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## DISABILITY EQUALITY

### 1. Introduction

The Disability Discrimination Act 1995 (DDA) states that it is unlawful for an employer to discriminate against a disabled person:

- in the terms of employment.
- in the opportunities in promotion, transfer, training or receiving any other benefit.
- by refusing to afford any such opportunity.
- by subjecting them to dismissal or any other detriment.

Although other discrimination legislation prevents positive discrimination, the DDA does not prevent employers from treating their disabled staff more favourably because of having a disability.

### 2. Definitions Within the Act

A person with disabilities is defined as: "a person who has, or who has had in the past, a physical or mental impairment which has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities". People who have had a disability in the past which met this definition are also protected by the Act.

#### *Physical Impairment*

The Act states, however, that sight impairments correctable by glasses or contact lenses are not included but in general if a condition can be controlled by taking drugs, or using special aids, the individual will qualify. Severe disfigurements are included, except those deliberately acquired, e.g. tattoos or body piercing (for non-medical purposes). Hay fever sufferers are excluded, unless the hay fever aggravates the effect of another condition. Addiction or dependency is not classed as a disability unless it has resulted from medical treatment.

#### *Mental impairment*

The impairment must result from, or consist of, a clinically well recognised illness. This could include manic depression, schizophrenia and depression. Disorders of personality, sexuality or behaviour (e.g. kleptomania) are excluded.

#### *Progressive conditions*

Individuals who have progressive conditions such as HIV, cancer, multiple sclerosis and can show that in the future, if not at present, their ability to carry out day-to-day activities will be impaired, will fall within the disability definition. A person with a progressive condition who has not shown any symptoms which affect day-to-day activities will not be included.

#### *Substantial effect*

The effect must not be "minor" or "trivial".

#### *Long-term effects*

An impairment has long-term effects if:

- it has lasted for 12 months;
- it can reasonably be expected to last for at least 12 months;
- it can reasonably be expected to last for life.

If an impairment may recur, rather than have a continuous effect, it will also qualify. An impairment that would have an effect, if measures were not taken to treat or correct it (e.g. diabetes) will also qualify.

*Normal day-to-day activities*

An impairment is taken to affect normal day-to-day activities only if it affects one of the following:

- mobility
- manual dexterity
- physical co-ordination
- continence
- ability to lift, carry or otherwise move everyday objects
- speech, hearing or eyesight
- memory or ability to concentrate, learn or understand
- perception of the risk of physical danger.

People often think of disability as covering situations such as using a wheelchair, being blind or visually impaired, or deaf. However they are sometimes surprised to discover that disability can cover much wider ranging conditions such as facial disfigurement, dyslexia, learning difficulties, HIV, aids, heart disease, epilepsy, diabetes, depression and mental illness.

Further guidance on the meaning of Disability is to be found in the Government Publication 'Guidance on matters to be taken into account in determining questions relating to the definition of disability'. Tribunals are under a statutory duty to take this guidance into account in reaching their decisions.

*Note* : Individuals who are registered as disabled on 12 January 1995 and on 2 December 1996 are deemed to have a disability for the purpose of the legislation for three years from 2 December 1996. The Act abolishes the requirement for people with disabilities to register and the quota provisions for employers. In future, employment tribunals will adjudicate on whether or not an individual qualifies for protection under the Act.

### **3. Obligations on the School**

The Act makes it unlawful to discriminate against a person with a disability in relation to:

- recruitment
- terms and conditions of employment
- opportunities for training
- promotion and transfer
- benefits
- dismissal
- any other detriment

Discrimination will occur if, for a reason relating to the person's disability, the school treats that person less favourably than he would treat others to whom that reason does not, or would not apply and that employer cannot show that the treatment in question is justified. The school will also be treated as discriminating against a person with a disability if they fails to comply with the duty to make reasonable adjustments and that failure is not justified:

#### **4. Less Favourable Treatment**

The school is defined as discriminating if he or she treats a person less favourably for a reason that relates to his/her disability. People with disabilities who suffer less favourable treatment as a result of the application of employment policies or procedures may be able to claim that this adverse treatment relates to their disability, and thereby make a claim for discrimination.

