

Employment Fact Sheet: Disability discrimination at work

It is against the law to discriminate against people with disabilities in various areas of their lives.

What is meant by disability?

There are rules about what the law counts as a disability, when considering whether or not discrimination has taken place.

The law says that **disability** means a physical or mental impairment, which has a substantial and long-term negative effect on your ability to carry out normal day-to-day activities. There are special rules for people with cancer, HIV and multiple sclerosis - see below.

According to this definition, impairments can include sensory impairments, such as sight and hearing, or mental impairments such as learning disabilities, dyslexia and mental illness. Some severe disfigurements count as a disability. Some conditions that can worsen over time such as cancer, multiple sclerosis and HIV are regarded as a disability as soon as they are diagnosed, even before they start to affect your day-to-day activities.

To have a long-term disability means that the disability:

- has lasted for at least twelve months; or
- is expected to last for at least twelve months; or
- is likely to last for the rest of your life, if you are expected to live for less than twelve months.

An impairment will be treated as affecting your ability to carry out normal day-to-day activities if it affects at least one of the following:

- mobility
- ability to use hands, for example, for writing or cooking
- physical co-ordination
- continence (the ability to control your bladder or bowels)
- the ability to lift, carry or move ordinary objects
- speech, hearing or eyesight
- memory, or the ability to concentrate, learn or understand
- being able to recognise physical danger.

In some cases, even if medical aids or treatment are used to help control or remove a disability, it is still regarded as a disability. Examples of this include the use of an artificial limb or medication to control epilepsy. However, visual impairment corrected with glasses or contact lenses is not regarded as a disability.

Although a minor impairment may not, on its own, count as substantial, you may have a number of minor impairments which taken together may be seen as having a substantial effect. If an impairment stops having a substantial effect, it can still be regarded as an impairment if there is a reasonable likelihood of the condition recurring, for example, epilepsy.

People with cancer, HIV or multiple sclerosis

If you have cancer, HIV or multiple sclerosis, you are automatically counted as having a disability. This means that you don't have to show that you have an impairment that has a substantial, adverse, long-term effect on the ability to carry out normal day-to-day activities. You are counted as having a disability from the date you are diagnosed with the condition.

What does not count as a disability?

The law does not currently count the following as disabilities:

- addiction to alcohol, nicotine or any other substance not prescribed by a doctor. However, damage to health caused by the addiction may be considered a disability
- hay fever
- certain personality disorders (for example exhibitionism, voyeurism or a tendency to steal, set fires, or physically or sexually abuse other people)
- tattoos and body piercing.

Disability discrimination at work

It is against the law for an employer:

- to discriminate directly against you if you are disabled
- to treat you less favourably because of your disability - including recruitment and selection, terms and conditions, dismissal and redundancy (but see below)
- not to make 'reasonable adjustments' to the workplace to enable you to work or to continue to work (see below)
- to harass you if you are disabled or because you are associated with someone who is disabled, for example, your partner or child.

Employers can treat disabled people less favourably only if they have a sufficiently justifiable reason for doing so, and only if the problem cannot be overcome by making 'reasonable adjustments'. For example, an employer would be justified in rejecting someone with severe back pain for a job as a carpet fitter, as they cannot carry out the essential requirements of the job.

Reasonable adjustments

An employer must make reasonable adjustments to the workplace itself or to the employment arrangements if they cause a substantial disadvantage to a disabled person.

Examples of the types of adjustments that an employer might make include:-

- making physical adjustments to the premises
- supplying special equipment to help you do your job
- transferring you to a different post or work place
- altering your hours of work or giving you extra time off.

When employers are deciding whether an adjustment is reasonable they can take into account several things, including the cost of making an adjustment and the size of their business. If you are already in the job, your employer can also take into account your skills and experience and the length of time you have worked there.

What can I do if I'm being treated unfairly or harassed at work?

