differently. If, for example, the jobs for which workers are being paid at different rates are mainly done by women or mainly done by men, you should also read the information at [page 21](#): 'When your employer decides about pay and benefits for women and men'.

Who is responsible for a benefit

If you are working for an organisation that provides **services, goods or facilities** (which this part of the guide calls 'a service') to the public or a section of the public, your employer may give you access to that service either on the same basis as the public or on special terms, such as a staff discount.

Or your employer may pay someone else to provide you with a service.

To work out how this situation applies to you, there are five questions to think about:

- Does your employer provide a service to you in exactly the same way they provide it to members of the public (for example, you can hire a function room from them on the same terms as a member of the public)?
- Does your employer provide a service to you which is almost the same as a service they give the public but in a special way because you work for them (for example, you receive a staff discount when you buy something from them)?
- Does someone else provide you with a service on behalf of your employer?
- Is the benefit group insurance?
- Does equal pay law apply?

Does your employer provide the service to you in exactly the same way they provide it to members of the public?

Your employer may be providing a service to you in exactly the same way they provide it to members of the public. For example, you can hire a function room from your employer on the same terms as a member of the public.

If this is the situation and you believe your employer has discriminated unlawfully against you, you can bring a claim against them in the County Court in England or Wales, and the Sheriff Court in Scotland. You should read the Equality and Human Rights Commission guide: *Your rights to equality from businesses providing goods, facilities or services to the public* or the equivalent guide if your employer is another type of organisation. The introduction to this guide tells you how to get hold of this information.

Does your employer provide a service to you which is almost the same as a service they give the public but in a special way because you work for them?

Your employer may be providing a service to you in almost the same way they provide it to members of the public, but with special arrangements because you work for them. For example, you receive a staff discount on the service.

If this is the situation and you believe you've been discriminated against, this is the right guide for you to be reading.

Does someone else provide you with a service on behalf of your employer?

Sometimes, your employer might arrange for someone else to provide a service to you and their other workers.

If the person or organisation providing the service discriminates unlawfully against you, it will be the service provider who is responsible. You will have a claim in the

County Court (in England or Wales) or the Sheriff Court (in Scotland) against the service provider, just like any other member of the public using that service, and not against your employer.

You should read the Equality and Human Rights Commission guide: *Your rights to equality from businesses providing goods, facilities or services to the public* or the equivalent guide if the service provider is another type of organisation. The introduction to this guide tells you how to get hold of this information

But if it is your employer's behaviour that is unlawful discrimination, your claim would be against your employer in the Employment Tribunal, and this is the right guide for you to read.

Is the benefit group insurance?

Some employers offer their workers insurance-based benefits such as life assurance or accident cover under a group insurance policy. Equality law allows employers to provide for different premiums or benefits based on sex, whether people are married or in a civil partnership, pregnancy and maternity or gender reassignment. However the difference in treatment must be reasonable, and be done by reference to actuarial or other data from a source on which it is reasonable to rely.

If this situation applies to you, it is your employer, not the insurer, who is responsible for making sure that provision of benefits under group insurance schemes is not unlawfully discriminatory.

Example — An employer arranges for an insurer to provide a group health insurance scheme to workers in their company. The insurer refuses to provide cover on the same terms to one of the workers because she is a transsexual person. The employer, who is responsible for any discrimination in the scheme, would only be acting lawfully if the difference in treatment is reasonable in all the circumstances, and done by reference to reliable actuarial or other data.

Does equal pay law apply?

Remember that special rules apply where the service your employer is giving you (or has arranged for someone else to give you) as a benefit is part of your contract of employment and there is a difference between the benefits men and women get. If, for example, the jobs in relation to which your employer provides the service as a benefit are mainly done by women or mainly done by men, you should also read the

information at [page 21](#): ‘When your employer decides about pay and benefits for women and men’.

Bonuses

Bonus payments are payments made on top of basic salary, and are usually designed to motivate employees by rewarding them for achieving particular targets or standards.

Sometimes, a bonus will be set out in your contract. Sometimes it will be up to your employer if a bonus is paid (this is often referred to as a ‘discretionary bonus’). Many schemes are a mixture of both types, so that you have the right to be considered for a bonus, but your employer has the final say as to whether to pay out.

Your employer must avoid unlawful discrimination in awarding bonus payments. This includes all the different types of unlawful discrimination listed earlier in this guide.

This might mean, for example, making reasonable adjustments for you if you are a disabled person.

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.

You can read more about reasonable adjustments to remove **barriers** for disabled people in [Chapter 3](#).

Always remember that specific rules apply where pay or benefits are part of your contract of employment and women and men are being paid differently. If, for example, the jobs for which your employer provides a bonus are mainly done by women or mainly done by men, or bonuses are set in a way that means generally people of one sex end up significantly better off than the other, you should also read the information at [page 21](#): ‘When your employer decides about pay and benefits for women and men’.

Occupational pension schemes

If your employer provides an occupational pension or work or company pension scheme to their employees (or one is provided for them), the people running the scheme must avoid unlawful discrimination in how they run it. This includes all the different types of unlawful discrimination listed earlier in this guide.

Example — A pension scheme that offers benefits to opposite-sex partners must give the same benefits to same-sex partners. If people have to be married to receive benefits, then the same benefits must be offered to civil partners and to those in same sex and opposite sex marriages equally. Not doing so would be discrimination because of sexual orientation.

The duty to make reasonable adjustments to remove barriers for disabled people applies to pension schemes. You can read more about reasonable adjustments to remove barriers for disabled people in [Chapter 3](#).

Specific rules apply where membership of an occupational pension scheme is part of your contract of employment and women and men are treated differently by the scheme. There are also exceptions relating to age.

If you believe that your occupational pension scheme may be unlawfully discriminating against you, you should get expert advice from your trade union or another organisation.

Health insurance and disabled workers

If:

- you are a disabled person and
- your employer offers private health insurance to you and other workers as a benefit,

your employer and the insurer must not exclude you because of your disability or offer it to you on worse terms than those offered to your colleagues, unless they can **objectively justify** any difference in treatment.

Pay discussions

Some employers make it a condition in contracts of employment that their employees must not talk about their pay with colleagues or anyone else. This is sometimes called a 'secrecy clause' or 'gagging clause'. It means employees cannot check if they are being paid the same for the same or similar work, whatever their protected characteristic.

Equality law says that, regardless of what your contract says, you are allowed to talk about your pay to anyone, including:

- colleagues
- former colleagues, or
- (for example) a trade union representative

provided this is to find whether or to what extent there is a connection between pay and having (or not having) a protected characteristic. You can also try and obtain pay information from a colleague, or former colleague, with this aim. Equality law calls all these discussions 'relevant pay disclosures'.

In other words, a gagging clause in a contract will not have any legal effect to stop these kinds of pay discussions taking place.

This discussion can relate to any protected characteristic, not just equal pay between women and men.

Example — A discussion between a worker who is a disabled person and a non-disabled colleague for the purpose of establishing whether the non-disabled person is being paid more than the disabled person could involve a relevant pay disclosure. However, two non-disabled colleagues simply comparing their respective salaries are unlikely to be making a relevant pay disclosure, unless they are investigating pay disparities which may be linked to sex, race or another protected characteristic.

Your employer must not treat you badly because you have talked to someone about your pay in order to find out if your pay may be different because of a protected characteristic. This is likely to be victimisation.

