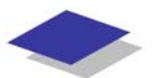


Disability Discrimination



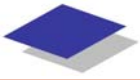
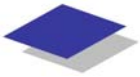


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Introduction

With effect from 1 December 1998, the employment provisions of the Disability Discrimination Act (DDA) were extended to employers with 15 to 19 employees. In deciding not to lower the threshold further at this stage, the Government say they've recognised that small employers don't always have specialist personnel managers and so there is genuine concern that hard-pressed small business men and women run a much greater risk of making simple mistakes with a complex law than a larger business. They might then have to answer for such mistakes in an employment tribunal at disproportionate expense. However, it's our belief that the law is unlikely to stop at firms with more than 15 employees.

The latest changes on DDA are covered on page 9 of this Information Pack – announced on 5 March 2001.




Statistics

Lowering the threshold to 15 brings the total of employers covered by the DDA to 135,000 - an increase of 45,000. The number of employees covered will be 12,750,000 - an increase of 750,000.

That leaves 1,085,000 firms out of the new regulations at present - they employ 3,900,000 people. It means that only 11% of all firms are affected at present although between them they employ 77% of the total number of people employed.

The Rights of the Disabled

The Disability Discrimination Act creates the following "rights" for anyone defined as a "disabled person":

-  Not to be discriminated against in employment
-  Not to be discriminated against in the provision of goods, facilities and services; and
-  Not to be discriminated against in the selling or letting of land and property

It must be noted that these are not universal rights, as various exemptions will apply -for example, only certain degrees of impairment will qualify individual disabled people for rights and certain types of organisations will be exempted from any legal obligations.


To summarise, the social model says that people with impairments are disabled by society; it specifies that a person is disabled if she or he has a physical or mental impairment and if she or he is prevented from taking part in society by one or more of the following:

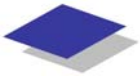
-  Lack of access to the built environment
-  Poor employment prospects
-  Lack of access to information
-  The imposition of negative or patronising images
-  Reduced social contact

The Disability Discrimination (Amendment) Bill

The Disability Discrimination (Amendment) Bill received its first reading on 9 January 2002 in the House of Lords.

The Bill can be viewed on the Internet at: www.parliament.the-stationery-office.co.uk/pa/ld200102/ldbills/040/2002040.htm.

 Firms with	Number of firms	Number of Employees	Average number of Employees per firm	Disabled Employees	Average number of Disabled Employees per firm
1 Employee	500,000	500,000	1.00	60,000	0.12
2 - 4 Employees	310,000	1,300,000	4.19	100,000	0.32
5 - 10 Employees	200,000	1,300,000	6.50	150,000	0.75
11-14 Employees	75,000	800,000	10.67	70,000	0.93
15-19 Employees	45,000	750,000	16.67	60,000	1.33
20 or more Employees	90,000	12,000,000	133.33	1,300,000	14.44
All	1,220,000	16,650,000	4.12	440,000	1.43



In short, a person is disabled if the world at large will not take into account their physical or mental differences.

Note: when devising ways to implement the Act it is useful to remember that:



When the Act talks of "disability" it is referring to impairment and functional limitation



When the Act mentions "discrimination" and "barriers" this roughly equates with the social model understanding of disability

However, for the sake of clarity the rest of this section uses the medical model language of the Act. Readers may find it useful to refer back to this section from time to time to remind themselves of the crucial differences between the social and medical models of disability.

Unlawful Discrimination

It will be unlawful for an employer to discriminate against a disabled person:

1. In recruitment and selection arrangements
2. In the terms on which employment is offered
3. By refusing to offer, or deliberately not offering, employment
4. In the terms of employment which are offered to an employee
5. In the opportunities which are offered to an employee for promotion, transfer, training or receiving any other benefit
6. By refusing to offer the employee, or deliberately not offering her/him any such opportunity
7. By dismissing the disabled person, or subjecting her/him to any other disadvantage

An employer will be said to discriminate against a disabled person if, for a reason which relates to the person's disability, she/he treats her/him less favourably than other non-disabled employees and the treatment cannot be justified. The word "relates" seems to provide a basis for challenging indirect discrimination. For example, if a person is blind and uses a dog, the definition would cover an employer's behaviour towards the person because of her/his need to be accompanied by the dog - which is a reason relating to her/his disability but not the same as her/his disability.

