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Equality Rep's Handbook

**Disability legislation /
Access / HIV in the workplace**

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Disability legislation

The Disability Discrimination Act 1995 (DDA) came into force in December 1996 and began a rolling programme of implementation, the most recent of which occurred in 2005 (DDA 2005).

The DDA applies to work done in England, Scotland and Wales. However, similar provisions apply in Northern Ireland. In some cases, the DDA will apply to workers with a base outside Great Britain, as long as a large proportion of their work is done in Great Britain.

The DDA provides protection to workers and employees who are disabled “within the meaning of the Act”. The definition of disability was extended in the DDA 2005 to include conditions such as cancer and HIV. This piece of legislation also introduced a less stringent test for “mental disability” in place of the previous requirement for a mental health condition to be “clinically well recognised” (see below). The Act also protects disabled people in relation to access to goods, facilities and services, buying or renting property and education.

The Act also covers job applicants and those who have left their employment, if their complaint is closely connected to their previous employment.

The DDA covers all employers, irrespective of the number employed. Practical work experience and work placement arrangements are also within the scope of the Act.

There is no qualifying period before a complaint can be made **so a worker is protected from the first day of their employment.**

DEFINITION OF DISABILITY

The Act requires a disabled worker to have a “**physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.**”

The DDA has a Code of Practice which recommends that employers should not make “a fine judgement” on whether a worker is disabled or not, but concentrate on meeting the needs of each worker and job applicant.

The government also recommends that “a broad approach” should be taken when defining a physical impairment. This definition can also include sensory conditions such as deafness, blindness and partial sight.

Tribunals have also found that conditions such as carpal tunnel syndrome, asthma, diabetes, emphysema, bulimia, chronic fatigue syndrome (ME) and back pain come within the definition of physical impairment.

Mental impairments now no longer have to cross the hurdle of being “clinically well recognised” and can include learning difficulties and brain injuries caused by accidents or strokes etc. Tribunals have found that conditions such as depression or anxiety, post-traumatic stress disorder, schizophrenia, dyslexia and autism also come within the definition of mental impairments.

“Substantial” is taken to mean something more than minor or trivial. On the whole “substantial” relates to:

- the cumulative effects of the impairment – although individual aspects may be minor in themselves, taken together they may have a substantial effect on day-to-day activities
- the time taken to carry out normal day-to-day activities compared with a worker who does not have the impairment
- the way in which normal day-to-day activities are carried out in comparison with someone who does not have the impairment
- the effect of the impairment on a worker’s behaviour – if a person can modify their behaviour they may not fulfil the criteria of “substantial”
- external effects – temperature, humidity, time of day – these may have an adverse effect on a worker’s ability to carry out normal day-to-day activities.

People with a severe disfigurement automatically satisfy the definition of “substantial adverse

effect” but this does not include tattoos or body piercings.

The use of aids to correct a disability must not be taken into account when assessing whether a worker is disabled. For example, a hearing aid does not stop a worker from being assessed as disabled.

The phrase “long term” is normally taken to refer to a condition that has lasted for 12 months or is likely to last for more than 12 months. Even though a worker may be going through a period of remission, their condition will still be deemed to be a disability if it is “likely to recur”. The DDA also includes provision for conditions that are progressive over a period of time such as multiple sclerosis and similar conditions such as cancer and HIV should be treated as disabilities from the date of diagnosis.

DISCRIMINATION

It is illegal for employers to discriminate against workers on the grounds of disability, or not to make “**reasonable adjustments**”, including access to work support.

Discrimination occurs where:

- a disabled person is treated less favourably than someone else
- the treatment is for a reason relating to the person’s disability
- the treatment cannot be justified.

As with other discrimination legislation there is no justification for direct discrimination.

Discrimination also occurs where:

- there is a failure to make a reasonable adjustment for a disabled person
- the failure cannot be justified

- there is post-employment discrimination (in the writing of references for example)
- an employer publishes discriminatory employment advertisements
- an employer instructs someone else to discriminate.

It is explicitly unlawful to harass a disabled person for a reason relating to their disability. This is considered to be behaviour that will have the effect of “violating dignity” or “creating an intimidating, hostile, degrading, humiliating or offensive environment”.

It is also unlawful to victimise a person, whether disabled or not, on the grounds that they have given evidence in a DDA case, made allegations of discrimination or raised any other matter under the DDA.

In all cases it is for the employer to prove that unlawful discrimination has not occurred.

REASONABLE ADJUSTMENTS

Every employer must make reasonable adjustments so that disabled workers are not put at a disadvantage.

Such reasonable adjustments may be nothing more than a flexible approach to working hours or allowing extra rest breaks or they may include more far-reaching physical changes to office premises or purchase of equipment such as voice-activated computer software. In all cases, the disabled person themselves should be closely involved in the decisions made on what adjustments are needed.