When your employer decides about pay and benefits for women and men ('equal pay')

The term 'equal pay' is used specifically to mean making sure that women and men who are doing **equal work** receive the same rewards under their contracts of employment.

Equal pay applies to everything the employee receives, not just money paid to them, such as holiday entitlement.

Equal pay applies to **workers, office-holders**, police officers and people serving in the armed forces. This guide refers to all these people as 'employees' for convenience.

Similarly, people who recruit or 'employ' these people are referred to as 'employers'.
If:

- you are not in one of these relationships with the person or organisation that is paying you but you are in another work situation, or
- the unlawful discrimination is because of a protected characteristic other than sex, or
- the pay or benefits are not part of your contract

then your employer must still not discriminate unlawfully against you, but the special equal pay laws and procedures do not apply, and the first half of this guide applies to your situation instead.

Note: Because it is much more often the case that women are paid less than men, this guide generally refers to the person claiming equal pay as being a woman. But equal pay law protects men and women equally, so if a man is being paid less than a woman doing equal work, the following applies to him too.

This section of the guide looks at some of the rules in more detail, including:

- Sex equality clause
- Equal work
- Like work
- Work that is rated as equivalent
- Work that is of equal value
- The employer's defence of 'material factor'
- Pay protection schemes
- Pay, benefits and bonuses during maternity leave.

However, although the *reason* the law exists is simple – to make sure women and men receive the same rewards for equal work – the law itself can be complicated. This guide tells you the general outline of the law, but if you are concerned about equal pay, you should get other help and advice, for example, from:

- Acas
- the Equality Advisory and Support Service
- your trade union if you have one.

Contact details for a range of organisations who may be able to help you are in [Chapter 5](#).

Sex equality clause

Your employer must pay women and men doing equal work the same and give them the same benefits. The only way in which your employer can avoid this is if they can show that there is a reason for the pay difference that has nothing to do with the sex of the workers. This is called the ‘material factor defence’ and is explained in more detail at [page 30](#).

Every woman’s contract of employment is automatically read as if it contains a term or clause which has the effect of making sure her pay and all other contractual terms are no worse than a man’s where they are doing equal work. It does not matter if the contract is written down or not.

This applies to all the parts of the contract including:

- wages and salaries
- non-discretionary bonuses
- holiday pay
- sick pay
- overtime
- shift payments
- occupational pension benefits, and
- non-monetary terms such as holiday or other leave entitlements or access to sports and social benefits (for example, a gym membership if that is something the employee’s contract entitles them to).

If your pay and benefits are not part of your contract, your employer must still not discriminate against you because of your sex, or any other protected characteristic,

but the special equal pay law and procedures do not apply. This might include purely discretionary bonuses, promotions, transfers and training and offers of employment or appointments to office.

Example — A female sales manager is entitled under her contract of employment to an annual bonus calculated by reference to a specified number of sales. She discovers that a male sales manager working for the same employer and in the same office receives a higher bonus under his contract for the same number of sales. She would bring her claim under the equality of terms (equal pay) provisions. However, if the female sales manager is not paid a discretionary Christmas bonus that the male manager is paid, she could bring a claim for unlawful sex discrimination rather than an equal pay claim because it is not about a contractual term.

Equal work

There are three kinds of equal work. All of these require a woman to compare herself to a man in the **same employment**. He is called a ‘comparator’.

- The first is when a woman is doing work that is the same as or broadly similar to the work her comparator is doing. This is called ‘like work’.
- The second is when although their work is different, a **job evaluation** study shows that a man’s and a woman’s jobs are rated as equal. This is called work that is ‘rated as equivalent’.
- The third is when the man’s and woman’s jobs are different but are equal in value in terms of the demands or skills that are needed. This is called ‘work of equal value’.

The comparator need not be employed at the same time as the woman claiming equal pay.

Like work

If the jobs are exactly the same, it is easy to say this is ‘like work’. If they aren’t exactly the same, then look at the differences between them. If these aren’t of

practical importance then the jobs are broadly similar and still count as 'like work' so the two workers should be paid the same.

Example — Depending on the exact circumstances, these male and female workers could be considered to be doing 'like work':

- Male and female drivers, where the men are more likely to work at weekends.
- A woman cook preparing lunches for directors and a male chef cooking breakfast, lunch and tea for employees.
- Male and female supermarket workers carrying out similar tasks even though the men may lift heavier objects from time to time.

The fact that a male and female worker have the same contractual duties but the male worker goes beyond what his contract requires him to do does not mean that he cannot be a comparator. The focus in these circumstances will be on what the job actually requires.

Example — A male and female office worker are both contracted to work 40 hours per week and have broadly the same responsibilities. The male worker frequently works more than his contractual hours and often undertakes duties that do not form part of his job description. The male and female worker are still comparable and would probably be treated as employed in 'like work' because the actual job requirements are broadly the same.

It is what happens in practice that counts. A contractual obligation on a male worker to do other duties does not count if these are not in fact carried out.

Example — Men but not women workers do the same job, but under their contracts, only the men have to work compulsory overtime and can be required to transfer to different duties. This difference is not of practical importance if the flexibility is not called upon in practice.

If you think your employer is paying you less than a male comparator for like work, you should get expert advice from your trade union or another organisation.

Work that is rated as equivalent

Job evaluation is a way of systematically assessing the relative value of different jobs.

If an employer carries out (or gets someone to carry out for them) a job evaluation study and this gives an equal value to a woman's work and her comparator's, then her work is rated as equivalent to the man's. The value of the work will be measured by looking at the demands made on the workers, using factors such as effort, skill and decision-making.

Because the focus is on the demands of the job rather than the nature of the job overall, jobs which may seem to be of a very different type can be rated as equivalent.

Example — The work of an occupational health nurse might be rated as equivalent to that of a production supervisor when components of the job such as skill, responsibility and effort are assessed by a valid job evaluation scheme.

For a job evaluation study to be valid, it must:

- Cover both the woman's job and her comparator's
- Be thorough in its analysis and capable of impartial application
- Take into account factors connected only with the requirements of doing the job rather than the person doing the job, e.g. job performance, and
- Be analytical in assessing the component parts of particular jobs, rather than their overall content on a whole job basis.

Your employer must also be careful that the job evaluation study is not itself discriminatory, whether intentionally or unintentionally.

If a job evaluation study has assessed the woman's job as being of lower value than her male comparator's job, then an equal value claim by the woman will fail. However, if the Employment Tribunal has reasonable grounds for suspecting that the evaluation was discriminatory in the way it was carried out or in the measurements it used, or that it was in some other way unreliable (for example because it was not carried out in accordance with the points above), then the Tribunal would have grounds to disregard the evaluation study and find discrimination.

There has historically been a tendency to undervalue or overlook qualities inherent in work traditionally undertaken by women (for example, caring).

A job evaluation scheme which results in different points being allocated to jobs because it values certain demands of work traditionally undertaken by women differently from demands of work traditionally undertaken by men would be discriminatory.

A scheme like this will not prevent a woman claiming that her work may be equal to that of a male comparator.

Example — A job evaluation study rates the jobs of female classroom teaching assistants and their better paid male physical education instructors as not equivalent. This is because the study gives more points to the physical effort involved in the men's jobs than to the intellectual and caring work involved in the jobs predominantly done by women. Because it uses a sex-biased points system, this job evaluation study would not prevent the women succeeding in an equal pay claim.

