

The Disability Discrimination Act

How does it affect my business?

"Do I have to make expensive alterations to my business premises?"

"Do I need to change my employment contracts?"

"Does it involve me in a lot of disruption?"

It is unlawful for any business to discriminate against disabled employees, some self employed contractors or job applicants. All businesses can be liable if they discriminate against contract staff working for them.

Any business or organisation dealing with the public also has to take steps to avoid treating people with a disability less favourably.

Are any of my staff and job applicants "disabled"?

- Yes, if they have a physical or mental problem which substantially affects normal day to day activities for a period lasting a year or more.
- Mental problems must be clinically well recognised to count.
- Certain conditions do not count such as hayfever and addictions.
- An existing employee in good health could become "disabled" at any time if they suffer a long term illness or have a serious accident.

Examples of disabilities

A long term strained back; diseases such as multiple sclerosis, epilepsy and HIV if the employee has the relevant symptoms; impaired hearing; clinical depression; dyslexia.

What is "discrimination"?

Discrimination is treating someone less favourably than other staff or job applicants because of his disability or for a reason relating to his disability. The less favourable treatment can be in respect of any aspect of the employment - recruitment procedures, contract terms, promotion, training, benefits and dismissal.

Examples of discrimination

- holding interviews in a place to which a disabled person cannot get access
- insisting that a disabled person has a medical examination when this does not apply to all employees
- not promoting a disabled employee because you assume that the disability may prevent the employee making the grade in management

Duty to make reasonable adjustments to accommodate people with a disability

If a disabled person is put at a substantial disadvantage at work because of his disability, the employer is under a duty to make "reasonable adjustments". These are changes to the workplace, working practices or terms of employment to accommodate the disabled person or job applicant. If the business fails to make reasonable adjustments, it will be discriminating. The business can only avoid this duty if the staff member would still be unable to do the job, even after adjustments were made.

However, the business is not expected to go to any lengths to accommodate the disabled person, but only implement adjustments which are reasonable in the

Head Office

3 Lonsdale Gardens
Tunbridge Wells
Kent TN1 1NX
T 01892 510000
F 01892 549884

Thames Gateway

The Old Rectory
St. Mary's Road
Greenhithe
Kent DA9 9AS
T 01322 623700
F 01322 623701

The Disability Discrimination Act

How does it affect my business? (continued)

circumstances. Whether or not the adjustments are reasonable will depend on various factors - how much they would cost, how much disruption they would cause, their practicality, how great the company's resources are, how much help the adjustment would be to the worker.

Examples of reasonable adjustments

The following adjustments may be reasonable depending upon the circumstances of each individual case.

- providing a telephone which is compatible with a hearing aid
- if a staff member is unable to lift objects, allocating this part of his job to a colleague
- giving instructions to a worker who is hard of hearing in a quiet office instead of a noisy workplace
- giving the disabled person other duties which are not affected by his disability

Is discrimination against disabled workers totally outlawed?

No, in certain circumstances businesses are able to "discriminate" against someone for a reason relating to their disability if this is justified in the particular circumstances of the case, that is, if there is a significant, relevant reason for the less favourable treatment of the disabled person.

For example, a business may be justified in dismissing a disabled person if he takes far more sick leave than colleagues because of his disability and if this means that it is impossible for him to carry out his duties satisfactorily. However, businesses cannot rely on incorrect assumptions that disabled

people in general take more sick leave than their colleagues to avoid liability for discrimination. Likewise, a company would not be justified in failing to recruit someone who cannot drive due to a physical impairment if driving is not needed for the job in question.

What about Harassment?

It is also specifically unlawful for a business to subject a disabled person to harassment because they are disabled. Harassment is defined as the violation of a person's dignity or the creation of an intimidating, hostile, degrading, humiliating or offensive environment.

Penalties for getting it wrong

If workers or job applicants believe that the company has discriminated against them, they can complain to an employment tribunal. If the tribunal upholds the complaint, it can order the company to pay compensation to the disabled person and recommend that the company takes any particular action, such as making reasonable adjustments.

Discrimination in providing products and services to the public

Businesses and organisations which provide products or services to the public have duties generally to disabled people as well as to workers and job applicants. Just about every organisation which deals with the public is affected by this, no matter how small it is and whether or not it receives payment for what it provides.

The general duty is not to treat people with a disability less favourably unless this can be justified. It is an offence for a business

The Disability Discrimination Act

How does it affect my business? (continued)

or organisation dealing with the public to discriminate against people with a disability by refusing service, offering service on less favourable terms or providing a worse standard of service.

But businesses and organisations are not liable if the discrimination is justified, for example if it is necessary for health and safety reasons.

DDA Update

In **H J Heinz & Co Ltd v Kenrick**, the EAT upheld a finding of disability discrimination, even though the company did not know that the employee's symptoms fell within the definition of "disability" under the Act.

In **Clark v Novacold**, the Court of Appeal, in its first decision on the Act, held that a tribunal should not compare the treatment given to the disabled person with that which a non-disabled person would have received in similar circumstances. This decision makes it even more important that employers tread very carefully when considering the dismissal of a disabled worker.

We now have a Disability Rights Commission to promote the equalisation of opportunities for disabled people. It can assist individuals to bring claims under the Act.

Injury to feelings awards by tribunals have ranged from £500 to £15,000, with the average award being £3,000.

This information sheet highlights the main aspects of the provisions for businesses in the Disability Discrimination Act. However, it is not possible here to go into comprehensive detail on any of the points raised and professional advice should be sought on specific issues.

For further information or to be sure of receiving other information sheets on employment issues, please contact Nick Hobden on 01892 510000 or by e-mail at nick.hobden@ts-p.co.uk.