The burden of proof initially rests with the employee, to show that the less favourable treatment relates to the disability. Once proven, the school must show justification. The reason must be material to the circumstances of the particular case and substantial.

#### **5. Retention of Employees with a Disability**

The Act now places a legal requirement on the employer to take all reasonable steps in achieving its aim of retaining employment for those staff who become disabled whilst at work, or for those employees who have a disability which worsens.

#### **6. Duty to Make Reasonable Adjustments**

The Act requires that where any arrangements made by an employer, or any physical features of the premises, place a person with a disability at a substantial disadvantage, it is the duty of the employer to take such steps as are reasonable in all the circumstances to prevent that effect.

Examples of Adjustments which Governing Bodies and LEA's might reasonably have to make are:

- **altering premises**, e.g. widening a doorway, providing a ramp, stair-climbing chairs or non-slip flooring, moving classroom or corridor furniture, altering lighting, or providing parking spaces for disabled drivers;
- **allocating some duties to another employee**, e.g. asking a non-disabled teacher to assemble a slide projector and screen for a teacher with a disability, providing ancillary support in the classroom, arranging supervision duty rosters to take account of mobility, e.g. library supervision may be more appropriate than playground supervision for a teacher with a disability;
- **transferring the person to fill an existing vacancy**, e.g. if a teacher becomes disabled and there is no reasonable adjustment which can enable him/her to continue in his/her post he/she might be considered for another suitable teaching post. In the case of LEA maintained schools, the LEA may be able to recommend the teacher for a suitable vacancy at another school;

- **altering working hours**, e.g. allowing an employee who becomes disabled to work part-time or to job share or making adjustments to the timetable;
- **changing the person's place of work**, e.g. ensuring that a teacher with mobility difficulties which prevents him/her from using the stairs can hold all of his/her lessons in classrooms on the ground floor;
- **allowing absences during working hours for rehabilitation, assessment or treatment**, e.g. allowing an employee who becomes disabled time off during work to receive physiotherapy or other treatment;
- **supplying additional training**, e.g. training in the use of particular pieces of equipment unique to the person with a disability or re-training a teacher in a new subject area in order for him/her to continue teaching;
- **acquiring or making changes to equipment**, e.g. providing an induction loop in the school hall and other assembly areas, providing magnifying facilities, a pager that vibrates, a visible fire alarm system, or an adapted telephone; or
- **providing a reader or signer**, e.g. reading information to a visually impaired person at particular times during the working day.

DFEE Circular 3/97 sets out examples of adjustments which Governing Bodies or LEAs might reasonably have to make. Schools should check with their Link Officer in the School and Governor Support Service in the Education Department as to whether or not they are responsible for the costs of such adjustments.

#### **4. Failure to Comply**

Failure to comply with this duty is an act of unlawful discrimination in itself, unless it can be justified. Human Resources has a standard job application form which it is recommended is used by schools. In addition, the Department can offer the facility to distribute and receive recruitment information in various formats such as braille, tape etc. This service can be accessed through the Policy and Recruitment Team on (Tel No. (0191) 3834203) of Human Resources.

The duty arises where, in the case of an applicant or a potential applicant for a job, the employer knows or could reasonably be expected to know that a person with a disability is, or may be, an applicant for a job. Similarly in other cases, the duty only arises where the employer knows or could reasonably be expected to know that the employee has a disability.

This list may be changed by further regulations.

The duty to make reasonable adjustments is not directly enforceable but Section 5(2) of the Act provides that an employer will be treated as having discriminated against a person with a disability if the employer fails to make reasonable adjustments unless the employer can show that the failure is justified.

This will mean that a blanket failure to comply will not normally be justified. Furthermore, the reason for the failure must be substantial, i.e. not minor or trivial. There is power to issue further regulations spelling out the circumstances in which a failure to comply with the duty to make reasonable adjustment will be justified but the regulations enacted so far do not deal with this issue.

5. **Further Help and Information**

- The Disability Rights Commission (DRC) provides a direct route for any inquires in employment or service provision.
- The Employment Service Disability Employment Advisors are based in Jobcentres.
- The Advisory, Conciliation and Arbitration Service (ACAS) are another useful contract, providing free independent advice.

**Signed:**



CHAIR OF GOVERNORS.

**S Hindle**  
**Chair of Governors**

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