A woman may also bring a claim for equal pay where her job is rated higher than that of a comparator under a job evaluation scheme but she is paid less.

Detailed guidance for employers on designing, implementing and monitoring non-discriminatory job evaluation schemes is available from the Equality and Human Rights Commission.

If you think your employer is using a job evaluation scheme that is unlawfully discriminatory, you should get expert advice from your trade union or another organisation.

Work that is of equal value

If an employer has not carried out (or got someone else to carry out) a job evaluation study, a woman can still claim equal pay with a man if she can show that her work is of equal value with his in terms of the demands made on her. Instead of the assessment being done by her employer as part of the job evaluation study, the assessment whether the work is of equal value takes place as part of the woman's claim to the Employment Tribunal.

Jobs being of equal value means that the jobs done by a woman and her male comparator are different but can be regarded as being of equal worth, having regard to:

- the nature of the work performed
- the training or skills necessary to do the job
- the conditions of work, and
- the decision-making that is part of the role.

In some cases, the jobs being compared may appear fairly equivalent (such as a female head of personnel and a male head of finance). More commonly, entirely different types of job (such as manual and administrative) can turn out to be of equal value when analysed in terms of the demands made on the employee.

More detailed guidance on how to tell if jobs are of equal value is available from the Equality and Human Rights Commission.

If you think your employer is paying you less than a male comparator for work of equal value, you should get expert advice from your trade union or another organisation.

The employer's defence of 'material factor'

Once a woman has shown that she is doing equal work with her male comparator, the equality clause will take effect unless her employer can prove that:

- the difference in pay or other contractual terms is due to a material factor, and
- this does not itself discriminate against her either directly or indirectly because of her sex.

The employer must say what the factor(s) are and prove that each factor:

- is the real reason for the difference in pay and not a sham or pretence
- actually causes the difference in pay between the woman and her comparator
- is material; that is, significant and relevant
- does not involve direct or indirect sex discrimination.

For example: An employer argues that it is necessary to pay a male comparator more because of a skill shortage. To succeed, the employer must provide evidence of actual difficulties in recruiting and retaining people to do the job being done by the higher-paid man.

Possible material factors include:

- personal differences between the employees concerned such as experience and qualifications
- geographical differences, for example, London weighting
- unsocial hours, rotating shift work and night working.

Whether the employer succeeds in defending the pay difference depends on the specific circumstances in each case.

To be a valid defence, the material factor must not be itself directly or indirectly discriminatory.

A material factor will be directly discriminatory where it is based on treating women and men differently because of their sex. This cannot provide a defence to an equal pay claim, and it is not open to an employer to justify the discrimination.

Example — Male maintenance workers in a bank are paid more than female administrators because the bank has always regarded and rewarded men as family breadwinners. This is directly discriminatory and cannot be justified.

Even if an employer can show that a material factor is not directly discriminatory, a woman claiming equal pay may be able to show that it is indirectly discriminatory.

Indirect discrimination happens where a pay system, policy or arrangement has a worse impact on women compared to their male comparators. If the employer cannot **objectively justify** what they have done, they will not succeed in the material factor defence.

Example — Women employed as carers by a local authority, whose work is rated as equivalent to men employed as street cleaners and gardeners, are paid at a lower rate. The difference is due to a productivity bonus scheme which does not apply to carers, who were predominantly women. As the scheme has a disproportionately adverse effect on the women, the employer has to provide objective justification for it.

Pay protection schemes

Many employers have recognised that women have historically been paid less than men for work of equal value and some have put in place 'pay protection schemes' as part of what they are doing to sort out the situation. These schemes temporarily continue an inequality in pay, for example by allowing men to continue on higher pay while steps are taken to raise the women's pay. Equality law says that an employer's long-term objective of reducing pay inequality between women and men is always to be regarded as a legitimate aim.

However, for a scheme like this to qualify as a 'material factor' defence, there will need to be evidence that the employer is moving to close the pay gap, rather than indefinitely continuing the inequality between men's and women's pay.

More detailed guidance to help you decide whether a proposed pay protection scheme is lawful is available from the Equality and Human Rights Commission.

If your employer has put in place a pay protection scheme and you think that it is discriminatory, you should get expert advice from your trade union or another organisation.

Pay, benefits and bonuses during maternity leave

If you are a pregnant woman, your employer must not give you lower pay or worse contractual terms for a reason relating to your pregnancy. If your employer does this, you will have an equal pay claim.

However, when you go on maternity leave, unless your contract provides for maternity-related pay, you do not continue to get your usual pay and any benefits with a transferable cash value (such as a car allowance). You are still entitled to any non-cash benefits you have.

Maternity-related pay means pay other than statutory maternity pay to which a woman who is pregnant or on maternity leave is entitled under her contract. Many employers, as a matter of good business practice, provide a more generous maternity pay scheme than the one the law sets as a minimum.

When you go on **maternity leave**, a 'maternity equality clause' is automatically read into your contract, which covers:

- the calculation of any maternity-related pay you are entitled to under your contract
- bonus payments during maternity leave, and

- pay increases following maternity leave.

Unlike other types of equal pay claim, there is no need for a male comparator where your claim relates to these three things (or to other forms of pregnancy and maternity discrimination).

Any pay increase you receive or would have received had you not been on maternity leave must be taken into account in the calculation of your maternity-related pay.

Example — Early in her maternity leave, a woman receiving maternity-related pay becomes entitled to an increase in pay (because there has been a pay rise across the organisation she works for). If her terms of employment do not already provide for the increase to be reflected in her maternity-related pay, the employer must recalculate her maternity pay to take account of the pay increase.

Your employer must also pay you any contractual bonus payment awarded to you during your maternity leave period, or that would have been awarded had you not been on maternity leave. However, when your employer works out your bonus, the actual time during which you are on maternity leave will not generally be included, except for the two or four weeks of compulsory maternity leave.

Example — A woman goes on maternity leave three months before the end of her company's accounting year. At the end of the accounting year, while she is on maternity leave, bonuses for the whole year are awarded to staff. The woman's bonus is calculated based on the nine months of the accounting year when she was not on maternity leave plus the two week compulsory maternity leave period that applies to her because she is not a factory worker (it would be four weeks if she worked in a factory).

Your employer must pay any pay rise or bonus when they would usually be due, and not wait until you get back from your leave.

Example — A woman goes on maternity leave on 1 June. The contractual bonus for the year ending 30 April is payable on 1 July. Her employer says they will pay the bonus to her when she is back in a few months. The law requires the employer to pay the bonus on 1 July as it would if the woman was not on maternity leave. If this does not happen, she can make a claim relying on the maternity equality clause provisions.

When you return to work and start receiving your ordinary salary again (rather than statutory maternity pay or maternity-related pay), your employer must give you any pay increases that you would have received had you not been on maternity leave. For example, if everyone in the organisation, or even just the people doing the job you return to, have had a pay rise while you have been on maternity leave, you must be paid at a rate that takes account of the pay increase, not at your previous salary.

If pay and benefits have not been paid because of your pregnancy or maternity leave but are not things you are entitled to under your contract, then your claim is one of unlawful discrimination because of pregnancy and maternity, rather than equal pay, and the first part of this guide applies instead.

