

PAY & EMPLOYMENT RIGHTS SERVICE

PERS leaflet number 13

DISABILITY DISCRIMINATION

**What is disability discrimination?
Who is covered by the law?
Who can help you?**

*Community
Legal Service*



Feb 2009

DISABILITY DISCRIMINATION - THE LAW

The **Disability Discrimination Act 1995 (DDA)** makes it unlawful for employers to discriminate against you on the grounds of disability.

WHAT IS MEANT BY 'DISABILITY'?

You will be covered by the DDA if you have (or have had) a **"physical or mental impairment which has a substantial and long term adverse effect on your ability to carry out normal day to day activities."** In practice, decisions are made on a case by case basis. For example, cerebral palsy is normally covered, but hay fever is not. Not all mental illnesses are covered. Addiction to alcohol, nicotine or other substances is not covered unless it causes a further condition - for instance, liver disease caused by a drink problem.

It is likely that you will be covered by the law if the disability is long term - that is, has lasted for **at least 12 months** or is likely to last for more than 12 months or for the rest of your life - and if it has substantially affected your: **manual dexterity, mobility, physical co-ordination, continence, lifting everyday objects, speech, hearing, eyesight, memory, ability to concentrate, learn or understand, or your perception of the risk of physical danger.** For example, you are likely to be covered by the law if you are unable to dress yourself, or if you are unable to use a knife and fork.

People with a progressive condition such as HIV, MS, muscular dystrophy or cancer are classified as disabled as soon as there is a diagnosis of these conditions even if they do not have any disabling symptoms.

WHAT IS MEANT BY 'DISCRIMINATION'?

The DDA makes it unlawful for an employer to discriminate against a person, in recruitment, when the person is an employee and after employment has ended. Discrimination can occur in four ways. An employer discriminates against a disabled person if he or she:

- **treats a disabled person less favourably than he/she treats a person not having that particular disability whose relevant circumstances, including his abilities, are the same (direct discrimination).** It cannot be justified.

- **treats a disabled person less favourably for a reason related to their disability, and cannot justify this treatment (disability-related discrimination).**
- **fails to make a 'reasonable adjustment' in relation to a disabled person.** Your employer can only discriminate against you if they know you are disabled - or could have reasonably known. However, they should take 'reasonable steps' to find out if a worker is disabled. Examples of adjustments include alterations to premises, modifying equipment, allocating some responsibilities to another worker, altering hours, allowing the disabled person to work at a different location, and providing support. Whether or not it is reasonable to expect an employer to make a particular adjustment depends on a number of factors including the extent of the employer's financial resources.
- **subjects a disabled person to harassment where, for a reason relating to the disability, he or she engages in unwanted conduct which has the effect of violating the disabled person's dignity or creating an intimidating, hostile, degrading or offensive environment.**

Employers may also be liable for the actions of other employees. So, if your workmates harass you or discriminate against you while carrying out their work, you could take a case against your employer if the employer fails to do anything about it.

In addition, discrimination against a non-disabled employee because he or she is a carer of, or is otherwise associated with, a disabled person is also unlawful.

Victimisation

Both disabled and non-disabled people are protected if they are treated less favourably (**victimised**) for bringing or giving information in connection with a claim under the **DDA**, or making allegations of disability discrimination.

EXAMPLES OF DISCRIMINATION

* **Jack** works as driver for a courier company. He has developed a condition which means he is no longer able to drive. His employer is currently looking to recruit an office worker but does not offer the job to Jack even though he is able to do that job. Instead Jack is dismissed. This could be an example of disability discrimination as the employer failed to look into making a reasonable adjustment for Jack so that he could stay in work. The employer should have considered offering Jack the office worker position.

***Tracy** has a disability which requires use of a wheelchair. She applies for an office job but the employer assumes that the wheelchair will get in the way, so he gives the job to a person who doesn't use a wheelchair even though they are no more suitable for the job. This is direct discrimination and is unlawful. It can never be justified.

***Cathy** applies for a job in the same office. It includes typing and Cathy is the best applicant except for her typing speed, which is slow due to a repetitive strain injury. This can be overcome if she uses an adapted keyboard. **A reasonable adjustment by the employer** would be to provide an adapted keyboard. If the employer did not employ her and provide the adjustment, he would be unlawfully discriminating.

***Sharon** has a hearing impairment. **Mohammed** notices that his colleagues are making fun of her behind her back. He complains about this to his manager. He is then harassed by his colleagues. Mohammed is also covered by the DDA as he is being victimised for making a complaint about treatment suffered by Sharon.

WHO DOES THE DDA APPLY TO?

