



Disability -Protected Characteristic

DISABILITY

What is Disability Discrimination

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

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 something difficult or impossible.

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

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 is classed as a Disability Discrimination?

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.

If you have experienced discrimination, contact EQUIP for free, impartial advice and support:

Phone Number
0330 135 6606

Website
www.equipequality.org.uk

E-mail Address
advice@equipequality.org.uk





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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 if you have now recovered, you are still protected from discrimination because of that disability.

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'. For 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.

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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. For example:

- 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 isn't 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**. For 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.

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.

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Other disabled people

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

- where having a particular disability is essential for the job (this is called an **occupational requirement**). For example, an organisation supporting deaf people might require that an employee whose role is providing counselling to British Sign Language users is a deaf BSL user.
- where an organisation is taking positive action to encourage or develop people with a particular disability. For example, 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.

What else does the Equality Act protect against?

Being asked health questions designed to screen out disabled job applicants.

The Equality Act 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. For 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, then the question should not be asked.

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