Example — A woman who has been approved for a promotion tells her employer that she is pregnant. The employer responds that he will not now promote her because she will be away on maternity leave during a very busy period. This would be pregnancy discrimination at work but not an equal pay claim.

However, if the same woman is promoted and her increased salary takes effect after her maternity leave begins, her maternity-related pay will need to be recalculated to take account of the salary increase. When she returns to work from her maternity leave, it must be on the new salary. If this does not happen, she can make a claim relying on the maternity equality clause provisions.

Maternity equality in pension schemes

An occupational pension scheme is treated as including a maternity equality clause if it does not have such a clause already. The effect of this is to make sure that if you are on maternity leave, you continue to build up the same benefits in relation to the pension you receive once you retire.

If you are concerned about whether your occupational pension scheme may be unlawfully discriminating against you as a woman on maternity leave, you should get expert advice from your trade union or another organisation.

What to do if you believe you are being paid less than someone else because of a protected characteristic

If you want to complain that you are being paid less than a colleague because of a protected characteristic, there are a number of steps you can take.

These are explained in [Chapter 4](#): 'What to do if you believe you've been discriminated against'.

The procedures set out there apply to complaints that:

- you are being paid less than another employee because of any protected characteristic except sex, or
- you are being paid less than a person of the opposite sex for equal work but the pay or benefits are not part of your contract of employment, for example, a bonus which your employer chooses to give workers when your organisation has performed well, but which you have no contractual entitlement to.

If your complaint is that you are being paid less than a person of the opposite sex for equal work, and the pay or benefits concerned are part of your contract of employment, then the equal pay rules explained at [page 21](#): 'When your employer decides about pay and benefits for women and men' apply.

The next section of this guidance briefly explains the rules in an equal pay case. It especially focuses on the differences between equal pay cases and other types of claims brought under equality law as it applies to work situations. You should also read the general advice in [Chapter 4](#): 'What to do if you believe you've been discriminated against'. In particular, the rules about needing to pay fees to bring a case in an Employment Tribunal and the Early Conciliation procedure described in that section of the guide also apply to equal pay claims.

- What the Employment Tribunal has to decide in an equal pay case
- Which claims the Employment Tribunal can hear
- Time limits
- Burden of proof
- Assessment as to whether the work is of equal value
- What the Employment Tribunal can decide in cases where money is owed
- Pension cases If you believe that:
 - there has been a breach of an **equality clause** by your employer, or
 - that you are being paid less than an employee of the opposite sex who is doing a job of equivalent or equal value, and
 - the pay or benefits are included in your contract of employment,

this is an equal pay case. Equal pay cases can be extremely complicated and time-consuming and you should get further advice, for example, from your trade union if you have one.

You can find a list of organisations which may be able to help you in 'Further sources of information and advice'.

What the Employment Tribunal has to decide in an equal pay case

In making a decision about an equal pay case, the Employment Tribunal has to assess the evidence about:

- whether the comparator is the right comparator (in other words, if he is in the same employment)
- the work done by the woman and her comparator
- the value placed on the work (sometimes with the advice of an Independent Expert), in terms of the demands of the jobs
- the pay or other contract terms of the woman and her comparator and how they have been arrived at, and
- the reasons for the difference in pay or other contract terms.

Which claims the Employment Tribunal can hear

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

This includes any equal pay case, including:

- claims relating to pay during pregnancy and maternity, and
- claims about equality in the rules of occupational pension schemes.

Employment Tribunals also hear claims about other workplace disputes, such as where someone is claiming unfair dismissal.

Members of the armed forces must bring a service complaint before they can bring a claim to the Employment Tribunal.

Time limits

These time limits are very important. Do not assume that an Employment Tribunal will give you more time to bring your claim unless yours is a 'concealment case' or you have an 'incapacity'. These are both explained below.

Where you have to contact Acas before making a claim because the early conciliation procedure applies, there are special rules about time limits. The normal time limit is extended to allow conciliation to take place. There is more information on the early conciliation procedure in [Chapter 4](#) of this guide in the section called 'Settling a dispute'.

A six month time limit applies when:

- you want to bring a claim for a breach of an equality clause or rule, or
- you want the Employment Tribunal to make a statement about the effect of an equality clause or rule.

The six month time limit starts from the end of your employment contract. So if you are still in the same job, you can bring a claim at any time. But if you have left the employer you believe was not paying you equal pay, you must tell the Employment Tribunal about your claim within six months of leaving, by filling in the right form and sending it to them.

If:

- the employer conceals information from you which would have told you that you were not getting equal pay or
- you have an 'incapacity'

the time limit is also six months, but the six months is measured from a different point.

If the employer conceals information about the inequality in pay, the six months begins with the date when you discovered (or could reasonably have discovered) the concealment.

Example — A woman suspects that her male colleagues who do the same work are better paid. Her employer reassures her that she and her colleagues get the same salary but he deliberately does not tell her that the men also receive performance bonuses under their contracts. Her male colleagues refuse to discuss their pay with her. The woman only discovers the discrepancy between her pay and the men's when one of the men tells her 18 months after she ceases employment. Within six months, she makes an equal pay claim to a tribunal based on the value of the bonus payments she would have received if her contract had provided for them. Although the woman's claim is made more than six months after her employment ends, she shows that her employer deliberately misled her into believing her salary was the same as the men's. She had no way of discovering

the truth earlier. Her claim can proceed as a concealment case.

If you have an incapacity, the six months begins on the date the incapacity ends. 'Having an incapacity' means:

- in England and Wales that you are under 18 or that you lack capacity within the meaning of the Mental Capacity Act 2005, and
- in Scotland that you are under 16 or are incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000.

Example — A woman's employment ends due to a mental health condition which results in her temporary loss of capacity to make decisions for herself. She could make a claim for breach of an equality clause to an Employment Tribunal but is not well enough to do so. The six month time limit will start when she recovers sufficiently to make a claim.

Members of the armed forces have nine months from their last day of service to make their application to the Employment Tribunal provided that they first raise a service complaint.

Example — A former member of the armed forces wants to bring a claim about her terms of service. She first makes a service complaint and then brings a claim for breach of an equality clause in an Employment Tribunal. This claim would need to be brought within nine months of her period of service ending.

Equal pay claims may also be brought in the county court and High Court or (in Scotland) the Court of Session and sheriff court and for this the time limit is six years (5 years in Scotland) from the alleged breach.

Burden of proof

A woman claiming equal pay must prove facts from which an Employment Tribunal could decide that her employer has paid her less than a male comparator doing equal work. This means the woman must show that it is more likely than not that:

- she was employed to carry out equal work with a male comparator (who is a real rather than hypothetical comparator) in the same employment but

- her male comparator received better pay or other contractual benefits than her.

Once the woman has shown this, the employer must show that it is more likely than not that the difference in pay and/or other terms is for a material reason other than sex or that the work is not, in fact, equal. If the employer can show this, they will have a 'material factor defence' and the woman's claim will fail.

However, if the woman demonstrates that the employer's material factor defence has a worse impact on women doing equal work to that of the comparator, the employer will need to **objectively justify** the material factor.

Assessment as to whether the work is of equal value

Where an Employment Tribunal has to decide if the claimant's work and that of the comparator are of equal value, it can ask Acas to select an independent expert to prepare a report on the matter.

Unless the tribunal withdraws its request for a report, it must wait for the expert's report before deciding whether the work is of equal value.

