

Advice on Disability Discrimination Law

Discrimination on the grounds of disability is unlawful under the Disability Discrimination Act 1995 (DDA). The initial Act was very limited, but has been extended by successive amendments to cover employment, education, goods and services and premises. The Disability Discrimination Act 2005 places a duty on all public sector authorities (including colleges and universities) to eliminate discrimination and harassment and to promote disability equality.

The Disability Equality Duty (DED) is a new legal duty, introduced by the Disability Discrimination Act 2005, which means that every public body (including colleges and universities) will need to look actively at ways of ensuring that disabled people are treated equally.

Under current disability legislation:

- All employers have to comply with the DDA, irrespective of number of employees. Previously this threshold was 15 people or more.
- It has been made explicit that you cannot justify less favourable treatment to someone because of their disability.
- It is no longer possible to justify failure to make a reasonable adjustment. All college and university buildings should have been made fully physically accessible from 2005.
- Harassment is explicitly recognised as a distinct form of discrimination and is unlawful.
- Constructive dismissal and the termination of employment by the expiry of a period of time, that is, fixed-term contracts (unless employment is immediately renewed on the same terms) come within the definition of dismissal.
- The burden of proof in disability discrimination cases is now the same as for sex discrimination, ie if a case is made against an institution, it is for the institution to prove that discrimination did not occur

How does this affect UCU members?

If a member is disabled or has had a disability the DDA makes it unlawful for an employer to discriminate against him/her when he/she is applying for a job or is already in employment. This includes:

- application forms
- interview arrangements
- proficiency tests
- job offers
- terms of employment
- promotion, transfer or training opportunities
- benefits
- dismissal or redundancy.

What is a disability?

It is important to be aware that a disability may not always be obvious to other people. There is no automatic link between ill health and disability. Like non-disabled people, disabled people may be healthy or ill. There is no reason for disabled staff to have more (or fewer) accidents than others, if the adjustments for safe working are made. Much of what is useful for disabled staff is also valuable for non-disabled colleagues. Many disabled people do not have any additional access requirements. For those who do require additional support, government grants are available through the Access to Work scheme (more information on this scheme is below).

A disabled person is defined in the DDA as: 'someone who has a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities'.

This covers:

- sensory impairments
- physical impairments
- clinically well-recognised mental illness
- learning difficulties, including dyslexia, dyspraxia and dyscalculia
- impairments controlled by medication or prosthesis
- hearing loss, even if a hearing aid is used
- severe disfigurement
- recurrent conditions – if an impairment ceases to have a substantial effect it is treated as continuing to have that effect if it is likely to recur
- progressive conditions.

Access to Work scheme

The Jobcentre Plus's Access to Work scheme provides practical support to disabled people entering paid employment to help overcome work-related obstacles caused by disability. Access to Work is open to employed, unemployed and self-employed disabled people. It provides a grant towards the employment costs resulting from disability. The scheme can help in a number of ways, for example:

- Special aids and equipment

- Communicator support at a job interview
- Adaptation to premises or existing equipment
- Help with fares to work
- Support worker (e.g. personal reader, carer, driver, job coach, communicator)

It also provides specialist help and advice to employers, including recruiting disabled people and retaining employees who become disabled. More information can be found on the Access to Work website:

http://www.direct.gov.uk/en/DisabledPeople/Employmentsupport/WorkSchemesAndProgrammes/DG_4000347

Declaring a disability

It is up to the employee whether he or she chooses to tell their employer about any disability. However, if their disability affects their way of working, they are advised to talk to their employer and colleagues if they want a reasonable adjustment to be considered.

Adjustment for the employer to consider

Examples of adjustments:

- making adjustments to premises
- allocating some of a person's work to someone else
- transferring someone to another post or another place of work
- flexibility about working hours – allowing someone to have different core working hours and to be away from the office for rehabilitation, assessment or treatment
- providing training
- using modified equipment
- making instructions and manuals more accessible
- using a reader or interpreter
- place of work (eg working from home).

When might an adjustment be reasonable

In considering whether an adjustment would be reasonable or not, the employer will need to consider:

- How effective it will be?
- Will it mean that the person's disability is a little less of a disadvantage or will it greatly improve the output of a disabled person?
- Will it cause much disruption?
- Will it help others in the workplace?
- Will it help other people with similar disabilities?
- Will the cost be a problem?

If considering making a request for an adjustment remind the employer of the following:

- the investment which has been made in the staff member, such as training, how long he/she has worked there, his/her knowledge and skills
- the staff member's relationship with colleagues and students
- the cost of salary compared to the likely cost of an adjustment
- how effective a particular adjustment would be in helping the staff member
- how a particular adjustment could help future disabled employees without any additional expenditure (eg access for wheelchair users)
- the cost of an adjustment and extent of any disruption it might cause
- what financial and other resources are available to the employer to help make an adjustment.

How does an employer decide what is reasonable

Ultimately, if someone were to complain under the DDA, an employment tribunal would decide whether any adjustment was a reasonable one for the employer to make. It would also be up to the tribunal to decide if an employer's treatment of a staff member was justified or not.

Establishing discrimination

There are a number of questions to be asked when establishing whether an employer has unlawfully discriminated against a person defined as disabled within the terms of the DDA:

- Is the person disabled according to the definition of the Act?
- Has the employer directly discriminated against the disabled person?
- Has there been any less favourable treatment which relates to the person's disability and which the employer cannot justify?
- Has the employer made a serious effort to identify a range of possible adjustments, using expert advice if necessary, and implemented those which are reasonable?
- Has the disabled person been subject to victimisation or harassment?
- Has the employer met its obligations under the Disability Equality Duty?

If a staff member and an employer can't agree

If a staff member believes that the employer has treated him/her less favourably or if the employer has not made reasonable adjustments, the staff member may consider further action. This action might include:

- Having an informal discussion with the employer about the staff member's needs and reminding the employer about anything that is felt relevant in the DDA
- Making a complaint through the institution's grievance procedure
- Following the 'questions procedure' and/or make a complaint to an employment tribunal. The questions procedure enables an employee to ask their employer questions

aimed at finding out if and why he or she has been treated in a discriminatory way. an employer is not obliged to reply, but if the employer fails to reply within a reasonable time or gives an evasive answer or ambiguous reply, this may be taken into account by a tribunal

- Bear in mind that there are time limits for using the questions procedure or complaining to an employment tribunal which don't take into account the time involved in following internal procedures

More advice and information

There is more information available from the Equality section of the UCU website at www.ucu.org.uk/equality , including a regular newsletter and equality resources for branch officers.

Members with concerns about a disability equality issue should contact their UCU branch/local association (LA) equality officer. If you don't know how to contact any local UCU representative ask your regional office – contact details are on the website at www.ucu.org.uk/index.cfm?articleid=2057.

UCU's Equality Unit has an equality officer with special responsibility for disability equality, who can provide advice and support for branch/LA officers, and members where necessary.