

6. What equality law means for you as an employer: dismissal, redundancy, retirement and after a worker has left.

Equality Act 2010 Guidance for employers.
Vol. 6 of 7.

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Introduction

This guide is one of a series written by the Equality and Human Rights Commission to explain what you must do to meet the requirements of equality law. These guides will support the introduction of the Equality Act 2010. This Act brings together lots of different equality laws, many of which we have had for a long time. By doing this, the Act makes equality law simpler and easier to understand.

There are seven guides giving advice on your responsibilities under equality law as someone who has other people working for you whether they are employees or in another legal relationship to you. The guides look at the following work situations:

1. When you recruit someone to work for you
2. Working hours and time off
3. Pay and benefits
4. Career development – training, development, promotion and transfer
5. Managing people
6. Dismissal, redundancy, retirement and after someone's left
7. Good practice: equality policies, equality training and monitoring

Other guides and alternative formats

We have also produced:

- A separate series of guides which explain what equality law means for you if you are providing services, carrying out public functions or running an association.
- Different guides for individual people who are working or using services and who want to know their rights to equality.

If you require this guide in an alternative format and/or language please contact the relevant helpline to discuss your needs.

England

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The legal status of this guidance

This guidance applies to England, Scotland and Wales. It has been aligned with the Codes of Practice on Employment and on Equal Pay. Following this guidance should have the same effect as following the Codes. In other words, if a person or an organisation who has duties under the Equality Act 2010's provisions on employment and other work situations does what this guidance says they must do, it may help them to avoid an adverse decision by a court in proceedings brought under the Equality Act 2010.

This guide is based on equality law as it is at 1 October 2010. Any future changes in the law will be reflected in further editions.

This guide was last updated on 23 July 2010. You should check with the Equality and Human Rights Commission if it has been replaced by a more recent version.

1. What equality law means for you as an employer: dismissal, redundancy, retirement and after a worker has left

What's in this guide

If you are an employer, and you are making a decision, or taking action following a decision, to dismiss a worker, make a worker redundant, tell someone they must retire because they've reached a particular age, or what you do after someone has stopped working for you (for example, if you are asked for a reference), equality law applies to you.

Equality law applies:

- whatever the size of your organisation
- whatever sector you work in
- whether you have one worker or 10 or hundreds or thousands
- whether or not you use any formal processes or forms to help you make decisions (although sometimes the law says you must follow a formal process and that some things have to be done in writing).

This guide tells you how you can avoid all the different types of unlawful discrimination. It recognises that smaller and larger employers may operate with different levels of formality, but makes it clear how equality law applies to everyone, and what this means for the way you (and anyone who already works for you) must do things.

This guide covers the following situations and subjects (we explain any unusual words as we go along):

- Dismissing a worker, whether that is for misconduct or because they can no longer do their job
- Making a worker redundant when their job is no longer needed
- Retiring a worker because they have reached a particular age
- Dealing with someone who used to work for you, for example if you are asked for a reference

What else is in this guide

This guide also contains the following sections, which are similar in each guide in the series, and contain information you are likely to need to understand what we tell you about making decisions about dismissal, redundancy, retirement and what happens after a worker's left:

- Information about when you are responsible for what other people do, such as your employees.
- Information about making reasonable adjustments to remove barriers for disabled people who work for you or apply for a job with you. Advice on what to do if someone says they've been discriminated against.
- A list of words and key ideas you need to understand this guide – all words highlighted in bold are in this list. They are highlighted the first time they are used in each section. Exceptions to this are where we think it may be particularly useful for you to check a word or phrase.
- Information on where to find more advice and support.

Throughout the text, we give you some ideas on what you can do if you want to follow equality good practice. While good practice may mean doing more than equality law says you must do, many employers find it useful in recruiting talented people to their workforce and managing them well so they want to stay, which can save you money in the long run. Sometimes equality law itself doesn't tell you exactly how to do what it says you must do, and you can use our good practice tips to help you.

Making sure you know what equality law says you must do as an employer

Are you an employer?

This guide calls you an **employer** if you are the person making decisions about what happens in a **work situation**. Most situations are covered, even if you don't give your worker a written **contract of employment** or if they are a **contract worker** rather than an employee. Other types of worker such as **trainees**, **apprentices** and **business partners** are also covered. If you are not sure, check under 'work situation' in the List of words and key ideas. Sometimes, equality law only applies to particular types of worker, such as employees, and we make it clear if this is the case.

