

# **Caring for the Carers**

## **A UCU guide for members and reps**



### **5. Legislation in relation to Carers**

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## The Equality Act 2010

The **Equality Act 2010** brings together most equality legislation including the Disability Discrimination Act. The Act covers all forms of discrimination in the workplace including recruitment, terms and conditions, promotions, transfers, dismissals and training or any other detrimental treatment because of disability. It covers all employment and the employer is generally liable for acts of discrimination, harassment and victimisation in the workplace.

Carers, although not specifically mentioned within the Equality Act 2010, can be protected from discrimination as they come from diverse backgrounds including age, disability, race, sex, religion or belief, or sexual orientation

The following are key aspects of the Act.

### a) Definition of Disability

The definition is that a worker has to show they 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'. There is no absolute definition, it is not simply a case that some conditions are classed as disability and others are not.

For example a person with diabetes may or may not be disabled; a person with dyslexia may or may not be disabled. The test is not limited to any particular conditions, but relates rather to the person.

To satisfy the definition, the disability must:

- Have lasted at least 12 months, or
- Be likely to last at least 12 months, or
- Be likely to last for the rest of the person's lifetime (if less than 12 months)

Normal day to day activities cover what most people do in their everyday lives such as walking, eating, shopping or forming social relationships. People who have had a disability in the past are covered as are people with progressive conditions and conditions such as HIV<sup>1</sup>, cancer and multiple sclerosis. For further information, see Enabling not Disabling.

### b) Public Sector Equality Duty.

The duty states that public bodies must:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act
- Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it.

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<sup>1</sup> TUC Briefing – Tackling HIV Discrimination at Work

- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

England, Scotland and Wales all have different specific duties which are designed to help public bodies comply with the general duty and how the general duty is being met.

The PSED is a useful way to hold your employer to account on equality as they need to publish equality objectives and an analysis of the workforce as a minimum. More guidance is available on the website including the UCU Public Sector Equality toolkit ([https://www.ucu.org.uk/media/4883/UCU-Equality-Duty-Toolkit/pdf/ucu\\_equalitydutytoolkit\\_update\\_sep15.pdf](https://www.ucu.org.uk/media/4883/UCU-Equality-Duty-Toolkit/pdf/ucu_equalitydutytoolkit_update_sep15.pdf))

### **c) Reasonable adjustments**

UCU has produced a separate guide on reasonable adjustments<sup>2</sup> which is available on the UCU website.

When an employer know or reasonably ought to know of the disabled person's disability they are under a duty to make a reasonable adjustment. The duty arises when a provision, criterion or practice (PCP) or physical feature of the premises places a disabled person at a substantial disadvantage in comparison to those who are not disabled.

The duty is on the employer is to take such steps as is reasonable to avoid the disadvantage. An employer cannot require a disabled worker to pay for the cost of the reasonable adjustment. There is financial assistance available through Access to Work (<https://www.gov.uk/access-to-work/overview>).

Reasonable adjustments include:

- Altering working hours
- Allocating some of the disabled person's duties to someone else
- Providing an interpreter
- Adjusting the premises

Detailed information is given in the UCU Reasonable Adjustment guide ([https://www.ucu.org.uk/media/6091/Reasonable-adjustments---removing-barriers-to-disabled-people-at-work-UCU-guidance/pdf/Reasonable\\_adjustments.pdf](https://www.ucu.org.uk/media/6091/Reasonable-adjustments---removing-barriers-to-disabled-people-at-work-UCU-guidance/pdf/Reasonable_adjustments.pdf)).

### **d) Types of discrimination**

#### **Direct discrimination**

Direct discrimination is where a worker is treated less favourably because of a disability. Unlike other discrimination legislation it is not unlawful to treat a disabled person more favourably than a non-disabled person.

