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representation for disabled people

Employment Rights under the Disability Discrimination Act 1995:

A Brief Guide for Disabled People

The Disability
Law Service

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INTRODUCTION

If you are a disabled person, then you may have the protection of the Disability Discrimination Act 1995, known as the “DDA”.

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

This is only a very **brief** guide to the DDA. The aims of this guide are to help you understand whether you are covered by the DDA, and if so, to understand your rights.

If after reading this guide you think that you may have a claim against your employer for disability discrimination 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 DDA ABOUT?

In summary, the DDA gives disabled people the right not to be discriminated:

- 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 DDA places a duty on employers to make **reasonable adjustments** to working arrangements or premises, in order to prevent employees, job applicants or ex-employees with disabilities from being disadvantaged. This includes making adjustments to the application and interview process, and careful consideration about providing references.

AM I COVERED BY THE DDA?

The DDA 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 DDA does not cover:

- Working for the armed forces; or
- Employment wholly or mainly outside Great Britain.
(Protection under the Act extends to employment wholly outside Great Britain, provided that the employment has a sufficiently close connection with Great Britain – and the Act sets out the circumstances in which this will be the case.)

The DDA also does not apply to *certain* employees who work on board a ship, aircraft or hovercraft. If you belong to this excluded category 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 of the DDA, you must meet the definition of a “disabled” person, which is contained in section 1 of the Act:

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, which is recognised by the medical profession. (as of 5 December 2005 mental impairments will not have to be clinically well recognised by the medical profession)

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.

You should note that the day to day activities do not include any activities which relate to your job. Not being able to do your job, therefore, does not in and of itself mean that you have a disability under the DDA unless your condition also affects your day to day activities outside work.

*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 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 CANCER, HIV or MULTIPLE SCLEROSIS, MUSCULAR DYSTROPHY, 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 it will have long-term effects and must also be more likely than not to progress to a point where the effects become substantial.

From 5 December 2005 if you are diagnosed with Cancer, HIV or Multiple Sclerosis you will automatically be covered by the DDA.

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.

If you can answer “yes” to all of the above questions then it is likely you are a disabled person under the DDA. 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 DDA.

DO I HAVE A CLAIM AGAINST MY EMPLOYER?

Does your employer have to know you are disabled?

You do not have to tell your employer that you have a disability or have described yourself as a disabled person, your employer only needs to know about your condition or must be aware of the symptoms of your condition. Where Occupational Health is aware of your disability then the employer is most likely deemed to have that knowledge.

However, if you want your employer to make adjustments 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.

Has my employer discriminated against me?

An employer can discriminate against a disabled person in 4 ways.

- **direct discrimination** – by treating a disabled person less favourably on the grounds of their disability
- **‘disability-related discrimination’** – by treating a disabled person less favourably for a reason related to their disability
- failure to comply with a duty to make **reasonable adjustments**
- **victimisation** of a person (whether or not he is disabled)

(In certain circumstances, the discrimination may be justified and therefore legal. This is discussed later in this guide.)

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” because of the disability itself.

For example, an employer refuses you an interview because you are visually impaired.

This type of discrimination cannot be justified.

“Disability related discrimination” for reasons that are present in your life only because you are disabled,

Examples:

- 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.

However if your employer decides to make you redundant because you had been working for the organisation for a shorter time than anyone else and the redundancy has nothing to do with your disability, then this is not discrimination.

Remember, however, that an employer may be able to **justify disability-related** discrimination (see page 7).

“reasonable adjustments” You can ask for reasonable adjustments from your employer if any aspect of:

- the working arrangements (e.g. the hours or the method of working) 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.

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 you 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 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 is 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 on the back pages of this guide.

Is my employer's treatment of me justified?

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

An employer can only justify discrimination for a good reason that relates directly to your situation.

Take, 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 less favourable treatment because of the person's 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 less favourably, 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.

Is my employer harassing me?

The DDA 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.

What if my employer treats me badly for raising the issue of disability discrimination or bringing a claim? ("Victimisation")

The DDA 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 who might give evidence in your favour in DDA proceedings.

Taking Action: What is my first step?

Generally it is good practice to use the grievance/appeal procedure whenever you have a serious dispute with your employer. This is now a legal requirement before bringing a complaint of discrimination and in most cases of

unfair dismissal. 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.

If you are not dismissed but are aggrieved then generally you **must** bring a grievance about your concerns before complaining to the tribunal. See below for time limits.

The Grievance

Send a grievance letter (preferably 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 within 3 months of the action about which you are upset. It is strongly advised that this letter be sent no later than two months after the discriminatory act.

After sending the letter, you have to wait at least 28 days after this before issuing a claim. Providing that you state your grievance or complaint, in writing, to your employer **within 3 months** from the date on which you were discriminated against the time limit for bringing a claim to the employment tribunal will be extended by a further 3 months.

Upon receipt of the grievance the employer should arrange a meeting with you with a view to resolving your concerns.