Protected characteristics

Make sure you know what is meant by:

- **age**
- **disability**
- **gender reassignment**
- **marriage and civil partnership**
- **pregnancy and maternity**
- **race**
- **religion or belief**
- **sex**
- **sexual orientation.**

These are known as **protected characteristics**.

What is unlawful discrimination?

Unlawful discrimination can take a number of different forms:

- You must not treat a person worse than someone else just because of a protected characteristic (this is called direct discrimination).

For example:

- An employer selects a woman for redundancy because she is pregnant.
- An employer uses the excuse of persistent lateness to dismiss a gay man because he is gay; a straight man who has the same pattern of lateness is not dismissed.

- In the case of women who are **pregnant** or on **maternity leave**, the test is not whether the woman is treated worse than someone else, but whether she is treated **unfavourably** from the time she tells you she is pregnant to the end of her maternity leave (equality law calls this the **protected period**) because of her pregnancy or a related illness or because of maternity leave.

- You must not do something to someone in a way that has a worse impact on them and other people who share a particular protected characteristic than it has on people who do not have the same characteristic. Unless you can show that what you have done, or intend to do, is **objectively justified**, this will be **indirect discrimination**. ‘Doing something’ can include making a decision, or applying a rule or way of doing things.

For example:

An employer has a policy of providing references for former employees which simply state length of service and the number of days they were absent from work regardless of the reason. If the employer cannot objectively justify this approach, it is likely to be indirect discrimination against former employees who were absent because of protected characteristics, as it has a worse impact on them and others who share the same characteristics.

- You must not treat a disabled person **unfavourably** because of something connected to their disability where you cannot show that what you are doing is **objectively justified**. This only applies if you know or could reasonably have been expected to know that the person is a disabled person. This is called **discrimination arising from disability**.

For example:

A small beauty products company employs a receptionist who is in an accident, as a result of which when she returns to work she has a severe facial disfigurement. Clients of the company make remarks about this and suggest she is unsuitable for this outward-facing role. The company considers dismissing her because of the amount of time other staff spend explaining her situation and how this makes them feel. However, when considering the decision, they realise that the dismissal would be for a reason connected to her disability (the attitude of clients and the impact on the other staff). Instead, the company keeps her in post and trains other staff to challenge the negative attitudes displayed by visitors. Whilst the company may have considered whether they could objectively justify dismissing her, instead it decides to retain a valued employee and avoid the prospect of a claim for discrimination arising from disability.

- You must not treat a person worse than someone else because they are **associated with** a person who has a protected characteristic.

For example:

An employer selects a person for redundancy not because they meet the selection criteria, but simply because they have a disabled child and the employer believes they may need time off to care for their child.

- You must not treat a person worse than someone else because you incorrectly think they have a protected characteristic (**perception**).

For example:

An employer makes a member of staff redundant because they incorrectly think they have a progressive condition (in other words, that they are a disabled person). This is almost certainly direct discrimination because of disability based on perception.

- You must not treat a person badly or **victimise** them because they have complained about discrimination or helped someone else complain or done anything to uphold their own or someone else's equality law rights.

For example:

An employee complains of discrimination and a colleague goes to their Employment Tribunal to give them support, although they do not give evidence. The colleague is subsequently selected for redundancy because the employer resents their support for the original employee. This is almost certainly victimisation. This would also apply if the colleague had given evidence in the case.

This also includes dismissing someone or selecting them for redundancy or discriminating against them after they've stopped working for you because they have discussed whether they are paid differently because of a protected characteristic.

For example:

A woman thinks she is underpaid compared with a male colleague because of her sex. She asks him what he is paid, and he tells her, even though his contract forbids him from disclosing his pay to other staff. The employer takes disciplinary action against the man as a result and dismisses him. This would be treated as victimisation.

If this applies to you, you can read more about this in the Equality and Human Rights Commission guide: *What equality law means for you as an employer: pay and benefits*.

- You must not **harass** a person.

For example:

A shopkeeper propositions one of his shop assistants, she rejects his advances and is then selected for redundancy which she believes would not have happened if she had accepted her boss's advances. This is likely to be harassment.

