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## A guide to disability discrimination law

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### Introduction

It is unlawful for someone to discriminate against you because of disability. The law that protects against such treatment in the United Kingdom is contained in the Equality Act 2010.

This factsheet outlines the important aspects of how this legislation works in practice before discussing the different forms that discrimination can take.

### Disability discrimination in practice

#### Disability and employment

It is against the law for an employer to discriminate against a disabled employee (except in some exceptional circumstances, which are outlined later). For example, in the terms of employment offered and in the opportunities for promotion, transfer or training.

It is important to note that an employer can be 'vicariously liable' for discrimination committed by an employee, unless it can show that it took all reasonable steps to prevent the discrimination (see below for further information).

#### Disability and education

It is unlawful for education providers to discriminate against, harass or victimise pupils or prospective pupils because of disability, or to fail to make reasonable adjustments for such pupils. For example, education providers may not discriminate with regard to admissions, the provision of education or the exclusion of pupils.

Information regarding access to work, employment rights and education can be found in Headway's *Returning to work and education* factsheet pack.

#### Access to services

It is against the law for service providers to discriminate against, harass or victimise people in the provision of services. Service providers are also under a duty to make reasonable adjustments for disabled people in the way they deliver their services.



Examples of reasonable adjustments (described further below) might include ensuring there are no physical barriers to access for disabled people or providing disability awareness training for staff that have contact with the public.

## Types of discrimination

The Equality Act prohibits several types of discriminatory conduct, the most relevant of which are: direct discrimination, indirect discrimination, discrimination arising from disability, failure to make reasonable adjustments, victimisation and harassment.

The meaning of each of these is discussed below, along with examples. This applies to either formal or informal policies, rules or practices.

### 1. Direct discrimination

Direct discrimination occurs if, because of disability, someone treats you worse than they treat, or would treat, others.

You need not be disabled to suffer direct discrimination. Protection will be available to you if you are treated worse because of the disability of another person (usually, but not necessarily, someone associated with you, such as a friend or relative) or are (incorrectly) perceived to be disabled.

- **Example of direct discrimination – disability:** A job applicant is in a wheelchair. The job for which he is applying can be performed equally well by someone who is disabled as by someone who is able-bodied. However, an able-bodied applicant is given the job purely because he is not disabled.
- **Example of direct discrimination – friend/relative of someone with a disability:** A job applicant is not offered a job because the employer fears she will take time off work to care for her disabled son. The employer has no evidence for this based on actual caring arrangements, so it must be discrimination because of the applicant's disabled child.
- **Example of direct discrimination – perceived disability:** A job applicant has a squint. Some people think he is partially sighted but in fact he has perfect vision. He is the most suitable candidate for the job but he is not offered the position because his potential employer assumes that he is partially sighted/cannot see well.



## 2. Indirect discrimination

If you are a disabled person you will be indirectly discriminated against if a practice which applies both to disabled and non-disabled people puts disabled people at a disadvantage. However, this may be allowable if it is shown to be a “proportionate means of achieving a legitimate aim”.

This applies to both formal and informal policies, rules and practices.

- **Example of indirect discrimination:** An employer has a standardised rest breaks and lunch breaks policy. However, this does not account for the fatigue and concentration problems experienced by a brain injured employee. Some flexibility would be appropriate in such a case.

## 3. Discrimination arising from disability

This third form of discrimination occurs when someone is treated unfavourably because of something connected to their disability.

- **Example of discrimination arising from disability:** A manager loses his temper with a colleague and is disciplined by his employer for his conduct. The manager only lost his temper because of the anger problems caused by his brain injury, of which his employer is aware. Dealing with the issue without resorting to disciplinary proceedings would therefore have been more appropriate.

However, there will be no discrimination arising from disability if the person accused of discriminating against you did not know, or could not reasonably have been expected to know, that you are in fact disabled.

### **Justification for indirect discrimination and discrimination arising from disability**

There is no indirect discrimination or discrimination arising from disability if the person accused of the discriminatory conduct can demonstrate that their actions were “a proportionate means of achieving a legitimate aim.” To be ‘legitimate’ an aim should be legal, should not be discriminatory in itself, and must represent a real objective consideration (e.g. the health, welfare and safety of individuals). While reasonable business needs and economic efficiency may be legitimate aims, a simple desire to cut costs may not be.

It will be for the employer or service provider to produce evidence in support of their assertion that the discrimination is justified.



