

# Disability discrimination in the workplace

If you or a member of your family has sustained a spinal injury resulting in disability, you will want to know your rights concerning discrimination at work, whether in relation to keeping your job, training for a new role or applying for a new job. This fact sheet summarises the key points you'll need to know.

## The Equality Act

The Equality Act 2010 prohibits discrimination against people with a disability at work, or when they apply for a job, promotion or training. Employers are under a duty to make reasonable adjustments for disabled employees and job applicants.

An employer must not:

- Discriminate by treating someone less favourably because of their disability (although positive discrimination is allowed)
- Apply a provision, criterion or practice that disadvantages a disabled person that cannot be justified
- Fail to make reasonable adjustments where a disabled person is placed at a substantial disadvantage at work
- Harass or victimise
- Ask pre-employment health questions other than for a prescribed reason

Disability discrimination claims are dealt with by an Employment Tribunal. Employment Tribunals can award compensation for loss of earnings and other benefits including pension and for injury to feelings. The amount of compensation is unlimited and large awards have been made. Tribunals can also make a declaration about the disabled person's rights and/or make an appropriate recommendation.

## Do you have a claim for discrimination?

If you think you may have been discriminated against at work or in applying for a job you should get legal advice as soon as possible.

Aspire Law can arrange for a free telephone consultation with an experienced employment lawyer who is able to act on a no win no fee basis on suitable claims.



## Time limits

A discrimination claim must normally be brought within three months of the act of discrimination. If there is continuing discrimination extending over a period of time it must normally be brought within three months of the end of that period.

A failure to make reasonable adjustments is an omission not a continuing act, so that the three month time limit starts when the employer makes the decision not to make the adjustment.

Time can be extended under the statutory ACAS early conciliation process (see below). The Tribunal can also extend the time if it thinks it is "just and equitable" to do so.

## Examples

- Someone is dismissed after suffering a spinal injury, because they need to use a wheelchair. The employer wrongly believes they will no longer be able to do their job. The discriminatory act is the dismissal, so the time limit is three months from the date of dismissal.
- A disabled person suffers harassment from her line manager because of her disability. It goes on for a year until she complains. The harassment stops but the employee wants to obtain compensation. She has three months to bring her claim from the last act of harassment.

- A wheelchair user asks her employer to install a ramp so she can access her work place more easily. The employer refuses. The employee has three months in which to bring a claim.

## Were you asked questions about your health?

An employer may not ask potential recruits about health, including whether a person has a disability or their sickness absence, unless it is necessary in order to:

- Establish if the applicant is able to undergo an assessment or if a reasonable adjustment is needed to undergo an assessment
- Determine if the applicant will be able to carry out the work
- Maintain diversity
- Positively discriminate
- If having a particular disability is a requirement

Asking a health question is not discriminatory in itself, but acting on it may well be.

## Raising a grievance and the ACAS code

Under the ACAS Code an employee who feels they have been discriminated against should raise a grievance before bringing a claim in an Employment Tribunal.

Since May 2014 it is mandatory to attempt conciliation through ACAS before a discrimination claim can be issued.

The three month time limit for bringing a claim can be extended under the ACAS conciliation process.

## Reasonable adjustments

Employers are under a duty to make reasonable adjustments to help disabled job applicants, employees and even former employees, who are at a substantial disadvantage by:

- An employer's provision, criterion or practice
- A physical feature of the employer's premises
- An employer's failure to provide an auxiliary aid

The employer's duty to make reasonable adjustments arises as soon as they know or should reasonably be expected to know about a person's disability and substantial disadvantage.

Examples of reasonable adjustments are:

- Adjustments to premises e.g. widening a door way or providing a ramp for a wheelchair user
- Allowing a disabled person time off for rehabilitation, assessment or treatment
- Acquiring or modifying equipment
- Employing a support worker to assist a disabled employee

The aim of reasonable adjustment is to enable the disabled person to remain in or return to work and to play a full part in the world of work. The onus is not on the disabled person to suggest adjustments. The duty is on the employer, but the employee should co-operate in discussing what adjustments might be necessary.

## Compensation

Compensation will largely be financial. It is based on loss of earnings, loss of pension and loss of benefits.

The Tribunal will award loss up to the date of the hearing and assess future loss taking into account when the claimant will be able to get another job. If the Tribunal concludes that the claimant will not be able to get a job at all, or not at the same salary, compensation could be considerable.

In addition to financial loss the Tribunal can also award compensation for injury to feelings. This depends on the degree of hurt, distress or upset caused. It also depends on the effect on the claimant, how vulnerable they were and the circumstances of the case.

There are three bands of awards for injury to feelings:

- Less serious cases - £500 - £6,000
- More serious cases - £5,000 - £20,000
- Most serious cases - £15,000 - £33,000

The Tribunal can also award aggravated damages if the employer has acted in a high-handed, malicious, insulting or oppressive manner.

Aspire Law has a dedicated team specialising in disability discrimination claims. For a free and no obligation discussion about your circumstances, please call us on 0800 030 20 40.

Call us free on: 0800 030 20 40 Email: [help@aspirelaw.co.uk](mailto:help@aspirelaw.co.uk)



Solicitors for people with spinal injury

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