

## DISABILITY DISCRIMINATION: KEY FACTS

The Equality Act 2010 makes it unlawful to discriminate against employees because of a mental or physical disability.

Under the Act a person is disabled if they have a physical or mental impairment which has a substantially adverse and long-term effect on their ability to carry out normal day-to-day activities. In the workplace such activities are taken to include things like using a telephone or computer, interacting with colleagues, following instructions, driving and carrying everyday objects.

### Four main types of disability discrimination

#### Direct discrimination

Is when someone is treated differently and not as well as other people because of disability. For example, an employer does not employ a disabled person just because it does not want disabled people in its workforce. A person can be treated 'less favourably' because of:

- their own disability (ordinary direct discrimination)
- a perceived disability (direct discrimination by perception)
- their association with someone who is disabled (direct discrimination by association).

#### Indirect discrimination

Can occur where a workplace rule, practice or procedure is applied to all employees, but may disadvantage those who are disabled. A disabled employee or job applicant claiming indirect discrimination must show how they have been personally disadvantaged, as well as how the discrimination has or would disadvantage other disabled employees or job candidates.

In some limited circumstances, indirect discrimination may be justified if it is necessary for the business to work. For example, an employer may reject an applicant with a severe back problem where heavy manual lifting is an essential part of the job.

#### Harassment

When unwanted conduct related to a person's disability causes a distressing, humiliating or offensive environment for that person.

#### Victimisation

Treating someone unfairly because they have made or supported a complaint about disability discrimination.

There are two other types of discrimination regarding disability:

- Discrimination arising from disability - Where someone is treated 'unfavourably' because of something linked to their disability, but not because of the disability itself. The disabled person claiming this type of discrimination does not have to compare their treatment to how someone else is treated.

- Failure to make 'reasonable adjustments' - An employer failing to make 'reasonable adjustments' for a disabled job applicant or employee is one of the most common types of disability discrimination. If adjustments are 'reasonable', an employer must make them to ensure its workplace or practices do not disadvantage a disabled job applicant or employee already with the organisation.

It is good practice to ensure all of your policies have rules in place to prevent disability discrimination, for example in:

- recruitment and selection
- determining pay, terms and conditions
- sickness absence
- training and development
- promotion
- dismissal
- redundancy

## Reasonable adjustment

A key part of the Equality Act 2010 requires employers to make reasonable adjustments to accommodate the needs of a disabled individual. The employer is required to think broadly of adjustments that could be made, and give the matter serious thought. The employer can discuss possible adjustments with the disabled employee but cannot rely on the employee alone to think of adjustments.

The requirement is to make 'reasonable adjustments'. 'Reasonable' is considered with the size and resources of the organisation in mind.

Reasonable adjustments may include:

- making adjustments during the interview and selection process
- making physical adjustments to the workplace
- allocating some duties to another employee (although you do not need to change functions which are essential to the role)
- moving the disabled employee to a different but suitable job
- altering the hours of work
- moving the disabled employee to another place of work
- allowing time off during working hours for treatment or rehabilitation
- arranging training for the employee
- acquiring or modifying equipment
- altering instructions or reference materials
- altering procedures for testing or assessment
- providing a reader or an interpreter
- providing supervision

## **Is obesity a disability?**

There have been several court cases in the UK and Europe, and it is now accepted that obesity itself is not a disability. However, where obesity causes an impairment which is substantially adverse and long-term, that impairment might be regarded as a disability by an employment tribunal.

As is often the case whether a condition related to obesity is likely to amount to a disability will depend on all the particular circumstances of the individual case. It is important to ensure that obese employees are not subjected to offensive comments or behaviour because of their weight and that obese job applicants are not discriminated against because of their weight.