If the tribunal does withdraw its request for a report, it can ask the expert to give it any documents or other information the expert has to help it make a decision.

If there has been a job evaluation study in relation to the work involved and the study finds that the claimant's work is not of equal value to the work of the comparator, the tribunal is required to come to the same decision unless it has good reason to suspect that the study is discriminatory or unreliable.

Example — A woman claims that her job is of equal value to that of a male comparator. The employer produces a job evaluation study to the tribunal in which the woman's job is rated below her comparator's job. The employer asks the tribunal to dismiss the woman's claim but the woman is able to show that the study is unreliable because it is out of date and does not take account of changes in the jobs resulting from new technology. The tribunal can disregard the study's conclusion and can proceed to decide if the work of the claimant and comparator are of equal value.

What the Employment Tribunal can decide in cases where money is owed

If an equal pay claim succeeds, the Tribunal may:

- make a declaration as to the rights of the woman and/or her employer in relation to the claim brought. For example, ordering a pay rise to the level of the comparator's pay (including any occupational pension rights) or adding the man's better terms to the woman's contract
- order the employer to pay arrears of pay or damages to the person who has brought the claim.

There is no award for injury to feelings in an equal pay case.

In England and Wales, the Employment Tribunal can award back pay or damages going back up to six years from the date that proceedings were brought in the Employment Tribunal. This is extended to the day on which the breach first occurred where incapacity or concealment applies.

In Scotland, the Employment Tribunal can award back pay or damages going back up to five years from the date that proceedings were brought in the Employment Tribunal. This is extended to up to 20 years where the employee had a relevant incapacity or there was a fraud or error.

From 6 April 2014, the Tribunal may impose financial penalties of between £100–£5,000 (payable to the Government) on employers if they lose and their case has 'aggravating features'. These awards are only likely to be imposed sparingly in instances where the employer's conduct has been particularly reprehensible.

In equal pay cases the Tribunal cannot recommend that an employer take steps to prevent discrimination like it can in other kinds of discrimination cases. However, the Government intends to introduce legislation in October 2014 which will require an Employment Tribunal to order, subject to certain exceptions, an employer to undertake an equal pay audit where the Tribunal finds that the employer has breached an equality clause and/or discriminated because of sex in relation to pay.

Pension cases

In cases about occupational pension entitlements, an Employment Tribunal can make a declaration as to the rights of everyone involved.

It can also order compensation, but the rules about this are complicated, so it is important to seek advice if this applies to you.

Where an Employment Tribunal makes a declaration about how a member of an occupational scheme must be treated, the employer must if necessary pay the scheme enough money to give the claimant what she is due, without any additional contributions having to be made by her or any other members.

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 the discrimination is done by a person who is not your employer's worker or agent
- 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.

Examples —

- 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.

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 the discrimination is done by a person who is not your employer's worker or agent

Usually, an employer will not be responsible for discrimination, harassment or victimisation by someone who does not work for them or is not their agent. However, case law indicates that it is possible an employer could be found to be legally responsible for failing to take action in specific circumstances. These would arise where they have some degree of control over a situation where there is a continuing course of offensive conduct of which they are aware but do not take action to prevent its recurrence.

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.

Examples —

- 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, 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. The required knowledge is of the facts of your disability but an employer does not also need to realise that those particular facts are likely to meet the legal definition of 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. The required knowledge is of the facts of your disability but an employer does not also need to realise that those particular facts are likely to meet the legal definition of disability. This means your employer must do everything they can reasonably be expected to do to find out.

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).

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.

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**).

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.

Examples —

- 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.

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 ‘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.

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 '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 '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.

Examples —

- 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.
- Requiring completion of an application form could put some disabled job applicants at substantial disadvantage and providing a different way to give information in support of an application may be a reasonable adjustment in certain circumstances.

Reasonable adjustments in practice

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

- **Making adjustments to premises.**

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.**

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.**

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.**

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.**

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.**

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.**

Examples —

- 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.**

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 over which your employer has control.

- **Modifying instructions or reference manuals.**

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.**

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.**

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.**

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.**

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 Choice.**

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.**

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.**

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.**

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.**

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 (for example, their average hourly rate) for these breaks.

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

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.

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 a 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.

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. 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.

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 your **employer**, or by a worker employed by them or by their **agent**, what can you do about it?

This part of this guide covers:

- Your choices
- Was what happened against equality law?
- Complaining to the employer:
 - Making an informal complaint
 - Raising a formal grievance
 - Alternative Dispute Resolution
 - Monitoring the outcome
- The questions procedure, which you can use to find out more information from an employer if you think you may have been unlawfully discriminated against, harassed or victimised. The questions procedure was abolished on 6 April 2014. However it will still apply to events that happened before that date and you can still ask an employer questions about events that happened on or after that date.
- 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 n Employment 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.

If your complaint is that you are being paid less than a person of the opposite sex for equal work, and the pay or benefits concerned are part of your contract of employment (usually called 'equal pay claims') different rules and different time limits apply. These are explained in the section called, 'What to do if you believe you are being paid less than someone else because of a protected characteristic' at [page 8](#) of this guide.

Your choices

There are three things you can do:

- complain to the employer informally
- raise a grievance under your employer's grievance procedure
- 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. More information about time limits is given later on in this guide.

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. From 6 May 2014, you will need to comply with the Early Conciliation Procedure before you can make a claim to the Employment Tribunal. There is more information on that procedure in the section on 'Settling a dispute' in this part of the Guidance.

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.

If you are bringing a claim after 29 July 2013, you will also have to pay a fee to make a claim to the Employment Tribunal and another fee to have your case heard. The fees may be as much as £1200 if your claim goes to a full hearing. However, if you

are successful, it is likely that the Tribunal will order the employer to reimburse your fees. Also, there are remission arrangements in place which mean that if your income is below a certain level the fee will be reduced or waived entirely.

The Government has published online guidance on fees: www.gov.uk/employment-tribunals/apply-to-the-tribunal

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.

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 ask them questions about what happened. We explain how you can do this 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 '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 something that happened at work 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 'Further sources of information and advice'.

Ways you can try to get your employer to sort out the situation by complaining directly to them

Making a complaint informally

It may be that your employer can look into what has happened and decide what to do without it being necessary for you to make a formal complaint.

Often all it needs to stop something happening is for the other person to understand the effect of what they have done or that the situation is being taken seriously by you — and their — employer.

This is especially the case if they did not intend something to have the impact it did — for example, if what has happened is indirect discrimination or discrimination arising from disability.

Making a complaint informally means talking to the person at your workplace who can make the situation better. This may be your manager or, if it is your manager who is behaving in the way you believe is unlawful discrimination, someone higher up. In a small organisation, it may be your employer themselves.

It is a good idea to ask your manager or employer for a meeting, so that there is enough time for you to talk about what has happened and to say what you'd like them to do.

The meeting needs to be somewhere where you can talk to your manager or employer without other people hearing what you are saying.

Even though it is an informal meeting, you can still prepare for the meeting by writing down what you want to say. This can help you make sure you have said everything you want to say to your manager or employer.

This may be especially important if you work for a small organisation and it is the person in charge (who may be the only manager) who has done what you want to complain about. If you can, you may get a better result from the meeting if you can explain what has happened in a way that does not immediately make your employer feel you are blaming them for doing something wrong.