Some workers will be willing to inform the employer of their disability but some may not wish their employer to be informed. This is their choice. However, if an employee fails to inform their employer and their work capability suffers

REASONABLE ADJUSTMENTS

Negotiating reasonable adjustments can sometimes be a difficult balancing act, as the access needs of the worker needs to be considered in the light of the employer’s resources. The Act specifies “reasonable” which is always difficult to define. However, the Act gives details of adjustments that employers may have to make:

- adjustments to premises
- amending working hours
- allowing disability leave so the worker can obtain treatment, assessment or rehabilitation
- allocating some duties to other staff
- redeploying the disabled worker to an existing vacancy
- transferring the disabled worker to an alternative place of work or place of training that is more appropriate to the worker’s needs
- arranging training or mentoring – this includes other staff
- Purchasing or modifying equipment, instructions or manuals
- Modifying procedures for assessments
- Providing assistants such as readers
- Improving support or supervision

as a result of no reasonable adjustments being made, the employer is not under any obligation to make reasonable adjustments and cannot be called to account.

However, in some circumstances it may be deemed that an employer “ought to have known” and therefore the duty to make reasonable adjustments may apply. The Disability Rights Commission’s Code of Practice on the DDA gives an example of an employee

who is depressed and tearful at work. The employer makes no attempt to find out the reason for this and disciplines the employee. In this case, the employer was aware of the symptoms and therefore was under a duty to take steps to find out whether there was an underlying disability.

Reasonable adjustments, taking into account the employer's financial and other resources should be carried out in a reasonable time period. The time frame and the way adjustments are implemented should be discussed in advance with the disabled worker.

2006 PUBLIC SECTOR DISABILITY EQUALITY DUTY

This is modelled on the similar duty on public bodies to promote race equality (Race Relations Amendment Act 2001) and comes into effect from 5 December 2006.

The Disability Equality Duty (DED) creates two types of duty on public bodies: a *general* duty and a *specific* duty.

General duties

All public bodies are subject to these duties, including local authorities, national assemblies, police authorities, NHS trusts etc. Some private sector organisations may be covered if they are exercising a function "of a public nature". This means that private companies that win contracts for any operations of a public body have to abide by the following general duties.

The general duties include the need to:

- promote equality of opportunity between disabled persons and other persons
- eliminate discrimination that is unlawful under the Act
- eliminate harassment of disabled persons that is related to their disabilities
- promote positive attitudes towards disabled persons

- encourage participation by disabled persons in public life
- take steps to take account of disabled person's disabilities, even where that involves treating disabled persons more favourably than other persons.

Specific duties

These are potentially the most important part of the DED. They create obligations on public bodies and require them, by law, to undertake specific practical steps to promote disability equality.

The major requirement on public bodies is to produce a Disability Equality Scheme (DES), to carry this through and then to report on its success or otherwise. There is a time limit of three years for the public body to achieve the following and report back.

The DES needs to set out :

- how the public body plans to carry out its disability equality duties
- how it will involve disabled people in the development of the plan (and to report how this involvement has taken place)
- how the impact assessment has been measured
- how it proposes to accomplish its general duty
- how it has gathered information regarding employment and service provision
- what it is going to review and how it will adjust the plans, if necessary.

All public bodies must publish their first DES by 4 December 2006.

Access – more than just ramps

Access for disabled members means much more than physical access for people with mobility impairments. By thinking inclusively, branch and chapel officers can make sure that disabled members can attend meetings. The NUJ, and this includes all chapels and branches, has a legal duty under the Disability Discrimination Act (DDA) to ensure that wherever possible disabled members can use or receive the same services to the same standards as non-disabled people. The NUJ also has a duty to anticipate that disabled journalists who wish to join the union will want to use these services and therefore reasonable changes or “adjustments” should be made so that they are able to do so.

The advice provided below covers all sorts of meetings. Most branches and chapels will be organising short meetings, for which some of the



advice given below will be unnecessary, and most branch and chapel officers will not need to run through all this advice for every meeting. However, it is as well for officers to keep a watching brief in case an accessible venue's standards fall. In this case, the venue manager should be made aware of the reduction in service, which may be breaching their responsibilities under the DDA.

At the end of this advice there is a check list which will assist you in providing access requirements.

FIRST APPROACH

If you do not know the venue very well, check the building before you arrange a meeting. Consider the following points relating to the approach and entrance to the venue:

- adequate signage and information
- accessible car parking/good public transport connections
- accessible pedestrian approaches and ramps
- steps for ambulant disabled people (with walking difficulties)
- accessible entrance doors, turning space for wheelchairs.

MOVING AROUND THE BUILDING

Evaluate how a disabled person would move around the building using signage, corridors, lift, catering areas. Check that the entrance to the meeting room is wide enough for a wheelchair and again, that there is sufficient turning space. Also check that there are accessible toilets and that these are conveniently placed.

Check whether the building has a good acoustic or loop system for members with hearing impairments.

Make sure fire evacuation policies and procedures are clearly signed, including requirements for assisting disabled people out of the building.