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<sup>2</sup> UCU Reasonable Adjustments [http://www.ucu.org.uk/media/pdf/s/a/Reasonable\\_adjustments.pdf](http://www.ucu.org.uk/media/pdf/s/a/Reasonable_adjustments.pdf)

To establish unlawful discrimination, the disabled person will normally have to demonstrate that they suffered discrimination in comparison with some other person (the comparator) or with a group of people. It must be shown that the less favourable treatment was for a reason related to the disabled person's disability. The Act also covers those who are **perceived** to have a disability and because they are **associated** with someone who has a disability.

Examples are:

- Someone is not promoted because they have a sight impairment
- Someone is not given time off to look after a disabled child when it has been granted to those with non-disabled children
- Someone is not included in a training event because they are thought to have depression

**Indirect discrimination** is when an employer applies a provision, criterion or practice which puts disabled workers at a disadvantage and which the employer cannot justify. Employers can only justify indirect discrimination if they can show that it was a 'proportionate means of achieving a legitimate aim'.

Examples of indirect discrimination:

- A worker with social anxiety disorder is included in a hot desking policy which exacerbated the condition
- Insisting workers take their lunch between 1 and 2pm when a disabled worker who could access to a support group for their condition if they had lunch at 12 noon twice a week.

### **Discrimination arising from disability**

This occurs when an employer treats a disabled person unfavourably 'because of something arising in consequence of' the disabled person's disability. An example is a worker loses their temper at work which is out of character. The worker is disciplined but the outburst is due to the severe pain caused by their cancer treatment.

#### ***Waddingham v NHS Business Services Authority 2015***

A NHS Trust discriminated against an employee with cancer who was required to undergo a competitive interview process in a redeployment exercise. Waddingham claimed he had been unfavourably treated because of something that had arisen in consequence of his disability and the Trust had failed to make reasonable adjustments. He argued that he had been fatigued and having to undertake a competitive interview was not a proportionate means of achieving a legitimate aim. He could have been assessed using evidence from his long service.

### **Harassment**

This is defined as unwanted conduct related to disability that has the purpose or effect of violating a person's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Harassment can take many forms and includes, abusive language, name calling, offensive screen savers or social media postings. Harassment covers those who are perceived to be disabled and also by association so if a worker is harassed for taking time off to care for a disabled child.

**Victimisation** is also unlawful under the EA. Employers must not discipline or otherwise discriminate against any person (disabled or not) who takes action under the Act, appears as a witness at a tribunal hearing, or gives evidence to an internal grievance or disciplinary hearing.

## The Care Act 2014

The Care Act 2014 applies to England only and aims to achieve a clearer and fairer care and support system for providers and users.

- **Wellbeing:** Place a **statutory principle** of individual **wellbeing** which underpins the Act and is the driving force behind the Act.
- **Prevention:** **Prevention** and **delay** of the need for care and support and places **people** in control of their own care.
- **Integration:** A **statutory requirement** for local authorities to **collaborate, cooperate** and to **integrate** with other public authorities.
- **Information, advice and advocacy:** Places a duty on local authorities to ensure that **information** and **advice** on care is available to all when they need it. Independent **advocacy** must also be arranged if a person would otherwise be unable to participate in, or understand the care and support system.
- **Diverse care markets:** Care providers must be more **diverse** to allow users and vulnerable people the choice as to which care provider best provides for them.
- **Safeguarding:** The new statutory framework **protects adults from neglect and abuse.**
- **Assessment and eligibility:** Anyone (including carers) requiring support, **will be entitled to an assessment** regardless of financial contact with the local authority.
- **Charging and financial assessments:** Local authorities must conduct a **financial assessment** if the type of care being considered is chargeable.
- **Personal budget and direct payments:** A **personal budget** will form part of the care and support plan. Where an individual including a carer has a personal budget, they can have a **direct payment**. From April 2016, self-funders with eligible needs will have an **independent personal budget (IPB)** to record the notional cost of meeting their needs.

Part 1 Section 59 of the Care Act 2014 (which was enacted in April 2015) stipulates that young Carers will have a local authority social worker assigned to identify what kind of help and assistance families require. NB: From April 2015, all local authorities must offer deferred payments and from April 2016, all people with eligible needs will have a **care account** to set out the notional costs accumulated to date towards their **cap on care costs**.

