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THE LEGAL SERVICE

# DISABILITY DISCRIMINATION





# Disability Discrimination

It is unlawful for someone to discriminate against you because of disability in certain circumstances.



The law that protects against such treatment in Great Britain is contained in the Equality Act 2010, which defines disability 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.

An employer can be vicariously liable for discrimination committed by an employee in the course of their employment, unless it can show that it took all reasonable steps to prevent the discrimination.

An education provider can also be vicariously liable for discrimination committed by others acting on its behalf in certain circumstances.

## Disability discrimination in practice

Before looking at the different types of discrimination, it is worth outlining disability discrimination in practice.

### **Disability and employment**

It is against the law for an employer to discriminate against an employee because of a disability (eg. in the terms of employment offered or the opportunities for promotion, transfer or training).

### **Disability and education**

Education providers must not discriminate unlawfully against pupils or prospective pupils because of disability (eg. with regard to admissions, the provision of education or the exclusion of pupils).

### **Access to services**

Service providers (such as private landlords, health and fitness clubs, shops and hotels) must not discriminate unlawfully against people in the provision of services. They are required to make reasonable adjustments for disabled people in the way they deliver their services.

Examples of reasonable adjustments (described further below) might include ensuring that there are no physical barriers to access for disabled people or providing disability awareness training for staff that have contact with the public.

## Types of discrimination

The Equality Act prohibits several types of discrimination, the most relevant of which are: direct discrimination, indirect discrimination, discrimination arising from disability, failure to make reasonable adjustments, victimisation and harassment.

The meaning of each of these is discussed below, along with illustrative examples where appropriate. They can apply to both formal and informal policies, rules and practices.

### **Direct Discrimination**

Direct discrimination occurs if, because of disability, someone treats you less favourably than they treat, or would treat, others.

You do not need to be disabled to suffer direct discrimination. Protection will be available to you if you are treated less favourably because of the disability of another person (usually, but not necessarily, someone "associated" with you, such as a friend or relative) or if you are (incorrectly) perceived to be disabled.

#### **Example of direct discrimination – disability**

A job applicant is in a wheelchair. The job for which he is applying can be performed equally well by someone who is disabled as by someone who is "able-bodied". However, the applicant is not given the job because he is disabled.

#### **Example of direct discrimination – friend/relative of someone with a disability**

A lone father caring for a disabled son has to take time off work when his son is unwell or has medical appointments. The employer resents the fact that the employee has to care for his son and eventually dismisses him.

The dismissal may amount to direct discrimination against the employee by association with his son.

#### **Example of direct discrimination – perceived disability**

A job applicant has a squint. Some people think he is blind but in fact he has perfect vision. He is the most suitable candidate for the job, but he is not offered the position because his potential employer assumes he is blind.



## **Indirect discrimination**

If you are a disabled person you will be indirectly discriminated against if, for example, a practice which applies uniformly to both disabled and non-disabled people puts you and others who are disabled at a particular disadvantage. The practice must be a proportionate means of achieving a legitimate aim or it will amount to indirect discrimination. This can apply both to formal and informal policies, rules and practices.

### **Example of indirect discrimination**

An employer provides job application forms in one format only. These forms are not accessible to blind or partially sighted individuals and an employee who is blind is disadvantaged by this practice. The practice is unlikely to be a proportionate means of achieving a legitimate aim because a different application process for blind or partially sighted applicants can be implemented by the employer.

## **Discrimination arising from disability**

If you are a disabled person you will suffer discrimination arising from disability if you are treated unfavourably because of something arising as a consequence of your disability and such treatment cannot be shown to be a proportionate means of achieving a legitimate aim.

However, there will be no discrimination arising from disability if the person accused of discriminating against you did not know, or could not reasonably have been expected to know, that you are disabled.

### **Example of discrimination arising from disability**

An employer dismisses an employee because she has had three months' sick leave. The employer knows that the employee is disabled and her sick leave is disability-related. The employer's decision to dismiss is not because of the employee's disability itself. However, the employee has been treated unfavourably because of something arising as a consequence of her disability (ie the need to take a period of disability-related sick leave).

## **Justification for indirect discrimination and discrimination arising from disability**

There is no indirect discrimination or discrimination arising from disability if the person accused of the discriminatory conduct can demonstrate that their actions were "a proportionate means of achieving a legitimate aim". To be "legitimate", an aim should be legal, should not be discriminatory in itself, and must correspond to a real business need (eg the health, welfare and safety of individuals). Whilst economic efficiency may be part of a legitimate aim, a simple desire to cut costs alone will not be.

To be "proportionate", a means must be reasonably necessary to achieve the legitimate aim. A means will not be considered reasonably necessary if a less discriminatory means could be used to achieve the legitimate aim.

It will be for the employer or service provider to produce evidence in support of their assertion that the discrimination is justified.

### **Example of justification**

An employer requires all machine operators working in his factory to pass an eye test. Although this discriminates against blind or partially sighted people, the employer argues that the eye tests are necessary to protect the safety of his workforce – minimising the risk of accident through operator error. Whether this is a permissible way of achieving that aim depends on whether another approach might ensure the safety of the workforce, without being as discriminatory towards those with a disability.

## **Failure to make reasonable adjustments**

The Equality Act requires reasonable adjustments to be made where, for example, a work practice or a physical feature of premises puts a disabled person at a substantial disadvantage when compared to others who are not disabled. The duty to make reasonable adjustments can also oblige employers to provide auxiliary aids and services to disabled employees.

The employer may not pass on the cost of making these reasonable adjustments to the disabled person.

### **Example of reasonable adjustment**

A company that employs a wheelchair user does not have premises adapted for disabled use. This makes it difficult for the wheelchair user to get to his desk, thereby putting him at a substantial disadvantage in comparison with colleagues who are not disabled. In this case, it may be a reasonable adjustment to make structural or other physical changes such as widening a doorway, providing a ramp or moving furniture.

### **Victimisation**

You will suffer victimisation if you are treated badly by someone because you have taken (or because it is believed that you have taken or may take) one of a variety of actions, including bringing or assisting with a claim under the Equality Act.

As is the case with direct discrimination, it is not only disabled people who may be victimised. You will also be protected if, for example, you assist a disabled person who is bringing a disability discrimination case (for example, by giving evidence in support of their disability and discrimination case).

### **Example of victimisation**

An employee brings a tribunal claim against his employer for disability discrimination. He is denied a promotion because of this.

### **Harassment**

You will have a claim for harassment if you experience behaviour which relates to disability and has the purpose or effect of violating your dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

As is the case with direct discrimination and victimisation, you do not need to be disabled to bring a claim for harassment – for example, you will be protected from harassment which is related to your friendship with a disabled person. It is not necessary for the behaviour to be directed at you specifically.

### **Example of harassment**

Alfred is not disabled but witnesses his colleague, Bill, who is disabled, being called offensive names on a regular basis. Bill does not mind but this creates an offensive working environment for Alfred. Alfred is being harassed.

## **Further Information**

This leaflet is intended to give an overview of disability discrimination and the protections available to individuals under the Equality Act. If further information is required, you might consider contacting one of the organisations listed below:

**Equality and Human Rights Commission [www.equalityhumanrights.com](http://www.equalityhumanrights.com)**

**The Disability Law Service [www.dls.org.uk](http://www.dls.org.uk)**

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