

what are reasonable adjustments?

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A brief guide...

A brief guide is not a definitive statement of the law. It is an overview designed to give you a flavour of the legislation.

As an employee you need to know what your employer's obligations are in relation to reasonable adjustments and whether there has been a failure in the duty.

As an employer this checklist will assist you in knowing when the duty arises and what you should be doing around it.

What is the reasonable adjustments duty?

The Equality Act 2010 requires employers to make adjustments which are reasonable in terms of how they can be accommodated without a disproportionate impact on other employees and at a cost which is reasonable.

The duty is designed to eliminate the disadvantage(s) caused by disability so that the disabled employee can continue to work.

When does the duty arise?

The duty arises when the employee informs the employer that he/she is suffering from a disability. At this stage the onus is on the employee to tell the employer what he/she needs the employer to do. The burden then shifts to the employer once the duty has arisen and suggestions for adjustments have been made.

If the employer's occupational health adviser knows that the employee has a disability the employer may be imputed to know when if they have not been told explicitly.

Who decides whether and what adjustments are required?

It is for the employee to tell the employer what the adjustments he/she needs are and how these will help alleviate the effects of their disability. Initially it is not for the employer to come up with the ideas around how to assist: this is the responsibility of the employee and his/her medical advisers/GP. Once the employee has made suggestions it is for the employer to consider whether they are reasonable and/or possible.

If the employee runs out of suggestions, however, the employer needs to consider if there is anything further that can be done. Advice from Occupational Health or another medical expert could be critical. An employer is not absolved of the responsibility to make adjustments just because the employee has failed to find a solution.

How can an employer resist adjustments?

The duty on the employer is a substantial one. Only if the cost is excessive or if there is no evidence to show that the adjustment will alleviate the disability will the employer be able to lawfully refuse adjustments.

The other circumstance where an employer may refuse is if they do not consider that the employee is disabled. The burden on the employer is significant. If the employer unreasonably refuses to make the adjustments it may be liable under the Equality Act 2010 for failing the reasonable adjustments duty which constitutes unlawful disability discrimination and entitles the employee to present a claim to the Employment Tribunals.

Of note is the fact that a disability discrimination claim can be brought while the employee is still employed subject to the usual time limit in the Tribunals which is that the claim must be brought within three months minus one day of the act of discrimination complained of.

Tribunals have a discretion to extend time for discrimination claims which are presented late but they rarely exercise it. If there is a dispute employees must be careful to observe the time limit or this may prove fatal to their claim. If in doubt, take advice.

What should employees do when an employer refuses to make adjustments?

In the first instance employees should raise a grievance under the employer's disciplinary and grievance procedure. If this does not yield results it may be necessary to take legal advice and/or issue a claim in the Employment Tribunals. Beware while the internal investigation into the failure is underway, that you do not inadvertently miss the limitation date for presenting your claim to the Employment Tribunals. There is no obligation to wait for the outcome and by doing so you may miss the three month time limit.

As an employer I cannot afford to make the adjustments or I cannot accommodate them for another reason. What should I do?

The Access to Work Scheme (operated by the Department for Work & Pensions) offers some financial assistance to employers seeking to make reasonable adjustments. If a dispute arises, in the first instance you should take advice from a specialist disability lawyer. You might also want to consider conducting a workplace mediation before the situation with the employee gets out of hand. One of the major features of disability discrimination disputes is that they get very personal very quickly and can escalate far too soon. The way in which such a delicate matter is handled is key to a successful outcome. The idea is to keep the parties talking, not to start finding other ways to criticise or push the employee out of the business (such as performance management or disciplinary proceedings). Take early advice and do not use a backhanded method to try to get the disabled person to leave. This only leads to litigation, costs and eventually awards against you. In the end this will cost you far more.

What are reasonable adjustments in practical terms?

A reasonable adjustment is anything which the employer can do to assist the employee in alleviating the effects of his or her disability. It may be that one simple measure is enough or a combination of measures may be required. The requirements might be quite fluid and change over time depending on the progression of the employee's condition. There are no hard and fast rules. It is just whatever can be done to remove the impediment from the person with an impairment and enable them to do their job and remain in work without any undue pressure or hindrance.

The following are just a few examples:

- Giving a depressed person a later start time because he/she finds the early morning difficult.
- Allowing a person with a nervous condition to work in an office alone because they find it too stressful to work in open plan
- Providing specialist equipment for a dyslexic employee which will enable him to do his job more easily and without strain.
- Giving specialist computer equipment to a blind or deaf employee
- Allowing a disabled worker to have individual performance targets because he/she works more slowly because of disability

As an employee, if you can demonstrate that you need an adjustment and can show how it will assist you, your employer must investigate and offer adjustments.

As an employer, once your employee advises that an adjustment is required, the law obliges you to give it your full consideration. If you are refusing to make adjustments, you will need to provide a full and valid justification, otherwise you may be acting unlawfully.

Useful links

The Equality Act 2010 Statutory Code of Practice on Employment is available for download at the Equality and Human Rights Commission website which is: www.equalityhumanrights.com

This provides many examples of the reasonable adjustment duty and explains the concept in more detail. It is written in plain English and is easily accessible to non-lawyers. It is essential guidance both for employees seeking adjustments and for employers having to deal with a request under the Act.

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