

what is disability discrimination?

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A brief guide...

This brief guide is not a definitive statement of the law. It is an overview designed to give you a flavour of the legislation so that you can decide whether you have suffered disability discrimination.

There are a number of forms of discrimination which are defined in the Equality Act 2010. In relation to disability they are:

Direct Discrimination

An example of this would be if a person has depression and his/her employer says "well I'd better keep my eye on you because I bet you're not up to the job are you?". This is direct discrimination arising from prejudice and assumption around the condition of depression. It is rare to find such explicit examples of discrimination but it does happen.

Indirect Discrimination

An example would be where an employer has a policy, criteria or practice which indirectly affects a disabled person. For example, if an employee suffers from ME and has to take time off for treatment and is often fatigued, they would be disadvantaged by a requirement that they had to be in work 6 days a week. This would disproportionately affect the person with ME and the employer should be asked to make a concession to alleviate the disadvantage.

Discrimination arising from disability

The Equality Act says that any detriment suffered as a result of disability can constitute discrimination. This is new to disability discrimination law and can cover any detriment you undergo, for example being put through an unreasonable disciplinary procedure, being dismissed, etc. If any actions by your employer arise from your disability they may be unlawful. For example, if you are dismissed for having a poor attendance record and the majority of your days off are directly related to your disability, this may be discrimination arising from disability.

Reasonable adjustments

Failure to make reasonable adjustments constitutes disability discrimination. The backbone of the disability discrimination legislation is the duty of the employer to make reasonable adjustments. This means providing you with equipment or working conditions or arrangements which alleviate the effect of your disability. For example, if you suffer from excessive fatigue arising from depressive illness it may be reasonable for your employer to offer you a shorter working day or working week. If you are blind your employer is obliged to provide equipment which will make it easier for you to do your work. Your employer has to be able to demonstrate that it has assisted you to the best of its ability as long as the cost of doing so is reasonable. Your employer is not entitled to ask you to contribute to the cost. You need to tell your employer about your disability if the reasonable adjustment duty is to arise.

Harassment

Harassment is when a person engaged in unwanted conduct related to disability which has the purpose or effect of violating your dignity or which creates a hostile, intimidating, degrading, humiliating or offensive environment for you to work in. For example if your employer or co-workers make fun of you because of a disability or make remarks which you find uncomfortable. Their motive is irrelevant. Even if they think it is light hearted as long as you find it intimidating or unpleasant it may constitute harassment and be unlawful.

Victimisation

Victimisation is when you are treated poorly by your employer or co-workers because you have raised an issue related to your disability. For example if you ask for a reasonable adjustment to be made and your employer starts treating you differently, i.e. ignoring you, being unpleasant. This would be an act of victimisation which would be unlawful.

Discrimination by association

Discrimination by association is when you do not have a disability but look after or are associated with someone who does (a spouse, parent or child, for example). You might be a single parent father who needs to take time off for hospital appointments for your disabled son. If your employer resents this and dismisses you, this might be direct discrimination by association.

Note however that there is no duty on the employer to make reasonable adjustments in relation to associative discrimination.

Discrimination by perception

This is where your employer or co-worker thinks that you are disabled and treats you less favourably but in fact you do not have a disability or do not meet the definition of disability in the Act. You may have a claim under this head if you fail to meet the definition set out in the Act. This form of discrimination is based on the assumption that you are disabled when in fact you are not.

Multiple claims

You may have claims under one or more of these heads of discrimination and can bring them all in an Employment Tribunal.

Time limits

Remember that there are time limits for bring tribunal claims. The limitation date is 3 months minus one day from the discriminatory act or, if it is a series of acts, from the date of the last act.

Useful links

There is a lot of useful information in easily accessibly format in 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.

There is a wealth of other information on disability discrimination on the EHRC website which gives guidance and examples.

“didlaw dealt with my case in an effective and sensitive manner. They were open and honest and helped me to a positive outcome with minimum stress. Quality service from nice people.”

PW, London