If you need help with this, you could contact one of the organisations listed in [Chapter 5](#) or you could ask your trade union if you have one or a colleague or friend. It may help to practise what you want to say.

Tell the person you are meeting:

- what has happened
- what effect it had or is having on you
- what you want them to do about it, for example, talking informally to the person or people who have done something

Your manager or employer may need time to think about what has happened and what to do about it. They may need to talk to other people to find out if they saw or heard anything. Tell your manager or employer if you agree to them doing this. If you do not agree, this may make it harder for them to find out what happened.

Your manager or employer should tell you what they are going to do, and then later what the result was.

If after investigating what has happened, your manager or employer decides:

- no unlawful discrimination took place, or
- that they are not responsible for what has happened (see [page 38](#))

then they should tell you this is what they have decided within a reasonable time.

If they don't explain why they decided this, you can ask them to explain. They do not have to explain, but if they do it may help you to decide what to do next: for example, if it is worth taking things further.

You then have two options:

- accepting the outcome
- taking things further by making a formal complaint using any procedures your employer has for doing this.

If your employer or manager agrees with you that what happened was unlawful discrimination, then they will want to make sure it does not happen again.

This may mean you don't need to do anything other than carry on with your job as usual. Or they may want you to do something such as meeting the person who discriminated against you. In any case, you may need to go on working with that person.

Don't feel that you have to do anything you are not comfortable with. But it may help sort things out to do what your employer suggests, if necessary with some expert help, for example, from your trade union or from another person or organisation, such as a mediator.

If the discrimination was serious or just one of a series of events, your employer may want to take disciplinary action against the person who discriminated against you. You would probably have to explain to a disciplinary hearing what happened. You may be able to get help or support in doing this from your trade union if you have one or from one of the organisations listed in 'Further sources of information and advice'.

If your employer does not tell you what they have decided, even after you have reminded them, then you can either make a formal complaint or make an Employment Tribunal claim.

Make sure you know when the last day is for bringing your claim so you don't miss this deadline.

Using your employer's grievance procedures

If you are not satisfied with the result of your informal complaint, then you can make a formal complaint, using the set procedures your employer has. It is the use of the set procedures that makes it 'formal'.

If you make a formal complaint, this is often called a 'grievance'. Your employer should be able to tell you what their procedures are.

If they don't have any information they can give you, there is a standard procedure which you can get from Acas. Your employer can use this too, if, for example, they don't have their own procedures. Contact details for Acas are in

'Further sources of information and advice'.

If you are not happy about the outcome of a grievance procedure, then you have a right to appeal.

Alternative dispute resolution

If you or your employer want to get help in sorting out a complaint about discrimination, you can agree to what is usually called 'alternative dispute resolution' or ADR. ADR involves finding a way of sorting out the complaint without a formal tribunal hearing. ADR techniques include mediation and conciliation.

In complaints relating to work situations, this can happen:

- as part of an informal process
- when formal grievance procedures are being used, or
- before an Employment Tribunal claim has been brought or finally decided.

There are different organisations who may be able to help with this, for example your trade union or Acas.

From 6 May 2014 in almost all cases you will have to contact Acas under the early conciliation procedure before you can make a claim to the Employment Tribunal. There is more information on Acas, the early conciliation procedure and different ways of settling your dispute with your employer in the section called 'Settling the dispute' later in this part of the Guidance.

What your employer can do if they find that there has been unlawful discrimination

The action your employer can take will depend on the specific details of the case and its seriousness. Your employer should take into consideration any underlying circumstances and the outcome of previous similar cases. Actions your employer could take include:

- Some form of alternative dispute resolution, which may be especially useful where you and the person who discriminated have to carry on working together.
- Equality training for the person who discriminated.
- Appropriate disciplinary action (your employer can find out more about disciplinary procedures from Acas).

What your employer can do if they find that there wasn't any unlawful discrimination

If your employer hears your grievance and any appeal but decides that you weren't unlawfully discriminated against, they still need to find a way for everyone to continue to work together.

Your employer may be able to do this themselves, or it may be better to bring in help from outside as with alternative dispute resolution.

Monitoring the outcome

Whether your employer decides that there has been unlawful discrimination or not, you must not be treated badly for having complained. For example, if your employer made you transfer to another part of their organisation (if it is big enough) this may be **victimisation**. However, you could ask to be transferred, and your employer should do this if you are sure this is what you really want.

Your employer should monitor the situation at your workplace to make sure that the unlawful discrimination (if your employer found there was discrimination) has stopped and that there is no victimisation of you or anyone who helped you.

If you are not satisfied with what has happened, whether that is with

- your employer's investigation
- their decision
- the action they have taken to put the situation right
- how you have been treated after you made the complaint

you could bring a claim in the Employment Tribunal. This is explained in the next part of this guide.

The questions procedure

If you believe you may have experienced unlawful discrimination, harassment or victimisation under equality law it is good practice to seek relevant information from the employer. This can help you decide if you have a valid claim or not.

How you can do this will depend on whether or not the claim is about something that happened before 6 April 2014.

Claims about events which happened before 6 April 2014

If the claim is about something that happened before 6 April 2014, there is a set procedure which you can use to obtain information from the employer. It includes a set form called 'the questionnaire' or 'questions procedure' available at:

www.gov.uk/government/publications/discrimination-and-other-prohibited-conduct-complaints-questionnaire

The form does not need to be used, provided the specified questions are adopted.

If you send questions to an employer under this procedure, they are not legally required to reply or to answer the questions, but it may harm their case if they do not.

If the employer doesn't respond to the questionnaire within eight weeks of it being sent, the Employment Tribunal can take that into account when making its judgment. It 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 an employer states that to give an answer could prejudice criminal proceedings and if it is reasonable to claim that it would. Most of the time, breaking equality law only leads to a claim in a civil court. Occasionally, breaking equality law can be punished by the criminal courts. In that situation, the employer may be able to refuse to answer the questions if in answering they might incriminate themselves and if it is reasonable for them not to answer.

Claims about events which happened on or after 6 April 2014

The questions procedure and the questionnaire form were abolished on 6 April 2014. For claims about events which took place on or after that date it will remain good practice for anyone who thinks that they may have experienced unlawful discrimination, harassment or victimisation under equality law to seek relevant information before issuing a formal claim.

Acas has produced non-statutory guidance for employers and employees asking and answering questions after 6 April 2014. It is available at: www.acas.org.uk/media/pdf/m/p/Asking-and-responding-to-questions-of-discrimination-in-the-workplace.pdf

That guidance makes it clear that an employer should treat any such questions seriously and promptly and not ignore them. The questions and answers can form part of the evidence in a case brought under the Equality Act 2010.

Whether the claim is about events that occurred before 6 April 2014, or on or after that date, the employer must not treat you badly, because you have sent them questions about a claim. 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 section of this guide called 'What to do if you believe you are being paid less than someone else because of a protected characteristic'
- 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.

Claims about equal pay between men and women can also be decided by the County Court or High Court (in England and Wales) and the Sherriff Court or Court of Session (in Scotland). This is explained in the section of this guide called 'What to do if you believe you are being paid less than someone else because of a protected characteristic'.

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

Anyone making a claim to an Employment Tribunal on or after 29 July 2013 has to pay a fee to make a claim and another fee to have their case heard. Remission arrangements are in place, which mean that if your income is below a certain level (and this varies depending upon, for example, family size), the fees will be reduced or waived entirely.