Justification

The definition of discrimination given in the Act is different from that in the Race and Sex discrimination legislation, since the scope for justified discrimination is far greater. There is no absolute prohibition of discrimination on the grounds of disability as such. Instead some forms of discrimination will be allowable if reasons for it can be given, that is, if it is "justified" in terms of the Act. To be justified a reason must be "substantial and material". An example of justification would be if the "adjustments" to work practices required for the employment of a disabled person were not considered to be "reasonable".

Reasonable Adjustments

The duty to make 'adjustments' has been borrowed from the "reasonable accommodation" idea contained in the Americans with Disabilities Act of 1990. It is the centrepiece of the Disability Discrimination Act and clearly differentiates it from other equality legislation. In social model terms, this new duty can be described as an instruction to remove barriers which disable people with impairments; it is essentially an example of positive action.

However, there is no automatic right to a reasonable adjustment - rather, it should be seen as a part of the right not to be discriminated against on the grounds of disability. For example, an individual cannot demand the removal of disabling barriers unless those barriers have a direct disabling effect on that individual.

Take recruitment and selection - first an employer has to figure out if the reason for not giving a disabled applicant the job is related to disabling barriers within his/her organisation, or if it is because the applicant does not have the requisite skills or experience regardless of any disabling barriers. If the reason is related to disabling barriers then the employer will have to work out if the adverse effect of the barriers could be removed by adjustments and if the adjustments are in fact "reasonable".

If disabling barriers can be eliminated by a reasonable adjustment and the employer fails to make that adjustment then they will be guilty of treating the disabled applicant less favourably than non-disabled applicants.

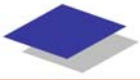
New Guidelines on Access to Businesses for Disabled People

A new Code of Practice on the Rights of Access that businesses and service providers must afford disabled people came into force on 27 May 2002.

The Code of Practice will help businesses and service providers ensure that their services are accessible to disabled people. It outlines the final set of access duties under the Disability Discrimination Act 1995 (DDA) which come into force in October 2004. The new duties require those providing goods and services to make 'reasonable adjustments' to overcome physical barriers to their services.

The Code is published by the Disability Rights Commission (DRC), The full document is available on the DRC website at: www.drc-gb.org.

The Code can be purchased from The Stationery Office, priced £13.95:
Tel: 0870 600 5522
Fax: 0870 600 5533
E-mail: book.orders@tso.co.uk



The duty to make adjustments is not triggered unless disabling barriers in the workplace put "the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled". The problem for policy makers is that the precise meaning of the term "substantial" is not clear. Whether or not a disadvantage is substantial or not will ultimately be the decision of an employment tribunal.

The following are examples of actions listed in the Act that an employer may have to take in relation to a disabled person in order to make a reasonable adjustment:

1. Making adjustments to premises (for example, widening doors or installing visible fire alarms, though regulations may limit this obligation where Building Regulations have been complied with)
2. Allocating some of the disabled person's duties to another person
3. Transferring her/him to fill an existing vacancy (a moderately common practice in well developed Retention and Redeployment policies)
4. Altering her/his working hours (for example, adjusting the core times of a flexi-time scheme)
5. Assigning her/him to a different place of work (for example, same job, different office)
6. Allowing her/him to be absent during working hours for rehabilitation, assessment or treatment
7. Giving or arranging training (presumably specific training on issues such as working with a personal assistant)
8. Acquiring or modifying equipment
9. Modifying instructions or reference manuals
10. Modifying procedures for testing or assessment
11. Providing a reader or interpreter
12. Providing supervision (for example, providing additional support and training for a person with learning difficulties)

In deciding if it is reasonable to require an employer to undertake a particular action the following factors will be taken into account by Employment Tribunals:

1. The extent to which taking the action would prevent the disabling effect in question
2. The practicability of such a step
3. The financial and other costs and the degree of disruption to the employer
4. The financial and other resources available to the employer
5. The availability to the employer of financial and other assistance (for example, the "Access to Work" scheme)

Although the Act says that cost will be a factor when considering whether or not an adjustment is reasonable, the Government has said that it does "not intend to put a financial ceiling" on such costs and the draft Code mentions that many changes can be made for no cost or very little cost.

