

Disability Law Service

advice and legal representation for disabled people

Employment Rights under the Equality Act 2010: A Brief Guide for Disabled People

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Employment Rights under the Equality Act 2010: A Brief Guide for Disabled People

Introduction

From 01 October 2010 the Equality Act 2010, known as 'the EA' became law. The EA has replaced the Disability Discrimination Act 1995 (the DDA) and other anti discrimination legislation, such as the Race Relations Act 1976 (the RRA).

If you are a disabled person, then you may have protection under the EA.

If you are covered by the EA, this law gives you certain rights at work and puts some obligations on your employer.

This is only a very **brief** guide to the rights of disabled people under the EA. The aim of this guide is to help you understand whether you are considered to be disabled by the EA, and if so, to understand your rights.

If, after reading this guide, you think that you may have a claim against your employer, you should seek further advice as soon as possible from one of the organisations listed on the back pages of this guide.

What is the EA about?

The EA does not just cover disability discrimination.

An employee may be protected by the EA if they believe that they have been discriminated against because of their: age; disability; gender reassignment; marriage and civil partnership; race; religion and belief; sex; sexual orientation; or pregnancy and maternity.

However this factsheet will only deal with disability discrimination.

In summary, the EA gives people the right not to be discriminated against:

- when applying for a job;
- in the terms on which employment is offered;
- in opportunities for training, promotion or other benefits;
- in the way you are treated by your employer and colleagues;
- in being selected for redundancy or by being dismissed; **and**
- when you have left your job, but still have a relationship with your previous employer, for example: by requesting a reference.

In addition the EA places a duty on employers to make **reasonable adjustments** to working arrangements or premises, in order to prevent disabled employees, job applicants or ex-employees from being disadvantaged because of their disability. This includes making reasonable adjustments to the application and interview process.

Am I covered by the EA?

The EA applies to all employees, including prison officers, fire fighters, the police, contract workers, office holders (such as coroners, but not elected councillors), people on work experience, partners in firms, and barristers.

It also applies to trade organisations (such as trade unions), qualifying bodies (such as General Medical Council, Driving Standards Agency, and examination boards), and trustees and managers of occupational pension schemes.

However, the EA does **not** cover:

- volunteers; or
- people working for the armed forces; or
- employment wholly or mainly outside Great Britain.

(Protection under the EA extends to employment wholly outside Great Britain, provided that the employment has a sufficiently close connection with Great Britain – and the EA sets out the circumstances in which this will be the case.)

The EA also does not apply to *certain* workers such as those in the Armed Forces, Crown Officers and some workers who work on board a ship or hovercraft. If you belong to this excluded category of worker then contact an adviser to find out whether the exclusion applies to you.

Would I legally be considered a disabled person?

In order to have the protection as a disabled person under the EA, you must meet the definition of a 'disabled' person, which is contained in section 6 of the EA. This states that:

“A person (P) has a disability if—

(a) P has a physical or mental impairment, **and**

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.”

If you have been diagnosed with Cancer, HIV or Multiple Sclerosis or are certified as blind or visually impaired you are automatically covered by the EA.

If your condition is not listed above you will only meet the definition if you can answer yes to **ALL** of the following four questions:

Question 1: Do I have an impairment?

To bring a claim you must have a physical or mental impairment. A mental impairment may be a learning difficulty or a mental illness.

Even if you recover from the impairment, you are entitled to bring a claim against the employer if you are treated less favourably for having had that impairment.

Question 2: Does my impairment affect my ability to carry out day to day activities?

Day to day activities include the ability to:

- walk, sit, climb stairs, use public transport or get around indoors and outdoors unaided;
- use your hands or fingers to write, use a knife and fork, press buttons on a keyboards such as on a telephone;
- place food into your own mouth or pour water into a glass;
- control your bowels or bladder;
- lift, carry or move everyday objects such as a kettle of water, bags of shopping or a chair;
- talk, hear or see;
- remember familiar people and places, organise simple activities, learn new things and understand spoken or written instructions such as a short recipe;
and
- understand physical danger and so, for example: be able to cross the road safely or tell by touch if something is very hot or cold.

