

Resource

Guide to the Equality Act 2010

This guidance gives an overview of the current protection provided to disabled persons under the Equality Act 2010.

15/10/2010: Adish Farkhad, Employer Law

Print



Taken from NRAS magazine, Winter 2010

This guidance has been prepared by Coffin Mew LLP to give an overview of the current protection provided to disabled persons under the Equality Act 2010 which replaced the Disability Discrimination

Act 1995 with effect from 1 October 2010.

Who is entitled to protection against disability discrimination?

In order to qualify for protection, an individual must show that they are a disabled person within the meaning of the Equality Act 2010 (EA). "Disabled person" is a legal definition which does not necessarily correspond with common perceptions of disability. ?

The current definition is a person who has a "physical or mental impairment which has a substantial and long-term effect on his ability to carry out normal day-to-day activities".

In the context of people who have been diagnosed with rheumatoid arthritis, this test can be broken down into four elements as follows:?

Does the individual have a physical or mental impairment?

Rheumatoid arthritis (RA) is almost always likely to fall within the definition of a physical impairment and, therefore, will satisfy this element of the test.

Does that impairment have an adverse effect on the individual's ability to carry out day-to-day activities??

Day-to-day activities are those which are carried out by most people on a fairly regular or frequent basis, for example, walking, carrying normal objects, reading and taking part in normal social interaction. They can also encompass activities relevant to working life. ?

Depending on the aggressiveness of the condition, most people with RA are likely to be able to satisfy this definition.

Is that effect substantial?

This is the more difficult element of the definition to satisfy and will require an analysis of what the individual cannot do or can only do with difficulty as a result of the condition. Importantly, the effect is considered ignoring the effects of any medication or treatment. If the RA has been diagnosed as a progressive condition, the individual will be able to show that this has a substantial and adverse effect if they can demonstrate that as a result of the condition, they have an impairment which has some effect on their ability to carry out day to day activities and that the condition is likely to result in an impairment which will have a substantial and adverse effect.

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Is that effect long-term?

Long-term is defined as having lasted at least 12 months or being likely to last 12 months or for the rest of the affected person's life. As RA is a long-term condition, people with RA are likely to be able to satisfy this element of the definition.

What protection do disabled people have against disability discrimination?

The Equality Act makes it unlawful for an employer to:

•???Discriminate against a person on the grounds of their disability. (Direct Discrimination).? For example, refusing to shortlist a blind person for a job that involves working with computers on the assumption that blind people cannot use them.

- ??? Treat a person unfavourably because of something arising in consequence of their disability, unless this treatment can be objectively justified (Discrimination Arising from Disability). For example, dismissing a disabled person for taking two month's sick leave which is related to their disability.
- ??? Apply a provision, criterion or practice, which is not connected to the person's disability and is applied equally to all staff, however, puts or would put people who have the disabled person's disability at a particular disadvantage, unless the employer can show that this is objectively justified (Indirect Discrimination). For example, a policy that all staff must work full time may put some groups at a particular disadvantage.
- ??? Fail to make reasonable adjustments to help overcome the disadvantages at work which an employee faces because of their disability (Failure to Make Reasonable Adjustments). Reasonable adjustments can include adjustments to recruitment/selection policies, to working arrangements, physical changes such as improving access to offices or providing specialist equipment and providing auxiliary aids. For example, providing an employee with arthritis an adapted keyboard or allowing an employee to take time off for medical appointments.
- ??? Subject someone to harassment for a reason which relates to their disability. For example, an employee persistently calling a colleague with a learning disability "stupid" or "slow" (Harassment).
- ??? Victimise someone because they have made or intend to make a claim or allegation under the EA or propose to act as a witness for someone else (Victimisation). ?

The EA covers discrimination against both employees and applicants for employment. Disabled persons are, therefore, protected when applying for employment, during employment (including in relation to terms and conditions and benefits offered) and when their employment is terminated. ?

The duty to make reasonable adjustments

The EA imposes a duty on employers to make reasonable adjustments where

"a provision, criterion or practise applied by or on behalf of an employer, or any physical feature of premises occupied by the employer, or the lack of provision of an auxiliary aid places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled".

Where this effect occurs, it is the employer's duty to take such steps as are reasonable in the circumstances in order to prevent the provision, criterion or practice having that effect. The EA confirms that the cost of making a reasonable adjustment cannot be placed on the employee.

Whether or not there is breach of the duty to make adjustments in a particular case will depend on whether a particular adjustment was "reasonable". This assessment is inevitably very fact sensitive. Under the EA the following factors must be taken into account when assessing reasonableness-?