In summary, an employer will be found to be discriminating if she/he fails to comply with the duty to make adjustments and cannot show that the failure to comply is justified in terms of the above framework.

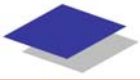
In a strict legal sense in the case of recruitment and selection an employer will not have to make any reasonable adjustments unless the applicant concerned has told the employer that she/he is applying for a job. Thus there is no legal obligation on an employer to be proactive in the sense of catering for all hypothetical disabled applicants. Experience shows, that if procedures and practices are not in place for providing an accessible Recruitment and Selection process, organisations will find that even the most modest of reasonable adjustments (for example, getting a British Sign Language interpreter or a wheelchair accessible interview room) will prove difficult, and delays could mess up the whole schedule. Furthermore, once an employer knows that an applicant has a particular impairment, the onus is on the employer to provide an accessible process - it is not up to the disabled applicant to request 'reasonable adjustments'.

Enforcement of the Employment Section

A complaint of discrimination may be presented to an Employment Tribunal (IT) generally within three months of treatment complained of and disabled employees will have recourse to the law regardless of their length of service. If an IT finds that discrimination has taken place it can:



Make a declaration of rights: that is, a disabled person who has won a case against an employer will be entitled to a formal declaration as to her/his respective rights and the employer's duties. This is the most likely outcome where the complainant has suffered no measurable loss or



where there is a point of legal principle at stake.



Order compensation: which may also include compensation for injury to feelings.



Make a recommendation or recommendations: to obviate or reduce the adverse (discriminatory) effects faced by the complainant.

If an employment tribunal makes a recommendation and an employer fails (without reasonable justification) to comply with it, the tribunal can then order compensation or increase this if it has already ordered it. Save for compensation for injury to feelings (which is likely to be limited to a prescribed maximum), the potential compensation award will be unlimited.

The Act anticipates that there will be an attempt to reach a conciliated settlement between the two parties before going to an IT. In this respect an Advisory, Conciliation and Arbitration Service (ACAS) officer will be asked to seek conciliation between parties.

The Act will make provision for Disabled people to use a prescribed questionnaire procedure in order to obtain evidence of reasons for treatment. That is, questionnaires can be provided and employers will have a legal duty to fill them in and give details relevant to the case. Answers will be admissible in evidence to an employment tribunal.

No legal aid will be available for tribunal cases. However, limited advice may be obtained under the "green form" scheme where one or two hours of free legal advice can be given. Also, Law Centres and Citizens Advice Bureau may be able to support people at an employment tribunal. And, Trade Union legal departments or national disability organisations may provide a legal service to complainants.

Exemptions

Operational police officers; prison officers; fire fighting personnel, and members of armed services are not covered by the Act. Until 1 December 1998, small employers (employing less than 20 employees) are also exempted (but from that date, the Act covers all firms with 15 or more employees).

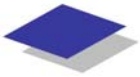
Rights in relation to the supply of Goods, Facilities, Services and Premises

Regulations will be crucial to the working of this part of the Act since they will be used to illustrate or cap the obligation to remove disabling barriers (to make adjustments). They may also be made to define circumstances where discrimination is justified (for example insurance services).

The Act imposes duties on a "provider of services". This is defined as a person (but includes legal entities such as local authorities and other organisations) who "is concerned with the provision in the United Kingdom of services to the public or a section of the public". Such "services" include "the provision of any goods or facilities" and it is irrelevant whether or not payment is made for them.

"Goods" would appear to be any personal or movable property. "Facilities" is not defined and presumably means anything which is neither goods nor services.

