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Disability discrimination

Published: 18 February 2020

Last updated: 18 February 2020

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help or advice, contact the [Equality Advisory and Support Service](#).

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Disability discrimination is when you are treated less well or put at a disadvantage for a reason that relates to your disability in one of

the [situations covered by the Equality Act](#).

Religion or belief discrimination

Sex discrimination

The treatment could be a one-off action, the application of a rule or policy or the existence of physical or communication barriers which make accessing

Sexual orientation discrimination

something difficult or impossible.

Terms used in the Equality Act

The discrimination does not have to be intentional to be unlawful.

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What the Equality Act says about disability discrimination

The [Equality Act 2010](#) says that you must not be discriminated against because:

- you have a disability
- someone thinks you have a disability (this is known as discrimination by perception)
- you are connected to someone with a disability (this is known as discrimination by association)

It is not unlawful discrimination to treat a disabled person more favourably than a non-disabled person.

What counts as a disability

In the Equality Act, a disability means a physical or a mental condition which has a substantial and long-term impact on your ability to do normal day to day activities.

You are covered by the Equality Act if you have a progressive condition like HIV, cancer or multiple sclerosis, even if you are currently able to carry out normal day to day activities. You are protected as soon as you are diagnosed with a progressive condition.

You are also covered by the Equality Act if you had a disability in the past. For example, if you had a mental health condition in the past which lasted for over 12 months, but you have now recovered, you are still protected from discrimination because of that disability.

Different types of disability discrimination

There are six main types of disability discrimination:

- direct discrimination
- indirect discrimination
- failure to make reasonable adjustments
- discrimination arising from disability
- harassment
- victimisation

Direct discrimination

[Direct discrimination](#) is what happens when someone treats you worse than another person in a similar situation because of disability.



Example –

During an interview, a job applicant tells the potential employer that he has multiple sclerosis. The employer decides not to appoint him even though he's the best candidate they have interviewed, because they assume he will need a lot of time off sick.

Indirect discrimination

[Indirect discrimination](#) happens when an organisation has a particular policy or way of working that has a worse impact on disabled people compared to people who are not disabled.

Indirect disability discrimination is unlawful unless the organisation or employer is able to show that there is a good reason for the policy and it is proportionate. This is known as objective justification.



Example –

A job advert states that all applicants must have a driving licence. This puts some disabled people at a disadvantage because they may not have a licence because, for example, they have epilepsy. If the advert is for a bus driver job, the requirement will be justified. If it is for a teacher to work across two schools, it will be more difficult to justify.

Failure to make reasonable adjustments

Under the Equality Act employers and organisations have a responsibility to make sure that disabled people can access jobs, education and services as easily as non-disabled people. This is known as the 'duty to make reasonable adjustments'. Disabled people can experience discrimination if the employer or organisation doesn't make a reasonable adjustment. This is known as a 'failure to make reasonable adjustments'.



Example –

An employee with mobility impairment needs a parking space close to the office. However, her employer only gives parking spaces to senior managers and refuses to give her a designated parking space.

What is reasonable depends on a number of factors, including the resources available to the organisation making the adjustment. If an organisation already has a number of parking spaces it would be reasonable for it to designate one close to the entrance for the employee.

What is the duty to make reasonable adjustments? | Equali...



Discrimination arising from disability

The Equality Act also protects people from discrimination arising from disability. This protects you from being treated badly because of something connected to your disability, such as having an assistance dog or needing time off for medical appointments. This does not apply unless the person who discriminated against you knew you had a disability or ought to have known.



Examples –

A private nursery refuses to give a place to a little boy because he is not toilet trained. His parents have told them that he is not toilet trained because he has Hirschsprung's Disease, but they still refuse to give him a place. This is discrimination arising from the little boy's disability.

An employee with cancer is prevented from receiving a bonus because of time she has taken off to receive treatment.

Discrimination arising from disability is unlawful unless the organisation or employer is able to show that there is a good reason for the treatment and it is proportionate. This is known as [objective justification](#).



Example –

An employee whose eyesight has seriously deteriorated cannot do as much work as his non-disabled colleagues. If his employer sought to dismiss him, after ruling out the possibility of redeployment, the employer would need to show that this was for good reason and was proportionate.

What is discrimination arising from disability? | Equality la...



Harassment

Harassment occurs when someone treats you in a way that makes you feel humiliated, offended or degraded.



Example –

A disabled woman is regularly sworn at and called names by colleagues at work because of her disability.

Harassment can never be justified. However, if an organisation or employer can show it did everything it could to prevent people who work for it from behaving like that, you will not be able to make a claim for harassment against it, although you could make a claim against the harasser.

Victimisation

Victimisation is when you are treated badly because you have made a complaint of discrimination under the Equality Act. It can also occur if you are supporting someone who has made a complaint of discrimination.



Examples –

An employee has made a complaint of disability discrimination. The employer threatens to sack them unless they withdraw the complaint.

An employer threatens to sack a member of staff because he thinks she intends to support a colleague's disability discrimination claim.

Pre-employment health questions

The Equality Act also prevents employers asking pre-employment health questions that are designed to screen out disabled job applicants. It says that employers cannot ask job applicants about their health or disability until they have been offered a job, except in specific circumstances where the information is necessary for the application process or a requirement of the job.



Example –

A job applicant fills in an application form which asks people to state whether they are taking any medication. Unless there is a good reason

why the employer needs to know this information, the question should not be asked.

Circumstances when being treated differently due to disability is lawful

Non-disabled people

It is always lawful to treat a disabled person more favourably than a non-disabled person.

Other disabled people

Treating a disabled person with a particular disability more favourably than other disabled people may be lawful in some circumstances.



Examples –

An organisation supporting deaf people might require that an employee whose role is providing counselling to British Sign Language (BSL) users is a deaf BSL user. This is called an occupational requirement.

An employer is aware that people with learning disabilities have a particularly high rate of unemployment, so sets up a mentoring and job-shadowing programme for people with learning disabilities to help them prepare to apply for jobs. This is taking positive action to encourage or develop people with a particular disability.

Occupational requirement and positive action are clarified in our statutory code of practice on employment.

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Published:

18 February 2020

Last updated:
18 February 2020

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Advice and support

If you think you might have been treated unfairly and want further advice, you can contact the Equality Advisory and Support Service (EASS).

The EASS is an independent advice service, not operated by the Equality and Human Rights Commission.

Phone: 0808 800 0082

Or email using the contact form on the EASS website.

Call the EASS on:

0808 800 0082