- ??? The effectiveness of the step in addressing or removing the disadvantage.
- ??? The practicability of taking the step.
- ??? The financial and other costs which would be incurred by the employer, and the extent to which the step would disrupt any of its activities. (Guidance indicates that it would be reasonable for an

employer to spend at least as much on an adjustment to enable the retention of a disabled person as could be incurred recruiting and training a replacement)

- ???The financial and other resources available to the employer.
- ???The availability of external financial or other assistance
- ???The nature of the employer's activities and the size of the organisation

The final decision as to what adjustments should be made is a managerial one for the employer to make. Before making this decision, an employer should undertake appropriate assessments in respect of their disabled employees as, without doing so, it will be difficult to demonstrate what adjustments may reasonably be made.

Possible reasonable adjustments in the context of people suffering from RA could include:-

- ???Making adjustments to premises
- ???Allowing the individual to be absent during working hours for assessment or treatment
- ???Acquiring or modifying equipment
- ???Modifying the work area
- ???Allocating some of the disabled person's duties to another person
- ???Altering hours of work or training
- ???Assigning to a different place of work or transferring to fulfil an existing vacancy

As a matter of good practice, it is advisable for employers to consult with employees regarding the steps taken to ascertain which adjustments should be made and to agree on any proposed adjustments. This is likely to include seeking advice from the individual's GP and/or an occupational health advisor.

Additional changes under the Equality Act 2010

Pre-Employment Health Questionnaires:

Under the old legislation, there was no clause dealing with the problem experienced by job applicants with a history of disability issues when faced with a pre-employment questionnaire during the recruitment process.

This has now been addressed under the EA, which restricts employers ability to ask questions related to health or disability (including in relation to sickness absence) prior to offering a job to candidates. From 1 October 2010 onwards, questions relating to health will only be permitted in very limited circumstances, for example, to establish whether an applicant requires any reasonable adjustments to the recruitment process.

Associative and perceptive discrimination:

In addition to protecting disabled persons themselves, the EA extends protection to people who are treated less favourably or subjected to harassment because they associate with someone who has a disability or are perceived to have a disability. So, for example, the wife of a disabled person may have a claim if they are passed over for a promotion opportunity because they are seen as less reliable due to their caring responsibilities.

Third-party harassment:

Under the EA, in addition to being liable for actions of its employees, an employer may now be liable

for harassment carried out by third parties, for example, clients or contractors. If an employer is aware that an employee has been harassed within the meaning of the EA on at least two occasions by a third party and fails to take steps to prevent the harassment happening again, the employee would have a claim against the employer.

Key points for employees to note

Knowledge of Disability:

An employer is not under any duty to make reasonable adjustments if it does not know or could not reasonably be expected to know that the person is disabled and is likely to suffer from a substantial disadvantage. In addition, employees will only be successful in a claim of discrimination arising from disability if their employer was aware that they were disabled.

Accordingly, where an individual is concerned that they are being placed at a substantial disadvantage due to their condition, they should ensure that they notify their employer of their condition and the disadvantage at which they are placed so that it is clear that the employer had the requisite knowledge.

Recommendations from GP/Occupational Health:

Where possible, employees should enlist the assistance of their GP in communicating their condition to their employer and suggesting adjustments which may assist the employee at work. If not offered by their employer, employees should consider requesting a referral to an occupational health advisor to obtain advice on suitable adjustments that should be made to the working environment to accommodate their condition.

Utilising the grievance procedure:

A grievance is essentially a complaint which an employee has about something at work. It is a method which employees can use to make a formal complaint which the employer is required to deal with under certain procedures.

All companies should have grievance procedures in place to enable employees to raise grievances with the employer. In addition to their own grievance procedures, employers should also follow the ACAS Code of Practice which can be found at www.acas.org.uk

The grievance procedure can be utilised by employees who feel that they have been discriminated against by their employer or individual employees and is commenced simply by raising a complaint in writing to the employer. On receipt of a grievance, the employer should arrange a meeting with the employee to discuss the grievance and investigate the same. The employee has a right to be accompanied at the meeting and to receive the employers' decision in writing, with the right of appeal. ?

The grievance procedure can prove a useful tool to raise concerns formally within the organisation and place pressure on employers to take action. If not resolved internally, the grievance procedure is also the initial stage for many employment claims that eventually go to the Employment Tribunal.

This advice is general and may not cover individuals' specific circumstances. If you need more specific information, you should seek legal advice.?

[Click here](#)?to read the CAB summary of your rights under the Equality Act (this will take you to a different site and will open in a new window).

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