The above activities were prescribed as day to day activities under previous disability discrimination, and would still qualify as day to day activities. However, the position under the EA is different in that a day to day activity is not prescribed, and any regular or daily activity, including work-related activities such as interacting with colleagues, preparing documents, using a computer and keeping to a shift pattern, are likely to be day to day activities.

Question 3: Does my impairment have a substantial adverse effect on my ability to carry out day to day activities?

Your impairment must have more than a minor effect on your day to day activities. You should, however, discount any treatment or medication you are having when answering this question. For example: if you are a diabetic who takes insulin you should consider how your day to day activities would be affected if you did not take your insulin.

If you have a progressive condition, i.e. a condition which will get worse with time, such as Muscular Dystrophy or lupus, you will be considered to be a disabled person from the moment your condition has **some** effect on your ability to carry out normal day to day activities, however slight that may be to start with. This is provided that the condition could well progress to a point where the effects become substantial.

Question 4: Is the effect of my impairment long-term?

Long-term means that your impairment has either:

- lasted for at least 12 months; **or**
- is likely to last for at least 12 months; **or**
- is likely to last for the rest of your life.

If your impairment had a substantial adverse effect for less than 12 months but is likely to recur, then your condition will be treated as long term. This is relevant if you have a fluctuating condition such as rheumatoid arthritis or depression. A condition will be seen as 'likely' to recur if this could well happen.

If you can answer 'yes' to all of the above questions then it is likely you are a disabled person under the EA. It can sometimes be very difficult to decide whether or not you do meet the criteria.

If you are unsure whether you can legally be classified as a disabled person, you ought to seek legal advice from one of the organisations listed at the back of this guide.

If you can legally be classified as a disabled person, the next question to consider is whether or not your employer has acted unlawfully under the EA.

NOTE: RIGHTS FOR NON-DISABLED PEOPLE

In certain circumstances it is also unlawful for an employer to discriminate against non-disabled people either because they are associated with a disabled person, or because they wrongly believe that the person is disabled. This protection only extends to protection from direct discrimination and from harassment.

It is also unlawful for an employer to treat a non-disabled employee unfavourably because they have supported or been a witness for a disabled employee in a discrimination claim. This will be victimisation.

Do I have a claim against my employer?

Informing your employer of your disability?

You do not have to tell your employer that you are disabled or have described yourself as a disabled person unless there is a clause in your contract requiring you to do so (this may be the case in safety-critical roles).

If you are applying for a job an employer is not allowed to ask about your health or disability except in the following circumstances:

- enquiring whether you would need a reasonable adjustment for any interview or assessments they intend to run to assess suitability for the role;
- establishing whether or not applicants will be able to carry out tasks vital to the job;
- monitoring diversity;
- so that they can take positive action, such as giving preferential treatment to disabled applicants or applicants with a particular disability.

Some types of discrimination, such as indirect discrimination, do not require that the employer be aware that you are disabled.

However, if you want your employer to make adjustments for you at work then you have to inform the employer of your disability in order to be certain that the employer has a legal obligation to put the adjustments in place.

An employer must also be aware of your disability for you to have a claim for direct discrimination or discrimination arising from disability.

Where an employer's Occupational Health service is aware of your disability then the employer will usually be deemed to be equally aware. This will be the case even if the information has been given to the Occupational Health service in confidence.

Has my employer discriminated against me?

An employer can discriminate against a disabled person in six ways.

- **direct discrimination** – by treating a disabled person less favourably because of their disability;
- **discrimination arising from disability**– by treating a disabled person unfavourably because of something arising from their disability, and that treatment cannot be justified;
- **‘indirect discrimination’** – by applying a policy or criteria that places a disabled person at a disadvantage, and that treatment cannot be justified;
- failure to comply with a duty to make **reasonable adjustments**;
- **victimisation** of a person (whether or not he is disabled);
- **harassment of a person.**

Examples of less favourable treatment are as follows:

- refusing to shortlist or interview you for a job;
- refusing to offer you a job;
- refusing to train or promote you;
- selecting you for redundancy;
- dismissing you;
- refusing to provide a reference; **and**
- harassing you or allowing a colleague to harass you.

