

## What is disability? 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 are suffering from a disability and whether you meet the definition in the Equality Act 2010.

In the employment context disability is defined as:

a physical or mental impairment (1) which has a substantial (2) and long-term (3) adverse effect on a person's normal day-to-day activities (4).

If you meet all four criteria of this definition you may be disabled. Ultimately the test is decided by the Employment Tribunals if you consider you are disabled and your employer contests that you are not. There may also be a need for expert medical opinion if the matter proceeds to a hearing.

The legal test in the Act has nothing to do with whether you have a blue badge for parking. It is a separate legal test. Employment Tribunals are concerned only with the *functional impact* on you of an impairment. Just being ill is not enough.

The definition must be met in four ways. Let's take a look at how this works.

### 1. Do you have a physical or mental impairment?

Y- Go to question 2.

N- You are not disabled.

Certain conditions are excluded: tattooing, alcoholism, exhibitionism, kleptomania, voyeurism, hayfever.

If you have a second condition arising from an excluded condition you may still meet the definition (as long as the second condition meets the definition). For example: you are an alcoholic and you develop depression as a secondary condition. As long as the depressive illness has a long-term, substantial effect on your normal day-to-day activities you may still meet the definition.

Some conditions automatically meet all four parts of the definition on diagnosis. If you have cancer, HIV or MS you do not need to take the four-part test.

In determining whether you have an impairment you should discount the effect any medicine you are taking or treatment you are receiving has on your condition. Would you have an impairment if you were not taking this medication and/or receiving this treatment? For example, if you suffer from long term depression and were not taking anti-depressants how would you be able to function?

### 2. Is the effect of the impairment *substantial*? This means *more than minor or trivial*. It is for you to show that the impact on your life is significant. Focus on what you cannot do or can only do with difficulty.

Y- Go to question 3

N- You may not meet the definition. Take advice.

If you have a progressive condition but the condition has not yet had a substantial effect it will be deemed to be substantial if it has had some effect on your activities and is likely to have a substantial effect in the future, for example, with a degenerative condition like rheumatoid arthritis.

3. Is the impairment long-term? Long-term generally means that it has lasted or is likely to last more than 12 months or is likely to last for the rest of your life. If it has lasted less than 12 months but is likely to recur you may still meet the definition.

Y- Go to question 4

N- You may not be disabled under the Act. Take advice.

4. The effect on your normal day-to-day activities This part of the test means examining how the impairment stops you from doing normal daily tasks that most other people do not find challenging.

This test is how the impairment affects your everyday actions such as your ability to bathe, shower and dress, whether you can shop for groceries and cook, whether you can do housework and ironing, whether you can read and whether you are able to socialise.

The essential questions for you is this:

“what can I not do now that I used to be able to do before I had the impairment?”

It is for you to prove that the impairment has an effect on your daily activities and that your life is no longer what it was pre-impairment. Focus on what is difficult that you used to be able to do easily, no matter how trivial.

## **Advice**

If you think you may be disabled in the employment context take advice. The Equality Act 2010 affords you considerable protections.

See our guide: what is disability discrimination?

Useful links For more detailed guidance on the definition of disability go to the website of the Government office for Disabilities and download their excellent PDF booklet: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/570382/Equality\\_Act\\_2010-disability\\_definition.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/570382/Equality_Act_2010-disability_definition.pdf)

*“Fantastically professional, supportive and good value! It meant a lot to have people on my side who understood my condition (depression)” ES, Surrey*