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# Disability and employment

Explore the UK legal position on disability discrimination and the importance of making reasonable adjustments for disabled employees

## Introduction

For UK employment purposes, disability is defined as a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities. It covers physical and mental conditions. Disability discrimination the law is now part of the Equality Act 2010.

This factsheet looks at the different types of disability discrimination. It suggests good employment practices to ensure everyone has fair access and opportunity to progress in work including the legal requirement to make reasonable adjustments to accommodate the needs of a disabled person. It also encourages employers to challenge stereotypical thinking and provides recommendations for positive progress.

Explore [our viewpoint on disability at work](#) in more detail, along with actions for government and recommendations for employers.

## What is disability?

For employment purposes in the UK, the disability definition is contained in the Equality Act 2010: a person is 'disabled' if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

'Long-term' means that the condition must last, or be likely to last, for more than 12 months, or is likely to last for the rest of the life of the person affected.

Individuals with cancer, multiple sclerosis or HIV/AIDS are covered from the date of diagnosis regardless of the impact that the illness is having on their life at the time of diagnosis. The definition of disability is therefore very broad. This means that many other conditions could also potentially be covered, including, for example, chronic fatigue syndrome, schizophrenia, arthritis, diabetes, epilepsy, dyslexia, severe nut allergies, eczema, depression.

To be covered under the Act, a condition doesn't have to be clinically well-recognised or diagnosed. Employers should focus on the effects an employee is experiencing at work, not on the disability or condition from which those symptoms may emerge. Many people with a disability or condition which could potentially be covered by the Act may not necessarily identify as or consider themselves to be 'disabled', even though they may still need adjustments to support them in the workplace. In practice, this means that employers may need to make adjustments for employees who do not say or think they are 'disabled'.

The UK has around seven million people of working age with a disability or long-term health condition, yet only about half of them are in work. This represents a huge pool of untapped talent which businesses can't afford to ignore – read about [closing the disability employment gap](#). Furthermore, [research by the TUC](#) found a disability pay gap of 20% with disabled employees earning £2.10 less an hour on average than non-disabled employees.

## The impact of coronavirus on disabled people

The COVID-19 pandemic has been felt acutely by those with disabilities and long-term health conditions. In addition, some who experience long COVID may be classified as having a disability. Not only are many disabled people clinically at high risk from the virus, but many also work in sectors hardest hit by the outbreak, including retail and hospitality. According to a report from [Leonard Cheshire](#), 71% of disabled people in employment in March 2020 were affected by the pandemic, either through a loss of income, being put on furlough or being made redundant. This increased to 84% for those aged 18 to 24.

The increase in homeworking opportunities may be helpful for those with disabilities and long-term health conditions. A [Unison survey](#) found that 73% of disabled workers said they were more or just as productive working from home, owing to reduced pain and fatigue through less commuting, and having the ability to take additional breaks and later start times. However, of those who said they were less productive, more than half had not been given any reasonable adjustments to support them to work from home.

[Coronavirus guidance on reasonable adjustments](#) from the Equalities and Human Rights

Commission provides helpful advice for employers on properly supporting employees with disabilities or long-term health conditions.

There's more on what employers should be doing in our [Responding to the coronavirus hub](#).

## The UK legal position

In Great Britain, disability discrimination, originally introduced by the Disability Discrimination Act 1995, is now contained within the Equality Act 2010. It includes a legal requirement to make 'reasonable adjustments' – see more on what this means in the Good practices section below.

The Equality and Human Rights Commission (EHRC) has published guidance on [disability discrimination](#) and the [Equality Act](#) including a [Code of practice on employment](#). Whilst not legally binding, the codes give important guidance on good practice and failing to follow them may be taken into account by tribunals or courts. CIPD members can find out more in our [Disability discrimination law Q&As](#).

Our [Brexit hub](#) has more on what the implications of leaving the EU might be for UK employment law.

### **Types of discrimination**

Within the Equality Act 2010 there are a number of different types of discrimination. These apply to the protected characteristics, which include disability.

#### **Direct discrimination**

This applies to all protected characteristics. It's treating someone less favourably than another person because of a protected characteristic that they have. For example, it's deciding not to recruit an individual because they are disabled.

#### **Indirect discrimination**

Indirect discrimination occurs when:

1. a provision, criterion or practice is applied to all, and:
2. it puts a group with a protected characteristic at a disadvantage when compared with another group
3. an individual is put at a disadvantage

4. the employer cannot show it to be a proportionate means of achieving a legitimate aim.

For example, indirect disability discrimination could occur if all employees are required to arrive at work at 08:00 and someone who is disabled has difficulty travelling in the rush hour to arrive on time. That employee's working hours could be changed so they could start and finish later. Enforcing the specific hours might indirectly discriminate against a disabled person unless the hours can be justified.