Direct discrimination

This is where an employer treats an employee less favourably because of their disability. An example of direct discrimination would be where an employer refuses you an interview because you are visually impaired.

It is also unlawful for an employer to directly discriminate against someone who is not disabled either because they are associated with a disabled person (for example if they are a carer for a disabled person), or if the employer wrongly believes that they have a disability. An example of this would be if an employer dismisses an employee because they believe that they have schizophrenia. Even if the employee does not have schizophrenia this is likely to be direct discrimination.

To show that the treatment is “less favourable” you need to show that the employer would not have treated a non-disabled employee, who is in the same or not materially different circumstances, the same way. If you are claiming direct discrimination, these circumstances include your abilities.

For example, an employee is dismissed because he cannot drive for two years because he has had an epileptic seizure. This would not be direct discrimination if the employer can show that they would have dismissed a non-disabled employee who could not drive. However, if the employer has not dismissed other employees who were unable to drive for two years due to some other reason, such as a ban due to drink-driving, then this may be direct discrimination.

Direct discrimination cannot be justified by an employer.

Discrimination arising from disability

This is where an employee is treated unfavourably not directly because of their disability, but for a something arising in consequence of their disability.

For example:

- An employer fails to put in place an adapted keyboard for a secretary with arthritis and then dismisses her because she is unable to carry out her role. The reason for dismissal is her inability to fulfil her role, however that reason relates to her disability.
- Your employer chooses to make you redundant because you have had a lot of time off sick for treatment of your disability.

An employer may be able to **justify** discrimination arising from disability (see justification below).

Indirect discrimination

This occurs where an employer applies a policy to all employees or applicants but it would place a disabled person at a particular disadvantage. For example, this could be a policy that all employees must be able to start work at 9am. Although this may be applied to all employees equally it may affect a person with arthritis whose medication makes them very dozy in the mornings.

You will need to show that you have been placed at a disadvantage compared to a non-disabled person in the same or not materially different circumstances.

An employer can justify indirect discrimination if they can show that it is a proportionate means of achieving a legitimate aim (see justification below).

Reasonable adjustments

Under the EA employers have a duty to make reasonable adjustments for disabled employees. You can ask for reasonable adjustments from your employer if:

- the working arrangements (e.g. the hours or the method of working) place you at a disadvantage because of your disability; **or**
- the building or place where you work (e.g. steps or doorways) make it much more difficult for you to do your job because of your disability than non-disabled people; **or**
- if you would be at a disadvantage because of your disability if you were not provided any aids or assistance at work (such as providing an adapted telephone or providing an assistant to help you).

In considering whether you have a case for reasonable adjustments you must:

- identify a working arrangement or physical feature or absence of an aid or assistant that places you at a disadvantage in relation to your disability;
- identify evidence of how substantial this disadvantage is; **and**
- identify evidence of adjustments that can practically be made, within the circumstances of your case, to address this substantial disadvantage.

Examples of **reasonable adjustments** may include:

- providing ramps or lifts or allowing you to work on the ground floor or widening doorways;
- providing equipment for you such as larger computer screens, adapted keyboards or a textphone;
- transferring small parts of your job which you cannot do to someone else;

- allowing you to sit down or stand up while working and providing special desks or chairs;
- allowing you to work part time or flexible hours;
- allowing you time away from work for treatment;
- giving you extra training or supervision;
- altering the way that you are assessed;
- providing you with a reader or interpreter; **and**
- allowing you to transfer to a more suitable vacancy.

Is the adjustment I am asking for reasonable?

This will depend on your individual circumstances and those of your employer.

When considering whether or not the adjustment you have asked for is reasonable your employer can look at:

- how effective the adjustment would be in improving your situation;
- how practical it is to make the adjustment;
- how much it would cost to make the adjustment and whether or not there is money or help available from elsewhere to make the adjustment;
- how long it would take to make the adjustment; **and**
- how much disruption making the adjustment would cause.