The Act does give some examples of services, for instance, access to any place the public can enter; access to and use of communication or information services; accommodation or facilities for entertainment, recreation or refreshment. It also explicitly includes "...the services of any local or other public authority". This part therefore has a major potential impact for local authority service provision. In Committee the Minister confirmed that facilities for telecommunication, the judicial system and legal proceedings, and broadcasting services are intended to be covered as well.



General prohibition on discrimination

The Act makes it unlawful for a provider of services to discriminate against a disabled person in the following ways:

1. If she/he refuses to provide goods, facilities or services which he/she provides or is prepared to provide to other members of the public;
2. If she/he fails to comply with the duty to make reasonable adjustments where the effect of such a failure is to make it "impossible or unreasonably difficult for the disabled person to make use of" the service;
3. If she/he provides a service to a disabled person to a lesser standard or in a manner which is unsatisfactory compared to how those services would be provided to a non-disabled person;
4. If she/he offers a service on different terms to those offered to a non-disabled person.

The definition of discrimination given in this part of the legislation is similar to that in the employment part. A provider of services discriminates against a disabled person if all the following conditions are satisfied:

1. The service provider treats the disabled person less favourably than he/she treats or would treat other members of the public; and,
2. Such less favourable treatment is for a reason which relates to the disabled person's disability; and,
3. The service provider cannot show the treatment is justified.

The duty to make adjustments

This will be enormously important and there are three situations here (each will be affected by regulations which are likely to limit the maximum expenditure a service provider may be required to spend).

1. Where the provider has a practice, policy or procedure which makes it impossible or unreasonably difficult for a disabled person to use the service, there is a duty to change that practice, policy or procedure so that it no longer has that effect.
2. Where it is a physical feature "for example one arising from the design of a building or the approach or access to premises" which has an adverse effect, then the service provider must take reasonable steps to remove the feature; or alter it to prevent the effect; or provide reasonable means of avoiding the feature; or provide a reasonable alternative for the disabled person.

3. Where the provision of auxiliary aids or services (for example, information on audio/video tape or a sign language interpreter) would enable a disabled person to use the service, the service provider has a duty to take reasonable steps to provide them.

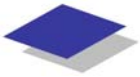
In no case will the service provider be required to take steps that would fundamentally alter the nature of her service or trade. For example, a newspaper publisher wouldn't have to convert all her/his newspapers into talking newspapers in order to accommodate blind people. Or, a climbing school wouldn't have to alter its climbing walls to accommodate wheelchair users who wish to abseil.

Reasons for justification

There are five situations in which discrimination may be justifiable. A service provider must show that at the time of the discrimination, in her/his opinion, one of these was satisfied and that it is reasonable for her/him to hold that opinion. (How the law on justification develops will be crucial because the adjustment duty still appears to provide scope for segregation and differential treatment).

1. The less favourable treatment is necessary in order to avoid endangering the health or safety of any person.
2. The disabled person is incapable of entering into an enforceable agreement or of giving an informed consent.
3. Where refusal of a service is "necessary" for the provider to be able to provide the service to other members of the public.
4. Where the less favourable treatment concerns the standard (or quality) of the service offered if it is "reasonably necessary" for the service provider to be able to provide the service to the disabled person or other members of the public.
5. Where less favourable treatment can be justified as reflecting an unreasonable greater cost to the provider of providing her/his services to the disabled person.

Where a service provider is subject to a duty to make adjustments (say, from a past case), then the justification defence is only available if that duty has been complied with, or it is reasonable for the provider to believe that even if she/he had complied with it, the way in which she/he treated the disabled customer would have still been justified.



Premises

Separate provisions in the Act render unlawful certain specified behaviours concerning the disposal (such as selling or renting) of premises or the management of premises. Local authorities, as major providers of rented housing, will be subject to these provisions.