## **Discrimination arising from disability**

It's discriminatory to treat someone less favourably because of something connected with their disability. For example, dismissing someone for making spelling mistakes owing to their dyslexia. It is justifiable only if the employer can show that it is a proportionate means of achieving a legitimate aim.

## **Associative discrimination**

This is treating someone less favourably because they associate with an individual who has a protected characteristic. For example, treating someone less favourably because their child has a disability and they sometimes have to leave work to deal with a problem.

## **Perceptive discrimination**

This is treating someone less favourably because it's perceived that they have a protected characteristic, whether they do or not. For example, refusing to appoint someone because it is thought that they are disabled when they're not.

## **Victimisation**

Victimisation occurs when someone is treated less favourably because they've made or supported a complaint, or raised a grievance under the Equality Act 2010. It also applies if it's thought that they have made a complaint. A comparator isn't required for a claim of victimisation. Post-employment victimisation can occur - for example refusing to give a reference to someone who had made a complaint under the Equality Act 2010 - although the Act has some grey areas concerning post-employment victimisation.

## **Harassment**

Harassment is 'unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating,

hostile, degrading, humiliating or offensive environment for that individual'.

There's no longer any specific legislation making employers liable for harassment that comes from a third party (for example, a customer). However an employer can still be liable as a result of numerous other legal duties, for example breach of contract, direct discrimination and under the Protection from Harassment Act 1997. This, and good practice, mean that employers should continue to take steps to protect employees from all forms of harassment.

Find out more in our [factsheet on workplace bullying and harassment](#).

## Occupational Requirement

Where there is an Occupational Requirement to employ a person with a particular protected characteristic, certain very limited exceptions from the law are permitted covering selection, promotion and training. The employer must be able to show that there's a genuine need, taking account of the type of work.

Case law in the area of disability discrimination continues to develop.

## Positive action

Employers can take positive action, for example to address under-representation or other forms of disadvantage within the workforce. The provisions are complex and must be handled very carefully. Different provisions apply concerning positive action relating to recruitment and promotion. See [guidance from the EHRC](#).

## Good employment practices

People professionals have a key role in creating fair and inclusive workplaces. As part of coherent [inclusion, diversity and employee engagement](#) strategies, employers should undertake thorough reviews or equality analyses of policies and working practices to remove unfair discrimination and bias. Feedback from employees with disabilities and long-term conditions is useful in developing an open and inclusive workplace culture.

Our [viewpoint on disability at work](#) gives recommendations for employers, with additional information below.

## Inclusion policy

Although there's no legal requirement to have a written inclusion and diversity policy, it's

a good idea to produce and actively use one. In some discrimination claims, employers may have a defence if they can show that they took all reasonable steps to prevent the discrimination occurring. Having a comprehensive current policy and recent relevant training will help employers to distance themselves from liability for acts such as harassment by an individual perpetrator employed by them. A policy also demonstrates the organisation takes its legal and moral obligations towards being a diverse and inclusive employer seriously. It can also encourage employees to treat others equally.

## Making reasonable adjustments

UK employers must make adjustments to accommodate the needs of a person with a disability. Employers are required to understand the barriers an employee is experiencing and put adjustments in place to resolve them. Employers should involve the employee in discussions about adjustments although the duty to make adjustments is ultimately the employer's.

The legal requirement is to make adjustments that are 'reasonable'. This duty falls to the organisation as a whole, not just a line manager in a department, so the resources (including finances and equipment) of the whole organisation can be taken into account when deciding what is 'reasonable'.

Reasonable adjustments must be considered with a specific individual and their specific role in mind. Adjustments can include :

- Altering premises – such as automated doors, providing ramps, quiet spaces, alternative formats of signage or directions around the building.
- Altering assessment procedures – such as giving extra time, providing assistive technology or ergonomic equipment.
- Training or mentoring – to support an employee to use new adjustments (such as speech to text software), or coping strategies (common with, for example, dyslexia or mental health conditions).
- Modified or specialist equipment – such as supportive chairs, height-adjustable or standing desks.
- Communication – providing an interpreter (for people who are, for example, deaf or who have a speech impairment).
- Time off during working hours – for example, for hospital appointments, physiotherapy, counselling, or treatment.
- Flexible working or adjusted hours.

A line manager, along with the disabled employee and, for example, occupational health, may come up with a range of adjustments to help, but the employer can make an evidence-based decision on whether these are 'reasonable'.

## Pre-employment medical questionnaires

The Equality Act 2010 made it unlawful to issue pre-employment medical questionnaires, except in some limited circumstances. Before offering employment, health-related questions can only be asked to:

- Help decide if there's a need to make reasonable adjustments to the selection process.
- Help decide whether an applicant can carry out an essential part of the job.
- Monitor diversity amongst applicants.
- Take positive action to address a current under-representation among disabled people in the workforce.
- Ensure that an individual does have a disability if there's a genuine requirement for it (for example, a mental health counsellor being required to have experience of mental health issues).