If, for example, the employer is only offering you the job on a temporary basis for a short time, and the adjustment will cost comparatively a lot of money or will take a long time to put into place, then it may not be reasonable for the employer to provide that particular adjustment.

If, however, you have worked for or are likely to work for the employer for a long time and your employer is a large organisation, a more costly adjustment may be seen as reasonable.

An adjustment is also more likely to be reasonable if there is money in the form of grants available from elsewhere to help pay for the adjustment. The Government operates an **Access To Work Scheme** under which a Disability Employment Adviser (DEA) can make workplace assessments and suggest reasonable adjustments which may be possible.

The DEA can also provide information about grants, which may be available for employers from the Government, which will meet some of the cost of making the adjustments. Details of how to contact the Access To Work Scheme is on the back pages of this guide.

Is my employer harassing me?

The EA makes it unlawful for an employer to harass a worker for a reason related to their disability. **Harassment** occurs where, for a reason related to your disability, your employer creates an intimidating, hostile, degrading, humiliating or offensive environment for you.

An example of harassment would be if you informed your manager that you would need time off for a hospital appointment regarding your disability. On your return, your manager publicly accuses you of missing work for no reason and therefore placing the rest of the team under pressure. This confrontation takes place in front of your office colleagues and they ignore you after this point.

It is also unlawful under the EA for an employer to harass you because you are associated with a disabled person or because they wrongly believe you to be disabled.

Victimisation

The EA makes it unlawful for an employer to victimise a worker for making an allegation or bringing a claim for disability discrimination. It is also unlawful for your employer to victimise any of your colleagues (regardless of whether or not they are disabled) who might give evidence in support of a claim under the EA.

Is my employer's treatment of me justified?

The EA says that, in certain circumstances, it is possible for an employer to justify treating a disabled person unfavourably because of his or her disability.

An employer can only justify discrimination if they can show that it is a proportionate means of achieving a legitimate aim.

For example: an employee who has been off sick for a long period of time because of his or her disability and cannot say when he or she will be fit for work. If the employer dismisses this person this is discrimination arising from disability. This dismissal may be justified depending on the nature of the job, the size of the employer and the period of absence because the job cannot be held open for a long period of time. If your employer's actions are justified, then your claim for disability discrimination would not succeed.

However, an employer will not be justified in treating an employee unfavourably if a reasonable adjustment would have prevented this treatment.

In the above example, the employer is considering dismissing the employee due to their sick leave. If a reasonable adjustment, such as allowing the employee to work part time, would result in the employee returning to work, then the dismissal would not be justified.

Taking Action: What is my first step

Generally it is good practice to try to resolve problems with your employer informally. Try meeting with your employer to inform them of the problem and ask that they take action to resolve the situation, such as making adjustments for you or amending any discriminatory policies.

If you cannot resolve the situation informally or if the problem is more serious then you should generally use the grievance/appeal procedure. If you are dismissed, then generally you **must** appeal before complaining to the tribunal. The employer's Human Resources department will advise you of the appeal procedure.

The Grievance

Send a grievance letter (preferably by recorded delivery) to your employer. The letter should state your complaint about the discrimination or any other action that you believe was unfair. This letter should be sent promptly and no later than a month or two month after the discriminatory act.

If, after reading this guide, you think that you may have a claim for discrimination you should seek further advice from one of the organisations listed on the back pages.

How do I make a claim?

Courts known as Employment Tribunals deal with employment claims. Your claim should be submitted to the Tribunal on a form known as an **ET1**, which is available from JobCentres, or on the internet at:

www.employmenttribunals.gov.uk

The Employment Tribunal will usually only consider your claim if it receives your ET1 application form **within three months** of the date of the act of discrimination. It is very important, therefore, to seek advice as soon as you think you may have been discriminated against.

If you are out of time in bringing your claim, it might still be possible to bring a claim before the Employment Tribunal but you will need to obtain legal advice as quickly as possible about pursuing this.