The Care Act 2014 can be downloaded here

[http://www.legislation.gov.uk/ukpga/2014/23/pdfs/ukpga\\_20140023\\_en.pdf](http://www.legislation.gov.uk/ukpga/2014/23/pdfs/ukpga_20140023_en.pdf)

## **The Children and Families Act 2014**

The Children and Families Act 2014 came into force in March 2014 and seeks to improve services for vulnerable children and support strong families. It underpins wider reforms to ensure that all children and young people can succeed, no matter what their background.

The changes to the law to give greater protection to vulnerable children, better support for children whose parents are separating, a new system to help children with special educational needs and disabilities, and help for parents to balance work and family life. It also ensures vital changes to the adoption system can be put into practice, meaning more children who need loving homes are placed faster. Reforms for children in care can be implemented including giving them the choice to stay with their foster families until their 21st birthday.

The Act seeks to reinforce legislation relating to the following areas:

- Adoption and children in care
- Aspects of the family justice system
- Children and young people with special educational needs
- The Office of the Children’s Commissioner for England
- Statutory rights to leave and pay for parents and adopters
- Time off work for ante-natal care
- The right to request flexible working

The Children and Families Act 2014 can be downloaded here

[http://www.legislation.gov.uk/ukpga/2014/6/pdfs/ukpga\\_20140006\\_en.pdf](http://www.legislation.gov.uk/ukpga/2014/6/pdfs/ukpga_20140006_en.pdf)



### **Northern Ireland**

Carers in Northern Ireland are covered by the following legislation:

#### **Carers and Direct Payments Act (Northern Ireland) 2002**

[http://www.legislation.gov.uk/nia/2002/6/pdfs/nia\\_20020006\\_en.pdf](http://www.legislation.gov.uk/nia/2002/6/pdfs/nia_20020006_en.pdf)

This covers the provisions of Carers’ needs, assessment, services and payments

#### **Health and Social Care (Amendment) Act (Northern Ireland) 2014**

[http://www.legislation.gov.uk/nia/2014/5/pdfs/nia\\_20140005\\_en.pdf](http://www.legislation.gov.uk/nia/2014/5/pdfs/nia_20140005_en.pdf)

Makes an amendment to the Carers and Direct Payments Act (Northern Ireland) 2002

#### **Northern Ireland Act 1998**

[http://www.legislation.gov.uk/ukpga/1998/47/pdfs/ukpga\\_19980047\\_en.pdf](http://www.legislation.gov.uk/ukpga/1998/47/pdfs/ukpga_19980047_en.pdf)

Places a statutory duty on public authorities under the Human Rights Act which requires public bodies to promote equality of opportunity for Carers.



## Scotland

### **Carers (Scotland) Act 2016**

The Carers (Scotland) Act received Royal Assent on 9<sup>th</sup> March 2016, makes provision about Carers, including:

- The identification of Carers' needs for support through adult carer support plans and young Carer statements
- The provision of support to Carers
- The enabling of carer involvement in certain services
- The preparation of local Carer strategies
- The establishment of information and advice services for Carers

For further information visit [http://www.legislation.gov.uk/asp/2016/9/pdfs/asp\\_20160009\\_en.pdf](http://www.legislation.gov.uk/asp/2016/9/pdfs/asp_20160009_en.pdf)

The Equality Act 2010 provides Carers with protection from some forms of discrimination. For example that employers and providers of goods and services must not treat carers less favourably than those without caring responsibilities.



## Wales

### **The Social Services and Well-being Act (2015)**

The Equality Act 2010 provides carers with protection from some forms of discrimination. For example that employers and providers of goods and services must not treat carers less favourably than those without caring responsibilities.

The Social Services and Wellbeing Act (Wales) 2014, became law on 1 May 2014. The main areas of the Act will start to take effect from April 2016. For further information visit [www.legislation.gov.uk/anaw/2014/4/pdfs/anaw\\_2014\\_en.pdf](http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw_2014_en.pdf)



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