The DDA applies to most **WORKERS - full-time, part-time, temporary, casual, self-employed or homeworkers**. The Act also covers **job applicants**, prison and police officers, fire-fighters, and some office-holders. Armed service personnel are not protected, nor are volunteers. Discrimination in vocational training including practical work experience is unlawful. It is also unlawful for the employer to discriminate against an ex-employee who is disabled by subjecting him or her to a detriment or to harassment that arises out of the employment.

WHAT ACTION CAN YOU TAKE?

If you want to take a case under the DDA, it is important that you get support and advice. Please contact one of the organisations listed in the **'Who can help you?'** section of this leaflet.

If you think you are being discriminated against in any way, you should first try to settle the matter through negotiation. In general you will not be allowed to bring a claim of disability discrimination to Employment Tribunal (ET) unless you have first raised the issue as a grievance to your employer and allowed 28 days for a response. However if you think that you may need to take the matter to an ET be careful to get the claim in within the time limit - see below. The time limit may be extended for **employees** who have raised a grievance, but only very rarely if they have been dismissed.

THE EMPLOYMENT TRIBUNAL

Complaints under the DDA are dealt with through an Employment Tribunal (ET). You need to fill in an ET1 form and send this to your local Office of Employment Tribunals. Usually (in dismissal cases) you need to make your complaint **within three months of the dismissal**. If you are complaining about discrimination, the issues of time limits can get complicated and can depend on factors such as grievance and disciplinary procedures. Please contact PERS for advice on how the time limit affects you.

As with most employment cases taken to ET, the **Advisory, Conciliation and Arbitration Service (ACAS)** will automatically become involved. They will try to settle your case without the need to go to a hearing. They will find out if your employer is prepared to offer you out of court compensation for the alleged act of discrimination. If you accept the compensation, the case will be dropped.

GATHERING EVIDENCE

There are two methods you can use to gather useful information to support your claim if you go to the ET:

Questionnaire Procedure: There is a standard official questionnaire (form DL56) that you can use to ask the employer questions about your case. The replies the employer gives can be used as evidence in the tribunal proceedings. The form is available free from the **EHRC Helpline** on **0845 604 6610**.

Discovery: An ET can require your employer to grant you "discovery of documents" relating to the case, such as medical reports or equal opportunities policies. Again, these can be used as evidence at tribunal.

LEGAL REMEDIES

If the ET finds that there has been unlawful discrimination, it can make one or more of the following orders:

* ***Declaration order.*** This declares that your rights have been violated and tells your employer to end the discriminatory practice. If it continues, you can claim compensation.

* ***Recommendation order.*** This recommends specific action to reduce the adverse effects of the discrimination. If you were refused a job or a promotion because of discrimination, you would not be given preferential treatment at another interview, but the next interview panel would be told why your previous application failed and that this time they must comply with the law.

* ***Compensation order.*** This requires your employer to pay you damages, including compensation for 'injury to feelings'. There is no upper limit to the amount of compensation that can be awarded.

WHO CAN HELP YOU?

The **Equality and Human Rights Commission** can provide information and guidance on discrimination and human rights issues.

Phone 0845 604 6610

0845 604 6620 (Textphone)

Website www.equalityhumanrights.com

**Post: Equality and Human Rights Commission Helpline
Freepost RRLG-GHUX-CTR
Arndale House
Arndale Centre
Manchester
M4 3EQ**

Citizens Advice Bureaux (CABx) and Law Centres: Your local CAB or Law Centre will also be able to give you advice. Advice from these

agencies is free. Contact PERS for details.

Trade Unions: Your trade union should be able to help you. If you don't belong to a union, contact PERS to find out which is the most suitable one for you.

Advisory, Conciliation and Arbitration Service (ACAS): ACAS will be able to provide you with information regarding employment law issues. They will be automatically involved if you take a case to an ET. Contact ACAS on **08457 47 47 47** or on the internet at **www.acas.org.uk**.

Disability Information Advice Line (DIAL): There are DIAL centres in most areas of this region. They provide free information and advice on the whole range of disability issues. Contact the national DIAL office for details of a DIAL branch in your area on **01302 310 123** (phone and textphone).

**This leaflet is intended as a guide and is not a full statement of the law.
Please seek advice before taking any action.**

PERS has a complaints and comments procedure. Please contact us for a copy if you wish to make a complaint or comment about our services.

PERS has a Community Legal Service (CLS) Quality Mark – if you want to make a complaint to the CLS about our advice service, you can obtain a copy of their complaints leaflet from us.

PAY & EMPLOYMENT RIGHTS SERVICE

**Unit 14 Batley Enterprise Centre • 513 Bradford Road
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www.pers.org.uk

Telephone advice is available from PERS at the following times:

Monday: 10am to 1pm

Tuesday: 10am to 4pm & 5.30pm to 7.30pm

Wednesday: 10am to 4pm

Thursday: 10am to 4pm

Friday: 10am to 1pm



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