

# Disability Law Service

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Offering free, confidential legal advice and  
representation for disabled people

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## **Employment Rights under the Disability Discrimination Act 1995: A Brief Guide for Disabled People**

# **Employment Rights under the Disability Discrimination Act 1995: A Brief Guide for Disabled People**

## **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 aim of this guide is 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 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 DDA 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. This includes making reasonable 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. (Since 5 December 2005 mental impairments have not had 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 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 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 it will have long-term effects and must also be more likely than not to progress to a point where the effects become substantial.

**Since 5 December 2005 if you have been diagnosed with Cancer, HIV or Multiple Sclerosis you are automatically 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.

### **NOTE**

Due to recent European case law (resulting from referral of a British case named **Coleman v Attridge Law** to the European Court of Justice) you can also be protected by the DDA on the basis of an 'association' with a disabled person. This protection only extends to protection from direct disability discrimination and from harassment.

## **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 are disabled 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 may be equally aware however this should not be assumed as Occupational Health normally retains its information on the basis of confidentiality with the employee and rarely discloses details to the employer.

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 five 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);
- **harassment of a person.**

(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. Furthermore, you must remember that the current state of case law on disability related discrimination is such that an employer can defend their action on the basis that it would have acted no differently if the facts were the same and the employee was not disabled, (e.g. it could argue that it would have chosen a non disabled employee for redundancy if they had a poor sickness absence record similar to the relevant disabled employee's record).

**‘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.

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

- identify a working arrangement or physical feature 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'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. 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 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.

## **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 three 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:

**[www.employmenttribunals.gov.uk](http://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, however if you sent a grievance letter or raised an appeal then the time limit *may in certain circumstances* be extended by a further three 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 its database on the internet at: **[www.clsdirect.org.uk](http://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

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, welfare benefits.

39–45 Cavell Street

Whitechapel

London E1 2BP

Telephone: **020 7791 9800**

Fax: **020 7791 9802**

Textphone: **020 7791 9801**

Email: [advice@dls.org.uk](mailto:advice@dls.org.uk)

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## **Disability Rights Commission (now to be found under the Equalities and Human Rights Commission)**

The DRC is a national organisation set up by the Government to monitor and tackle disability discrimination. It operates a telephone helpline for people with DDA problems. The DRC also publish many useful guides and leaflets, which can be obtained via its 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](mailto:enquiry@drc-gb.org)

Website: [www.drc-gb.org](http://www.drc-gb.org)

Employment Information: [www.drc-gb.org/usingyourrights](http://www.drc-gb.org/usingyourrights)

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## **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](http://www.clsdirect.org.uk)

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## **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**

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## **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**

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**National Association of Citizen's Advice Bureaux** (also known as 'Citizens Advice')

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](http://www.nacab.org.uk)

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**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](http://www.lawsociety.co.uk)

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## **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](http://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](mailto:advice@dls.org.uk)

Or write to us at: 39–45 Cavell Street, London E1 2BP

Community  
Legal Service



**advice** UK  
MEMBER



**Registered Charity Number 280805, Company  
Registration Number 1408520**