The Government has published online guidance on fees: www.gov.uk/employment-tribunals/apply-to-the-tribunal

The Tribunal is likely to order your employer to pay the fees back to you if your case succeeds.

If your complaint is against a public authority, you may also be able to bring a claim for judicial review. Different procedures and time limits apply to these proceedings.

Time limits for bringing a claim

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

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 section of this guide called ‘What to do if you believe you are being paid less than someone else because of a protected characteristic’, and
- for cases involving the armed forces, the time limit is six months (less one day).

If you bring 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. You will need to explain why you were not able to bring the claim within the time limit. 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.

Example — An employer has a policy of only providing company cars to employees aged 35 years or over. Unless the policy can be objectively justified, someone aged under 35 would be able to make a claim to the tribunal for age discrimination at any time while the policy continues to operate in favour of those aged 35. If the policy ceased to operate in favour of this age group, claims would have to be made within three months of this happening.

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.

Example — A wheelchair-user asks their employer to install a ramp to enable them to get over the kerb between the car park and the office entrance more easily. The employer indicates that it will do so but no work at all is carried out. After a period in which it would have been reasonable for the employer to commission the work, even though the employer has not made a positive decision not to install a ramp, it may be treated as having made that decision. A court can hear a claim if it is brought outside this time limit if the court thinks that it would be 'just and equitable' (fair to both sides) for it to do this.

Where you have to contact Acas before making a claim because the early conciliation procedure applies, there are special rules about time limits. The normal three month time limit is extended to allow conciliation to take place. There is more information on the early conciliation procedure in the section of this guidance called 'Settling a dispute'.

For more information see the Acas guidance on the early conciliation procedure: <http://www.acas.org.uk/media/pdf/h/o/Early-Conciliation-explained.pdf>

The rules are not straightforward and you should seek advice where there is any doubt about how the rules apply.

You may be able to get advice on this from Acas or Citizens Advice or your trade union. Contact details for these and other organisations who may be able to help you are in 'Further sources of information and advice'.

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:

- 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
- 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.

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

At present, the Employment Tribunal can 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). The Employment Tribunal can make this kind of recommendation even if the person who has won their case

no longer works for the employer. The Government has said it will abolish the Employment Tribunals' power to make these kind of wider recommendations. If it may be relevant to a case in which you are involved, you will need to check whether this power still exists.

Examples —

- 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. However, the Tribunal is now likely to order your employer to reimburse any fees you had to pay the tribunal after 29 July 2013 to bring your claim, if that claim is successful.

From 6 April 2014, the Tribunal may also impose financial penalties of between £100– £5,000 (payable to the Government) on an employer if they are unsuccessful in defending a claim and the case has 'aggravating features'. These awards are only likely to be imposed sparingly in cases where the employer's conduct has been particularly reprehensible.

The Government also intends to introduce legislation in October 2014 which will require an Employment Tribunal to order, subject to certain exceptions, an employer to undertake an equal pay audit where the Tribunal finds that the employer has breached an equality clause and/or discriminated because of sex in relation to pay.

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 or court hearing. There are three ways in which you can settle a dispute:

- Agreement between you and the employer
- Acas conciliation service
- Qualifying settlement 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 made a claim to an Employment Tribunal.

From 6 May 2014, all claimants (with very limited exceptions) will have to comply with the Early Conciliation Procedure before they can make a claim to the Employment Tribunal. Under the procedure, a person wanting to bring a claim has to present a completed early conciliation form to Acas or telephone Acas giving their details and those of their employer. Acas will then offer a free conciliation service to try and help the parties resolve their dispute.

The time limit for bringing a claim will usually be extended to allow the conciliation to take place.

You can get the prescribed notification form and guidance on how the early conciliation procedure works from the Acas website: www.acas.org.uk/index.aspx?articleid=4028

Example — A worker raises a grievance with her employer alleging sex discrimination. The employer dismisses her grievance. She decides to make a claim to the tribunal but before she does so she contacts Acas in order to comply with the early conciliation procedure. Acas helps her and her employer to conciliate 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 settlement agreement

A worker can also settle a claim or potential claim to the employment tribunal by way of a 'qualifying settlement agreement'. 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 settlement 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 settlement agreement, the same advisor can also advise you on the settlement 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 'Further sources of information and advice'.

5 | Further sources of information and advice

General advice and information

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. If you need expert information, advice and support on discrimination and human rights issues and the applicable law, especially if you need more help than advice agencies and other local organisations can provide, please contact the Equality Advisory and Support Service (EASS), below. EASS was commissioned by Government in 2012 to replace the EHRC Helpline, which is now closed. EASS is completely independent of the Commission.

Equality Advisory Support Service (EASS)

The Helpline advises and assists individuals on issues relating to equality and human rights, across England, Scotland and Wales. They can also accept referrals from organisations which, due to capacity or funding issues, are unable to provide face to face advice to local users of their services.

- Website: www.equalityadvisoryservice.com/
- Telephone: 0808 800 0082 (Mon–Fri 9am–8pm; Sat 10am–2pm)
- Textphone: 0808 800 0084 (Mon–Fri 9am–8pm; Sat 10am–2pm)

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: 0300 123 1100 (Mon–Fri: 08:00–20:00; Sat: 09:00–13:00)

Gov.UK (Employing people)

Guidance from the government's website for employers.

- Website: www.gov.uk/browse/employing-people

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.gov.uk/access-to-work

London, East England and South East England

- Telephone: 020 8426 3110
- Textphone: 020 8426 3133
- Email: atwosu.london@jobcentreplus.gsi.gov.uk

Wales, South West England, West Midlands and East Midlands

- Telephone: 02920 423 291
- Textphone: 0845 602 5850
- Email: atwosu.cardiff@dwp.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: 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: 0300 777 0107 **or** 0300 777 0108
- Email: mail@adviceuk.org.uk

Age UK

Age UK aims to improve later life for everyone by providing information and advice, campaigns, products, training and research.

- Website: www.ageuk.org.uk
- Telephone: 0800 169 6565
- Email: contact@ageuk.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

British Chambers of Commerce (BCC)

The BCC is the national body for a network of accredited Chambers of Commerce across the UK; each Chamber provides representation, services, information and guidance to its members.

- Website: www.britishchambers.org.uk
- Telephone: 020 7654 5800
- Fax: 020 7654 5819
- Email: info@britishchambers.org.uk

British Retail Consortium (BRC)

The BRC is a trade association representing a broad range of retailers. It provides advice and information for its members.

- Website: www.brc.org.uk
- Telephone: 020 7854 8900
- Fax: 020 7854 8901

Citizens Advice Bureau

Citizens Advice Bureaux offer free, confidential, impartial and independent advice from over 3,500 locations. These include high streets, community centres, doctors' surgeries, courts and prisons. It is available to everyone.

Advice may be given face-to-face or by phone. Most bureaux can arrange home visits and some also provide email advice. A growing number are piloting the use of text, online chat and webcams.

- Website: www.citizensadvice.org.uk/getadvice.ihtml
- Telephone (England): 03454 04 05 06
- Telephone (Wales): 03454 04 05 05

Citizens Advice Scotland

- Website: www.cas.org.uk/
- Telephone: 03454 04 05 06

Department for Business, Innovation and Skills (BIS)

BIS is the UK government department with responsibility for trade, business growth, employment and company law and regional economic development.