**Example of justification:** An employer requires all machine operators working in his factory to complete an eye test. Although this discriminates against blind or partially sighted people, the employer argues that the eye tests are necessary to protect the safety of his workforce - minimising the risk of accident through operator error. Whether this is a permissible way of achieving that aim depends on whether another approach might ensure the safety of the workforce without being as discriminatory towards those with a disability.

#### **4. Failure to make reasonable adjustments**

The Equality Act requires people to make reasonable adjustments where, for example, a work practice or a physical feature of premises puts a disabled person at a disadvantage. The employer may not pass on the cost of making these reasonable adjustments to the disabled person.

- **Example of reasonable adjustments:** A company which employs a wheelchair user does not have premises which are appropriately adapted. This makes it difficult for the wheelchair user to get to his desk, thereby putting him at a substantial disadvantage in comparison with colleagues who are not disabled. In this case, it may be a reasonable adjustment to make structural or other physical changes such as widening a doorway, providing a ramp or moving furniture.

Further information on the duty to make reasonable adjustments for people with brain injuries can be found in the Headway factsheet *The Equality Act 2010*.

#### **5. Victimisation**

It is victimisation if you are treated badly by someone because you have made a claim against disability discrimination.

As is the case with direct discrimination, it is not only disabled people who may be victimised. You will also be protected if, for example, you are treated badly because you have assisted a disabled person to bring a disability discrimination case.

- **Example of victimisation:** An employee brings a tribunal claim against his employer for disability discrimination. He is denied a promotion because of this.

#### **6. Harassment**

You will have a claim for harassment if you are a victim of behaviour which relates to disability and which is intended to, or has the effect of, creating an intimidating or hostile environment for you.



As is the case with direct discrimination and victimisation, you need not be disabled to bring a claim for harassment – for example, you will be protected from harassment which is related to your friendship with a disabled person. It is not even necessary for the behaviour to be directed at you specifically.

- **Example of harassment:** Alfred is not disabled but witnesses his colleague, Bill, who is disabled, being called offensive names on a regular basis. Bill does not mind but this creates an offensive working environment for Alfred. Therefore, this counts as harassment against Alfred.

## What to do if you feel you have been discriminated against

The legislation outlined above is designed to ensure that people with disabilities are treated as fairly as possible. If you feel that the rules have not been applied to you and you have been discriminated against then you can pursue the following options:

- Complain directly to the person or organisation via their complaints procedure
- Use an independent mediator to resolve the issue
- Make a claim in court or via a tribunal

The 'Further information' section overleaf lists other organisations which provide useful advice, information and/or support. The main contacts for you to receive support and advice regarding your case are the Equality Advisory Support Service (EASS) for discrimination in any context, or the Advisory, Conciliation and Arbitration Service (Acas) for concerns about discrimination at work.

**To discuss any issues raised in this factsheet, or to find details of our local groups and branches, please contact the Headway helpline free of charge on 0808 800 2244 (Monday - Friday, 9am-5pm) or by email at [helpline@headway.org.uk](mailto:helpline@headway.org.uk).**

**You can also find more information and contact details of groups and branches on our website at [www.headway.org.uk/supporting-you](http://www.headway.org.uk/supporting-you).**



## Further information

### Advisory, Conciliation and Arbitration Service (Acas)

Helpline: 0300 123 1100

[www.acas.org.uk](http://www.acas.org.uk)

### Citizens Advice Bureau – Advice Guide

[www.adviceguide.org.uk](http://www.adviceguide.org.uk)

### Disability Law Service

[www.dls.org.uk](http://www.dls.org.uk)

### Equality Advisory Support Service (EASS)

Helpline: 0808 800 0082

[www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

### Equality and Human Rights Commission

[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

### Gov.uk

[www.gov.uk/equality-act-2010-guidance](http://www.gov.uk/equality-act-2010-guidance)

### Headway – Employment and education after brain injury web pages

[www.headway.org.uk/employment-and-education-after-brain-injury.aspx](http://www.headway.org.uk/employment-and-education-after-brain-injury.aspx)

### Mind

[www.mind.org.uk/information-support/legal-rights/disability-discrimination](http://www.mind.org.uk/information-support/legal-rights/disability-discrimination)

## Acknowledgements

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To download *A Guide to the Law Following Serious Injury* visit [www.stewartslaw.com/services/personal-injury/legal-guides.aspx](http://www.stewartslaw.com/services/personal-injury/legal-guides.aspx).

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