Circumstances where you do not have to send a grievance letter include the following: (this is not an exhaustive list)

- ❖ If you are not an employee, or you suffered discrimination after your contract of employment had ended. If you are uncertain as to whether you are an employee then speak with an advisor.
- ❖ In certain circumstances where your dismissal is part of a collective dismissal – certain redundancies affecting more than 20 employees, unofficial strikes etc.
- ❖ If your complaint is only the fact that you were dismissed and not the events leading to the dismissal. If it is not clear whether this applies to your case then you will need to seek further legal advice.
- ❖ If you genuinely believe and can demonstrate that sending the grievance letter or waiting for expiry of 28 days would result in a significant threat to a person including yourself and/or further harassment, if you are already being harassed at work, then the tribunal should excuse your failing to commence or complete the grievance procedure.

If you are not required to send a grievance you **must** submit a claim to the tribunal **within 3 months** from the date on which you were discriminated.

You are strongly advised to speak with an adviser to ensure that you have correctly calculated your deadline for submitting a claim.

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.

There are serious consequences for you if you do not comply with the procedure. This could include not having your complaint heard by the tribunal and/or having any award you would receive from the tribunal reduced. It is therefore important that you get legal advice if you believe you may not have fully complied with the procedure, or your employer has failed to comply with the procedure.

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.

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 3 months from the date of dismissal.**

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 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:

<http://www.employmenttribunals.gov.uk>

The Employment Tribunal will usually only consider your claim if it receives your ET1 application form **within 3 months** of the date of the act of discrimination, however if you sent a grievance letter or raised an appeal then the time limit *may in certain circumstances* be extended by a further 3 months. 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.

HOW MUCH WILL IT COST?

The Tribunal does not at present charge a fee for starting a claim. It is also unlikely that you will be asked to pay the employer's legal costs if you lose your case. Similarly if you win your case the employer is unlikely to be asked to pay your legal costs.

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 DRC 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.

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 from a specialist employment law solicitor under what is known as the "Legal Help Scheme".

This 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 find a specialist employment law / disability discrimination solicitor in your area who can provide help under the free Legal Help Scheme, you can

contact the Legal Services Commission on **0845 608 1122** or search their database on the internet at www.clsdirect.org.uk.

Unfortunately, full legal aid is not available for Employment Tribunal cases.

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 7242 1222**.

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 Federation. Details of your local CAB can be obtained via the National Association of Citizens’ Advice Bureaux. Contact details for these organisations can be found at the back of this guide.

USEFUL ORGANISATIONS:

The Disability Law Service

We are a registered charity offering free confidential legal advice on disability discrimination in employment to people with disabilities. We are able to take on certain cases on behalf of disabled employees or job applicants.

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

39-45 Cavell Street
Whitechapel
London E1 2BP

Telephone 020 7791 9800
Fax 020 7791 9802
Minicom 020 7791 9801
Email advice@dls.org.uk

Disability Rights Commission

The DRC is a national organisation set up by the Government to monitor and tackle disability discrimination. They operate a telephone helpline for people with DDA problems. The DRC also publish many useful guides and leaflets, which can be obtained via their helpline. In some cases, the DRC will advise and represent disabled people who have disability discrimination claims.

Freepost MID 02164
Stratford-upon-Avon
Warwickshire
CV37 9HY

Telephone 08457 622 633
Fax 08457 778 878
Textphone 08457 622 644

Email enquiry@drc-gb.org
Website www.drc-gb.org
Employment Information www.drc-gb.org/usingyourrights

Legal Services Commission

The LSC can give contact details of solicitors and other organisations that can advise and assist you, subject to eligibility, under the free Legal Help Scheme.

29/37 Red Lion Street
London
WC1R 4PP

Telephone 0845 608 1122

Website: www.clsdirect.org.uk

RADAR

Offers legal advice on the DDA.

12 City Forum
250 City Road
London EC1V 8AF

Telephone 020 7250 3222

Textphone 020 7250 0123

RNIB

Offers legal advice to people with visual impairments

224 Great Portland Street
London W6 9DG

Telephone 020 7388 1266

The Law Centres Federation

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

Duchess House,
18-19 Warren Street
London W1P 5DB
Telephone 020 7387 8570

National Association of Citizen's Advice Bureaux

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

Myddleton House
115-123 Pentonville Road
London N1 9LZ

Telephone: 020 7833 2181
Fax: 020 7833 4371

Website: www.nacab.org.uk

The Law Society

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

Ipsley Court
Berrington Close
Redditch
Worcestershire B98 0TD

Telephone 020 7242 1222
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: 0845 6060 234
Textphone: 0845 6055 255
Website: www.jobcentreplus.gov.uk

Legal Disclaimer

Although great care has been taken in the compilation and preparation of this work to ensure accuracy, DLS cannot accept responsibility for any errors or omissions. All information provided is for education / informative purposes and is not a substitute for professional advice. Any organisations, telephone numbers and links to external web-sites have been carefully selected but are provided without any endorsement of the content of those sites.

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: 39 – 45 Cavell Street, London E1 2BP

Website: www.dls.org.uk



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