NB From April 2014, you will be required to contact Acas before issuing a claim, so that they explore the possibility of resolving the problem without resort to an Employment Tribunal. This process is known as 'Early Conciliation'. You are not obliged to negotiate with your employer during this process, but you must at least obtain a reference number from Acas in order to submit your claim. Your time limit to make a tribunal claim is suspended during the period it takes Acas to complete Early Conciliation, but you may need to take legal advice on the exact time limit in your circumstances.

How much will it cost?

The Tribunal now charges fees for starting a claim. For a discrimination claim, this will be £250, with a further £950 to pay if the matter goes to a final hearing. If you are on a low income and have small savings, you can apply for a remission from the fees.

It is unlikely that you will be asked to pay the employer's legal costs if you lose your case, unless your claim is misconceived. Similarly, if you win your case the

employer is unlikely to be asked to pay your legal costs, although they will probably be expected to pay you back the Tribunal fees you have paid.

You do not have to be represented by a solicitor or legal adviser in the Employment Tribunal. However, disability discrimination cases can become quite complex and your chances of success may be better if you do have legal advice and representation.

Most Employment Tribunal hearings are open to the public to attend. The Equality and Human Rights Commission website has guidance on making a claim.

What happens if I win my disability discrimination case?

If you are successful in your claim, the Employment Tribunal may award you **compensation** for any financial loss you have suffered as a result of the discrimination. In some circumstances, this may include compensation for future losses.

Additionally, the Tribunal can also award you compensation for injury to feelings. In extreme cases, where the discrimination has been so serious that it has actually caused you to become ill, a Tribunal can also award compensation for personal injury.

The Tribunal can also make a formal **declaration** that you have been discriminated against. Additionally, it can make a **recommendation** to your employer – for example: a recommendation that your employer should make the reasonable adjustments that you have been seeking. In claims that involve unfair dismissal as well as disability discrimination, the Tribunal can recommend that you be reinstated.

Please note that, although it can make recommendations, a Tribunal cannot force your employer to comply with them. However, if your employer fails to comply with a Tribunal recommendation, you may be eligible for extra financial compensation.

Other types of claims

Unfair Dismissal

If you have been dismissed for a reason relating to your disability, in addition to a claim for discrimination, you might also have a claim for unfair dismissal.

In most cases, you can only bring a claim for unfair dismissal if you have worked for your employer for over 12 months continuously (2 years for those who started work on or after 6th April 2014).

When hearing an unfair dismissal case, a Tribunal will look at whether your employer's decision to dismiss you was reasonable and whether a fair procedure was followed.

Your claim must be submitted within three months minus 1 day from the date of dismissal, subject to the effect of Acas Early Conciliation.

Depending on the circumstances of your case, you may have other claims in addition to disability discrimination and or unfair dismissal. An employment solicitor/law centre/CAB may be able to advise you on these.

Personal Injury

If you wish to bring a personal injury action against your employer, you must choose whether to bring this as a separate action in a County Court, or attach the claim to your Employment Tribunal action. You cannot bring the same personal injury claim twice through the separate courts.

How can I get help?

If your income is low, and you do not have much money saved, you may be able to get free advice and assistance for a discrimination claim from a specialist employment law solicitor under what is known as the 'Legal Help Scheme', through the Legal Aid Agency's telephone gateway (see below).

If you do not qualify for Legal Help, but you are still on a low income and live within Greater London, you can get free advice on discrimination in employment from the Disability Law Service (details below), and, depending on the merits of your case, some assistance with casework.

The Legal Help scheme covers the cost of some of the legal work involved in pursuing an Employment Tribunal claim. However, it does not cover all costs. In particular, it does not cover the cost of a barrister or solicitor actually presenting your case for you at the Employment Tribunal hearing.

To access Legal Help for a discrimination case, you can contact Civil Legal Advice through the Legal Aid Agency's telephone gateway, on **0845 345 4345**.

If you have a credit card, mortgage or contents insurance you may be insured for legal expenses. This means that the insurance company may pay the fees of a solicitor who advises you and represents you in the Tribunal.