If you are being treated unfairly or harassed at work, take action as quickly as possible:

- **get advice.** A Citizens Advice Bureau may be able to help or refer you to a specialist. Details of how to find your nearest CAB are at the end of this fact sheet
- If you're being harassed, **ask the person to stop.** Only do this if you feel it is safe. You may find it helpful to have a colleague or trade union representative with you when you do this
- **tell your manager** that you're being harassed or discriminated against. Put it in writing and keep a copy. Your employer is required by law to try to prevent the harassment. If the person harassing you is your manager, tell someone higher up in the organisation
- **talk to your personnel department or trade union.** They might be able to help you stop the unfair treatment or bullying
- **collect evidence.** This could include keeping a diary or record of the time, date and location of any incidents, what was said or done, if there were any witnesses and evidence of any similar incidents against other colleagues. Record the names and jobs of those you think are treated more favourably than you, or details of the rule or policy that puts you at a disadvantage and why
- the law allows you to ask your employer to provide information through a **questionnaire** procedure. This can help you get information to support your case. Get advice early on as there are strict time limits for this procedure.

Raising a grievance

If you've tried to stop the discrimination or harassment without success, you can **raise a written grievance**. All workplaces are required by law to have a grievance procedure. Your trade union or an adviser can help.

Although the law can help protect you against victimisation, think carefully about taking out a grievance or making a complaint as this could put your job in danger or make your life at work even more uncomfortable.

Taking your case to an industrial tribunal

If you have not been able to solve your problem through raising a grievance, you may have to complain to an **industrial tribunal**. You must have raised a written grievance with your employer before you do this. Industrial tribunals resolve disputes between employers and employees over employment rights, including discrimination at work.

You don't need to have worked for your employer for any particular length of time before you can make a claim for discrimination. If you have been dismissed, you may also be able to make a claim for unfair dismissal. You will need to **prove your case** - that's why you need to collect the information and evidence suggested earlier. You can ask your employer to provide information through a **questionnaire** procedure. This can help to support your case.

The Labour Relations Agency (LRA) offers a conciliation service in Industrial Tribunal complaints. If your complaint cannot be resolved by you and your employer through conciliation it will go on to a tribunal hearing. The tribunal is a panel of up to three people who will consider all the arguments, make a **legally-binding decision** and award **remedies**, for example **compensation**.

If you're considering complaining to an industrial tribunal, get advice straight away. There are strict time limits for taking a discrimination case to an industrial tribunal, so don't delay.

What happens if I am victimised for complaining about discrimination at work?

If you complain about discrimination or harassment at work because of your disability, you have some protection in law. For example, your employer can't victimise you because you have:

- encouraged a colleague to complain about unfair treatment or bullying
- given evidence in a colleague's case
- complained about unfair treatment or harassment against you.

Examples of victimisation could include:

- being labelled a trouble-maker
- being denied promotion or training opportunities
- being ignored by your work colleagues.

If your employer victimises you because you've been involved in a complaint about unfair treatment or bullying at your workplace, you can make a claim for **unlawful victimisation** to an **industrial tribunal**. You must raise a **written grievance** with your employer before you do this. If you're thinking about making a claim to an industrial tribunal, talk to an experienced adviser straight away.

Other types of discrimination

As well as discrimination because of your disability, you could be treated unfairly for other reasons, for example, because of your age, religious belief and/or political opinion, sex, race or sexuality.

If you think you've been treated unfairly for more than one reason, make sure you raise all the issues if you make a complaint.

Further help

Citizens Advice Bureau

Citizens Advice Bureaux give free, confidential, impartial and independent advice to help you solve problems. To find your nearest CAB visit www.citizensadvice.co.uk or look under C in your phone book.

Equality Commission for Northern Ireland

You can find information about all types of discrimination from the Equality Commission for Northern Ireland. The advice service is free and confidential. Contact the enquiry line on **028 90 890 890** or visit the website at www.equalityni.org.

LRA

The Labour Relations Agency (LRA) operates an Enquiry Helpline which provides information and advice about employment issues. Contact the Enquiry Helpline at **028 9032 1442**.

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