It will be unlawful to discriminate against a disabled person when selling or renting property in the following ways:

1. In the terms on which premises are offered to be disposed of (for example, asking a higher selling price to disabled buyers)
2. By refusing to dispose of premises to the disabled person (for example, it will be illegal to say that you won't sell a house to someone simply because they are disabled)
3. In the treatment of the disabled person in relation to any list of persons in need of premises of the sort in question

It will be unlawful for someone who manages premises to discriminate against a person occupying those premises in the following ways:

1. In the way that person permits the disabled person to make use of any benefits or facilities (for example, banning disabled people from certain areas)
2. By refusing or deliberately omitting to permit the disabled person to make use of any benefits or facilities
3. By evicting the disabled person, or subjecting her/him to any other detriment on the grounds of disability

As with the other sections of the Act, discrimination regarding premises is defined as less favourable treatment for a reason which relates to the disabled person's disability. Again, a person is justified in treating a disabled person less favourably if, in her/his opinion, one of a list of prescribed conditions is satisfied, and it is thought to be "reasonable" for her/him to hold that opinion. The prescribed conditions are similar to those given in the previous sections of the Act and can be summarised as follows:

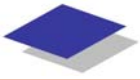
1. The treatment is necessary in order not to endanger the health or safety of any person (which may include the disabled person her/himself)

2. The disabled person is incapable of entering into an enforceable agreement
3. Where the less favourable treatment relates to the way the disabled person is permitted to make use of any benefits or facilities but such treatment is necessary for the disabled person or occupiers of other premises forming part of the building to make use of the benefit or facility
4. Where the treatment is refusing or deliberately omitting to permit the disabled person to make use of any benefits or facilities and it is necessary for occupiers of other premises forming part of building to make use of this benefit or facility

Regulations will allow for the extension of the list of justified less favourable treatment. The big difference between the Act's treatment of premises and other sections of the Act is that there is no duty to make adjustments to buildings. Also, there is no mention of new houses being built to accessible standards. The Government intends to continue to rely on Building Regulations to provide a legislative framework for access to premises.

Enforcement of the Goods, Facilities, Services and Premises sections

A claim of unlawful discrimination will be the subject of civil proceedings "in the same way as any other claim". Proceedings will be through the County Court and appeals will go to the Court of Appeal. As with employment cases, damages may include compensation for injury to feelings. The court will be able to order mandatory action (and not just recommend it like the employment tribunals) and could commit a person for non-compliance with its order. Legal Aid will be available for proceedings. The Secretary of State may establish or arrange an advice and assistance service with a view to promoting settlement of disputes out of court, that is, a type of conciliation service.



Enforcement of rights under the Act

An individual who believes that he or she has been discriminated against on grounds of disability during employment may bring an action in an Employment Tribunal. If found guilty of disability discrimination, an employer may be ordered to pay an award of compensation. There is no cap on the amount of compensation which may be awarded.

Action points for employers

Employers who fall under the requirements of the Act should review their practices and employment procedures to ensure that they do not contravene the Act. In particular, employers should review their recruitment procedures so that they are able to identify any employees who have a disability and determine whether any steps should be taken to accommodate their disability, and bear in mind the provisions of the Act when taking decisions in relation to recruitment and in relation to employees during the course of their employment and on its termination

Extending the Disability Discrimination Act 1995

The government announced on 5 March 2001 that it will be extending the Disability Discrimination Act 1995 to include:

- Increased protection for people with cancer (the quoted example being people in remission from cancer, who may not fall within the definition of a disabled person);
- Removing some of the excluded sectors from the Act, such as police, firemen and prison officers. It will also cover barristers, pupil barristers and employees on board ships, aeroplanes or hovercrafts;

- A legal duty on public bodies to provide equal opportunities for disabled persons;
- Persons registered as partially sighted being deemed to be disabled (and not having to come within the normal definition);
- Abolition of the 'small employer' exemption by October 2004 (employers with less than 15 employees are currently excluded from the DDA). Note that the EC Equal Treatment Framework Directive requires the small-employer exemption to be abolished by December 2006 - thus the proposals go slightly further than the government's obligations.

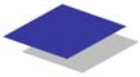
These new measures are in response to the Disability Rights Task Force Report - *"From Exclusion to Inclusion"* and will extend the rights of over 600,000 disabled people already in jobs and cover nearly seven million jobs previously excluded from the Act.