- Website: www.gov.uk/government/organisations/department-for-business-innovation-skills
- Telephone: 020 7215 5000

Chartered Institute of Personnel and Development (CIPD)

The CIPD is Europe's largest human resources development professional body, with over 135,000 members. It supports and develops those responsible for the management and development of people within organisations.

- Website: www.cipd.co.uk
- Telephone: 020 8612 6208

ChildcareLink

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

- Website: www.childcare.co.uk
- Telephone: 0800 2346 346

Close the Gap Scotland

Close the Gap Scotland works to close the gender pay gap by working with companies and trade unions as well as carrying out research to illustrate the gender pay gap.

- Website: www.closesthegap.org.uk
- Telephone: 0141 337 8131

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

Equality Britain

Equality Britain aims to promote opportunities in employment, education, housing and sport to people from ethnic minorities.

- Website: www.equalityuk.org

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

The Gender Trust

The Gender Trust is the UK's largest charity working to support Transsexual, Gender Dysphoric and Transgender people or those who are affected by gender identity issues. It has a helpline and provides training and information for employers and organisations.

- Website: www.gendertrust.org.uk
- Telephone: 01273 234024

GOV.UK

Gov.uk 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.gov.uk

Government Equalities Office (GEO)

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

- Website: www.gov.uk/government/organisations/government-equalities-office
- Telephone: 02072116000

Health and Safety Executive (HSE)

The HSE provides information and guidance on health and safety.

- Website: www.hse.gov.uk
- Telephone: 08701 545 500
- Email: hseinformationservices@natbrit.com

Healthy Minds at Work

Healthy Minds at Work is a Wales-based initiative to help prevent absence from work due to stress-related illnesses through improving the welfare of employees.

- Website: www.healthymindsatwork.org.uk
- Email: info@healthymindsatwork.org.uk

Law Centres Network

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: 0203 637 1330

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

Opportunity Now

Opportunity Now is a membership organisation representing employers who want to ensure inclusiveness for women, supporting their potential to be as economically active as men. Opportunity Now is part of Business in the Community.

- Website: www.opportunity.bitc.org.uk
- Telephone: 0207 566 8650

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 UK through legislation and social

change. It provides legal advice, training and consultancy for employers and organisations as well as undertaking commissioned research.

- Website: www.pfc.org.uk
- Telephone: 08448 708165
- Email: office@pfc.org.uk

Race for Opportunity (RfO)

RfO is a network of private and public sector organisations working across the UK to promote the business case for race and diversity. It is part of Business in the Community.

- Website: www.raceforopportunity.org.uk
- Telephone: 0207 566 8716

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

The Age and Employment Network (TAEN)

An independent charity whose mission is to promote an effective job market that serves the needs of people in mid- and later life, employers and the economy.

- Website: www.taen.org.uk
- Telephone: 020 7843 1590

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

Train to Gain

Advice and resources for businesses looking for support in training their staff.

- Website: www.traintogain.gov.uk
- Telephone: 0845 600 9006

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

Workwise

Workwise aims to make the UK one of the most progressive economies in the world by encouraging the widespread adoption of smarter working practices in order to gain better productivity and to balance work–life pressures.

- Website: www.workwiseuk.org
- Telephone: 01252 311 557
- Email: enquiries@workwiseuk.org

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.
all reasonable steps	In relation to discriminatory actions by an employee, all the things that the employer could reasonably have done to have stopped the discriminatory acts if they are not responsible; in relation to reasonable adjustments, ‘reasonable steps’ is another term for the things that the employer could reasonably have done to remove the disadvantage.
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

A person with whom a claimant compares themselves to establish less favourable treatment or a disadvantage in a discrimination case. If a comparator does not exist it is often possible to rely on how a person would have been treated if they did not have the relevant protected characteristic (known as 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. Sometimes people are treated as having a disability where they do not meet these criteria (e.g. asymptomatic cancer and HIV).

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. Sometimes

people are treated as having a disability where they do not meet these criteria (e.g. asymptomatic cancer and HIV).

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**. The required knowledge is of the facts of the worker's disability but an employer does not also need to realise that those particular facts are likely to meet the legal definition of disability.

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; for example, 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 [Chapter 4](#) of this guide.

educational establishments

Schools, colleges and higher educational institutions.

employee

A person who carries out work for a person under a contract of service 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. This guide refers to someone in these categories as ‘workers’. 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 seeks such a certificate and 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	<i>See</i> 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.
knowledge	This refers to knowledge of a person's disability which, in some circumstances, is needed for discrimination to occur. The required knowledge is of the facts of the worker's disability but an employer does not also need to realise that those particular facts are likely to meet the legal

	definition of disability.
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	<p>In England and Wales marriage is no longer restricted to a union between a man and a woman but now includes a marriage between two people of the same-sex.¹ This will also be true in Scotland when the relevant legislation is brought into force.²</p> <p>Same-sex couples can also have their relationships legally recognised as 'civil partnerships'. Civil partners must not be treated less favourably than married couples (except where permitted by the Equality Act).</p>
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 employees. It records information about a person’s protected characteristics. It is kept separately from any

¹ Section 1, Marriage (Same Sex Couples) Act 2013.

² Marriage and Civil Partnership (Scotland) Act 2014.

	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 <i>requires</i> treating them more favourably. An employer can also <i>chose</i> 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. Regardless of age, it must be objectively justified.
objective justification	See objectively justified .
objectively justified	When something can be shown to be a proportionate means of achieving a legitimate aim – that is, the way of achieving the aim is appropriate and necessary. 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	This usually refers to doctors or nurses employed in-house

service	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 *also* **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.

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.
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	<p>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 will cover certain acts or activities carried out on behalf of the state.</p> <p>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.</p> <p>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.</p>

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.
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'. This procedure will be abolished on 6 April 2014 (see, section in the Guidance on 'questions procedure' for details).
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 an age which is set in the employee's contract of employment or the normal retirement age in that employment. Employers must objectively justify any retirement age imposed, following the abolition of the default retirement age in 2011. The employer may also impose a retirement age on workers who are not

right to request flexible working	employees, but this must also be objectively justified. Employees with at least 26 weeks' service have the right to request flexible working under a formal procedure for any reason. 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. A 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.
specific equality duties	These are duties imposed on certain public authorities. They are designed to ensure that the better performance by a public authority of the public sector equality duty. See

also **public sector equality duty**.

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.
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.
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 Choice	Work Choice provides support to disabled people in helping them get and keep a job. The type of support varies according to the help needed but can include training and developing skills; building confidence and interview coaching.
work of equal value	See equal work .
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.

Contacts

This publication and related equality and human rights resources are available from the Commission's website: www.equalityhumanrights.com

For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

Website www.equalityadvisoryservice.com

Telephone 0808 800 0082

Textphone 0808 800 0084

Hours 09:00 to 20:00 (Monday to Friday)
10:00 to 14:00 (Saturday)

Post FREEPOST Equality Advisory Support Service FPN4431

Questions and comments regarding this publication may be addressed to: correspondence@equalityhumanrights.com. The Commission welcomes your feedback

Alternative formats

This guide is available as a PDF file and as a Microsoft Word file from www.equalityhumanrights.com. For information on accessing a Commission publication in an alternative format, please contact:

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