Some solicitors may also be prepared to represent you on a 'no win, no fee' basis. For more information about solicitors you should contact the **Law Society** on **020 7320 5650**.

If you are a member of a Trade Union your union representative should be able to advise you about your claim and may be able to represent you. Law Centres and Citizens Advice Bureaux may also be able to help you free of charge. Details about the Law Centre nearest to you are available from the **Law Centres Network**. Details of your local CAB can be obtained via **Citizens' Advice**. Contact details for these organisations can be found at the back of this guide.

Useful organisations:

The Disability Law Service

Is a registered charity offering free confidential legal advice on disability discrimination in employment to disabled people. It is able to take on certain cases on behalf of disabled employees or job applicants.

In addition to an employment law advice, it can also offer advice in the following other categories of law: community care, education, consumer/contract.

c/o Real

Jack Dash House

2 Lawn House Close

Isle of Dogs

London

E14 9YQ

Telephone: **020 7791 9800**

Fax: **020 7791 9802**

Textphone: **020 7791 9801**

Email: **advice@dls.org.uk**

The Equality Advisory Support Service (EASS)

The EASS gives free advice, information and guidance to individuals on equality, discrimination and human rights issues. Please note that the EASS cannot represent you at Tribunal and cannot advise on the merits of your case.

Telephone: 0808 800 0082

Website: www.equalityadvisoryservice.com

Equality and Human Rights Commission

The Equality and Human Rights Commission is a national organisation set up by the Government to monitor and tackle discrimination. The Equality and Human Rights Commission publishes many useful guides and leaflets, as well as a statutory Code of Practice on discrimination in employment, which can be obtained via its website. It does not provide advice on discrimination or human rights issues.

Equality and Human Rights Commission

Correspondence Unit

Arndale House

Arndale Centre

Manchester M4 3EQ

Website: www.equalityhumanrights.com

Civil Legal Advice

Civil Legal Advice is a national advice line for England and Wales, funded by legal aid. If you are eligible for legal help in an employment matter, a specialist advisor will contact you once you have given your initial details via the telephone gateway.

Telephone: 0845 345 4345

Minicom: 0845 609 6677

Disability Rights UK

Disability Rights UK is a national charity which campaigns for independent living and full participation in society by disabled people. It publishes many useful factsheets on areas such as benefits, education and independent living.

Telephone: 0207 250 8181

RNIB

Offers legal advice to people with visual impairments.

RNIB
105 Judd Street
London
WC1H 9NE

Helpline: 0303 123 9999

Email: helpline@rnib.org.uk

The Law Centres Network

Provides details of local Law Centres which can give legal advice and assistance with employment claims.

Law Centres Network

Floor 1
Tavis House
1 – 6 Tavistock Square
London
WC1H 9NA

Telephone: 020 3637 1330 (office line)

Citizens Advice

Provides details of local CABs which can give legal advice and assistance with employment claims.

Citizens Advice
3rd Floor North
200 Aldersgate St
London
EC1A 4HD

Telephone: 0300 231 231

Website: www.citizensadvice.org.uk

Website: www.adviceguide.org.uk (for advice)

The Law Society

Provide details of solicitors who can advise on discrimination and employment cases.

Telephone: **020 7320 5650**

Website: **www.lawsociety.co.uk**

Access To Work Scheme

Administered by the Government's Department of Work and Pensions. This scheme is provided through Disability Employment Advisers based at local JobCentres.

Telephone: 020 8426 3110 (London; South East England; Eastern England)
0345 268 8489 (SW England; Wales; West Midlands; East Midlands)
0141 950 5327 (Scotland; NW England; NE England; Yorks and Humberside)

<https://www.gov.uk/access-to-work/how-to-claim>

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For further advice on these matters please contact:

The Disability Law Service

Telephone: **020 7791 9800**

Minicom: **020 7791 9801**

Fax: **020 7791 9802**

Email: **advice@dls.org.uk**

Or write to us at: c/o Real, Jack Dash House, 2 Lawn House Close, Isle of Dogs, London E14 9YQ.



The Baring Foundation



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Just text: **THNX01 £5 to 70070**

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