## Challenging stereotypical thinking

Stereotypical thinking and unaddressed unconscious bias can lead to bad decision-making. Employers should meet the needs of each employee with a disability or condition individually and identify solutions that will work for the person and the business.

- Disability shouldn't be confused with ill-health. Disability can affect health in different ways, but may not be health-related at all.
- Disability is broad and may not be visible or immediately obvious. For example, a very small percentage of people with disabilities are wheelchair users or Braille users.
- More people acquire their impairment or condition during their adult life than those who are born with them.
- A disability or condition can affect different people in different ways. Therefore, when making adjustments, consider the individual and their specific circumstances, not their condition.
- Corporate image and reputation can be seriously damaged or enhanced by the negative or positive experiences people with disabilities and their friends, families, and carers have of your organisation, especially with the increased use of social media and sites such as [Glassdoor](#).
- Mental health problems affect a significant proportion of the population and stress-related illness has overtaken musculoskeletal conditions as the main cause of absence in the UK workforce as a whole.
- People with disabilities continue to find it significantly more difficult to get a job than

able-bodied people, because employers fail to approach the management of disability positively.

- It's possible to make simple changes to jobs and the way they're carried out in order to successfully employ someone with a disability or long-term condition without serious cost, or even at no cost at all. Funding for workplace adjustments is available to most UK employers through [Access to Work](#).

## Recommendations for positive progress

Line managers should be trained to manage employees effectively, and understand their legal obligations as well as their employer's policy expectations. Disability 'awareness' training on its own is not enough: line managers need to know how to navigate conversations about disability and conditions with employees and understand how to arrange and implement reasonable adjustments.

The Department for Work and Pensions' Disability Confident scheme has published, in collaboration with us and a panel of experts, a [good practice guide for line managers](#) on recruiting, managing and developing people with a disability or health condition. This includes practical tips for managers to help staff and colleagues feel comfortable to talk about a disability or health condition.

The government has also launched a [Voluntary Reporting framework](#) encouraging employers to report what steps they are taking to support their disabled employees and promote employee health and wellbeing. It also provides direction and support to encourage employers to report the percentage of individuals in their organisation who have a disability or a long-term physical or mental health condition. The framework aims to help organisations make positive progress in successfully managing disability and fairness at work.

See the [advice hub](#) launched by Acas and BEIS for advice on ensuring that workers with disabilities get the best support at work.

## Useful contacts and further reading

### Contacts

The following have resources and services to advise organisations or support people with disabilities in the workplace. There are many other organisations which offer detailed information and workplace advice about specific disabilities.

[Acas - Discrimination, bullying and harassment](#)



[Acas - Disability at work](#)

[GOV.UK - Employing disabled people and people with health conditions](#)

[Equality and Human Rights Commission - Disability discrimination](#)

[Business Disability Forum](#)

[Disability Confident](#) - a government national level voluntary initiative to engage employer action in progressing inclusive policies and practices for people with disabilities, which is supported by the CIPD

[The Disability ClearKit](#) - developed in association with the Department for Work and Pensions, is the result of three years in-depth research with 220 leading employers

[Access to Work](#)

[National Register of Access Consultants](#)

[Shaw Trust](#)

[Centre for Accessible Environments](#)

## **Books and reports**

BUSINESS DISABILITY FORUM (2020) *[The great big workplace adjustments report](#)*. London: BDF.

COLEMAN, N., SYKES, W. and GROOM, C. (2013) *[Barriers to employment and unfair treatment at work: a quantitative analysis of disabled people's experiences](#)*. Research report 88. London: Equality and Human Rights Commission.

MENCAP (2017) *[Good for business: the benefits of employing people with a learning disability](#)*. London: Mencap.

REMPLOY (2017) *[Disability guide](#)*. London: Remploy. (Can be produced with company branding, either as a PDF or in print).

RUBENSTEIN, M. (2021) *[Discrimination: a guide to the relevant case law](#)*. 34th ed. London: Michael Rubenstein Publishing.

## **Journal articles**

BACON, N., HOGUE, K., WASS, V. and JONES, M. (2017) *[Are high performance work](#)*

practices (HPWPs) enabling or disabling? Exploring the relationship between selected HPWPs and work-related disability disadvantage. *Human Resource Management*.

BEATTY, J. et al. (2019) On the treatment of persons with disabilities in organizations: a review and research agenda. *Human Resource Management*. Vol 58 No 2, March/April. Reviewed in *In a Nutshell*, issue 89.

BURT, E. (2019) One in four UK employers would not hire someone with a disability. *People Management* (online). 21 February.

CHURCHILL, F. (2020) Disabled workers facing coronavirus 'jobs crisis', survey shows. *People Management* (online). 27 October.

POWER, B. (2019) Disability, mental health and wellbeing reporting. *People Management* (online). 14 February.

SUFF, R. (2021) The Disability Employment Gap needs closing - on several fronts. *CIPD Voice*. Issue 27, 5 February.

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