ARRANGING THE MEETING

If you have a disabled member who is a regular attendee, consider how you can involve them more in the planning process:

- when sending out notices of the meeting, ask members with particular access requirements to notify you of their needs
- make sure the agenda/minutes/other documents are sent out well in advance and that these can be made available in alternative formats
- food - if providing catering ask if members have any dietary requirements
- breaks – these can be essential for some disabled members and are often welcomed by everyone at a very long meeting!
- map – provide a clear map locating the venue, parking, toilets etc
- If you are organising a one-off meeting ask a member to act as the person who receives members in the reception area, or as an enabler if a member has to sign in, or negotiate fire doors
- layout of meeting room - think about lines of sight especially if you have hired a signer for hearing-impaired members. This is also important if you have organised screens for overhead projectors or PowerPoint presentations
- workshops – ask members to indicate which workshops they wish to attend so you can arrange facilitators to be in the appropriate rooms
- seating – some disabled people may require seats with arms or with high backs
- tables – if there is a lot of paperwork, all members may welcome tables, but these are especially helpful for people who find it easier to have something to rest their papers on
- information in accessible formats – Braille, large print, audio etc. If you are using presentation materials think about colour contrasts, such as avoiding blue and red for members who are colour blind
- in general, think of awareness – make sure chairpersons, speakers and presenters are aware of the requirements of disabled participants.

COMMUNICATION REQUIREMENTS

You may need to consider hiring:

- sign language communicators
- hearing loops
- lip speakers
- note takers
- facilitators and personal assistants – you may need to book more than one facilitator if the meeting is going to last a long time. For an all day meeting some participants may prefer to bring their own support workers.

QUICK CHECK LIST

- Have you checked the venue personally?
- Are there adequate disabled parking or conveniently sited, accessible public transport provision?
- Have you checked the access in and out of the building, including fire evacuation procedures?
- Has the building got accessible toilet provision?
- Have you requested information regarding access needs when sending out publicity material?
- Have you arranged for the agenda and any other documents to be provided in accessible formats?
- If providing catering – have you asked about any dietary requirements. Is the catering area accessible?
- Have you provided a clear map which locates the principle access facilities?
- Have you arranged the room appropriately, organised signers, induction loops, facilitators etc.?
- Have you informed speakers of the participation of a disabled member?

Dealing with HIV in the workplace

HIV stands for Human Immunodeficiency Virus. The virus weakens the body's immune system and can progress to AIDS. Although HIV cannot be cured, developments in drug treatment mean it can be effectively treated so that it does not progress to AIDS.

There are still many myths about HIV. It cannot be transmitted through normal work or social contact. In a limited number of jobs, workers may face risk of HIV infection through accidental direct exposure to infected blood – such as medical workers who have an accident with a syringe. Outside these possibilities, normal health and safety precautions protect employees against infection at work.

However, people living with HIV or who are thought to have HIV, are often subject to harassment, abuse or discrimination. In many cases, this prejudice intertwines with stereotypical views on homophobia, racism and ignorance about asylum seekers/immigration.

DISCRIMINATION

Discrimination aimed at HIV-positive workers is unlawful. The Disability Discrimination Act 2005 (see disability section) protects workers living with HIV from discrimination in employment and the provision of goods and services from the moment of diagnosis.

Workers living with HIV are protected against unfair dismissal and/or discrimination in recruitment, promotion, training and benefits. Employers are responsible for their own actions and those of employees. The DDA protection also entitles workers living with HIV to expect reasonable adjustments in the workplace. This means changing features of the workplace that may cause them "substantial disadvantage". This

may include practical changes to their job or offering flexible hours or time off for treatment. Reps may also need to get involved in supporting members who are returning from a break from work after HIV treatments.

HEALTH AND SAFETY

Employers have a duty of care to make sure that their employees are not at risk from accidental exposure to HIV or other blood-related infections. This is more likely to happen in medical organisations where close contact with patients is a regular occurrence and employees may be at risk because of the nature of their job. In such cases, an employer will need to draw up a risk assessment plan and procedures for controlling the risk.

DISCLOSURE

Unless a worker is a health care worker involved in "invasive procedures" there is no requirement for them to disclose their HIV status. Likewise, an employer has no justification in asking an employee about their possible HIV status, unless they work in an area where there is a genuine possibility it may affect their ability to carry out their duties. If a worker is in doubt about whether they need to disclose their status, they should contact their trade union representative or an HIV advocacy group for confidential advice.

Useful links and contacts

Disability Rights Commission

www.drc-gb.org

New Deal for Disabled People

www.newdeal.gov.uk

RNIB

www.rnib.org.uk

RNID

www.rnid.org.uk

TUDA

www.tuda.org.uk

Access Association

www.accessassociation.org.uk

Access to Work

www.jobcentreplus.gov.uk

Mind

www.mind.org.uk

Disability Now

www.disabilitynow.org.uk

National AIDS Trust

www.nat.org.uk

National AIDS Helpline

0800 567 123 (24 hours)

Terrence Higgins Trust

0845 1221 200 (Helpline – 24 hours)

Ensuring Positive Futures

Project offering employment-related training on HIV

www.e-pf.org.uk

Point of Diagnosis

Provides people with a range of conditions with information about legal protection offered by DDA

www.pointofdiagnosis.org.uk

Positively Women

020 7713 0444



Notes