The Government will remove the provision which allows employers to justify failure to make a reasonable adjustment as well as adding further examples to the list of adjustments employers might need to make. On access to goods, facilities, services and premises, the Government will extend the duties to make certain reasonable adjustments to those who let or manage property and take a reserve power to reduce, if appropriate, the current exemption figure for small dwellings to below six persons.

Other Factors

The Government intends to introduce legislation to protect people diagnosed with HIV and cancer from victimisation at work. The DDA already covers people who are HIV-positive and exhibit symptoms - a prospective employee claiming protection under the DDA, would have to have shown HIV or AIDS symptoms. The changes in the law are designed to go further to ensure that people with these medical conditions but who are well, are covered by the Act.

Currently, the DDA doesn't directly address the situation of people with no actual physical or mental limitations but who nevertheless experience strong social restrictions because of prejudice. People



with HIV and AIDS enjoy very little protection from discrimination at the point of recruitment. Employers in the UK can even demand HIV tests of candidates prior to appointment, although this is contrary to the advice of the Chief Medical Officer and the Department of Employment. Only if the discrimination contravenes legislation on sex, race or disability will the applicant have any legal redress.






Under the Act employers must not discriminate against candidates on the grounds of their disability, unless such discrimination can be justified. The justification offered might legitimately concern risk of infection or accident, but would depend upon expert advice. Concern about adverse customer or colleague reaction does not amount to justification and may not be taken into account.

The Disability Discrimination (Amendment) Bill

The Disability Discrimination (Amendment) Bill received its first reading on 9 January 2002 in the House of Lords. The Bill can be viewed on the Internet at:

www.parliament.the-stationery-office.co.uk/pa/ld200102/ldbills/040/2002040.htm.

The main provisions are as follows:

-  Providing that HIV and cancer are deemed to amount to a disability;
-  Removing the small employer exemption (note: this brings the DDA 1995 into line with the requirements of the EC Equal Treatment Framework Directive);
-  Expanding the remedies available to include re-instatement and re-engagement;
-  Extending the Act to prevent all incorporated or unincorporated associations with over 25 members from discriminating against members (or prospective members);
-  Removing the exemption for firemen and prison officers.

Further Information

If you would like to receive further information about this subject or other publications, please call us – see our contact details on the next page.

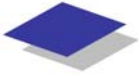
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Britton Price Limited, an ISO 9001 Quality Assured Company, is approved by the Department of Trade and Industry under Annex XIII - Full Quality Assurance for Lifts (module H) - to design, manufacture and install goods and passenger lifts into existing lift shafts. In most instances, the equipment provided is "CE" marked - thus guaranteeing quality and compliance.

Britton Price Limited specialise in fitting the right lift into existing shafts and depending on individual site specifications, the company can install a lift with more space to accommodate extra passengers.

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Contact: Peter Crosby, Sales Director

Some examples of where our lifts have been installed.

An office building in Pollen Street in London's West End.

Architects, Chapman Taylor, were undertaking a refurbishment of the building and required a lift to be added. Space for a lift was extremely limited in the existing structure but we demonstrated that a lift could be put into the existing stair well. To avoid adding any additional weight to the structure we also demonstrated that we could use the existing reinforced concrete structure as support. The Architects specified a glass lift. To avoid making it too dark inside the lift and the atrium, we adapted our XI-M lift by adding a glass box to the unit.

Anchor Trust, Polegate, Eastbourne

This is one of many lifts that we have installed for the Anchor Housing Association. This installation benefited from the use of our LANTAC shaft system. We increased the lift car size from a two-person to an eight-person lift. The lift car floor area was increased by 75%.

The Showcase Cinema in Dudley

In this case the client wanted the lift, which takes customers up to the VIP area, to become the focal point of the cinema foyer. As the cinema was a new build project, we were able to work with the architects from an early stage and provide them with a lift that met their exact requirements. We installed a lift from our X-SC range which gave them the look they were after – something that could travel the short distance in style whilst providing a good focal point to the cinema.