In addition, to make sure that disabled people have the same access, as far as is reasonable, to everything that is involved in getting and doing a job as a non-disabled person, you must make **reasonable adjustments**.

For example:

- An employer is considering dismissing an employee who happens to be a disabled person with a visual impairment. It is likely to be a reasonable adjustment for the employer to make sure that the information the person needs about the disciplinary procedure is available to them by checking what format they need the documents to be in.
- A disabled person has a learning disability and their employer agrees, as a reasonable adjustment, that they can be accompanied to a disciplinary hearing by a support worker as well as by their union representative.

You must make reasonable adjustments to what you do as well as the way that you do it.

For example:

A disabled person has a spinal condition that causes them severe pain. One day, the person shouts at their employer. This is completely out of character, and is because of the pain they are experiencing. Usually, this would lead to an employee being considered for disciplinary action. However, their employer knows about the person's disability and, as a reasonable adjustment, operates a higher threshold before considering their behaviour to be unacceptable. (They have also encouraged the disabled person to be open with colleagues about their condition so that other staff understand the reason for the difference in treatment). This does not mean that the disabled person can behave as they like; the employer only has to make *reasonable* adjustments, so if their behaviour is unacceptably bad, the employer still has the option of disciplinary action. If this was the case, although the disciplinary action might amount to treating the disabled person unfavourably for something arising from their disability (their short temper), the employer would probably be able to **objectively justify** their approach.

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 3.

Situations where equality law is different

Sometimes there are situations where equality law applies differently. This guide refers to these as **exceptions**.

There are several exceptions which relate to dismissal, redundancy or retirement and which apply to any employer:

- Age limits,
- Occupational requirements,
- Obeying another law, and
- National security.

There are two exceptions which relate to dismissal, redundancy or retirement and which apply only to some employers or jobs:

- Having or not having a particular religion or belief, which applies only to **religion or belief organisations**, and
- Having or not having a particular protected characteristic, which applies only to **organised religions** or jobs for the purpose of an organised religion.

This guide only lists the exceptions that apply to dismissal, redundancy or retirement. There are other exceptions, which apply in other situations, for example, when you are recruiting someone to do a job.

As well as these exceptions, equality law allows you to treat a disabled person better – or **more favourably** – than a non-disabled person. This recognises that disabled people face a lot of barriers to participating in work and other activities.

Age

Age is different from other protected characteristics. If you can show that it is **objectively justified**, you can make a decision based on someone's age.

However, it is very unusual to be able to objectively justify direct age discrimination of this kind. Be careful not to use stereotypes about a person's age to make a judgement about their fitness or ability to do a job.

This guide explains when you can make redundancy payments based on someone's age, and what you must and must not do if you want an employee to retire because they have reached a particular age.

Occupational requirements

If you can show that a particular protected characteristic is central to a particular job, you can insist that only someone who has that particular protected characteristic is suitable for the job. This is known as an 'occupational requirement'. If you have appointed a person using an occupational requirement and they no longer have that particular protected characteristic, equality law allows you to dismiss them without this being unlawful discrimination.

Obeying another law

You can take into account a protected characteristic where not doing this would mean you broke another law. For example, if the law said that a person had to be a particular age to do something and you discovered that they were not that age, you could dismiss them without this being unlawful discrimination.

National security

You can take a person's protected characteristic into account if there is a need to safeguard national security, and the discrimination is proportionate.

Having a particular religion or belief if you are a religion or belief organisation

If you are a **religion or belief organisation**, you may be able to say that a job requires a person doing the job to hold a particular religion or belief if, having regard to the nature or context of the job, this is an occupational requirement and it is **objectively justified**. You could then dismiss the person if they no longer held that religion or belief without this being unlawful discrimination.

For example:

A Humanist organisation which promotes humanist philosophy and principles would probably be able to apply an occupational requirement for its chief executive to be a Humanist. If the chief executive stopped being a Humanist, the organisation could dismiss them without this being unlawful discrimination.

Having or not having a particular protected characteristic if you are an organised religion or if a job is for the purposes of an organised religion

If :

- a job or role exists for the purposes of an organised religion, such as being a Minister or otherwise promoting or representing the religion, and
- because of the nature or context of the employment, it is necessary to avoid conflict with the strongly held religious convictions of a significant number of the religion's followers or to conform to the doctrines of the religion by applying a requirement to the job or role,

you may be able to dismiss a person because:

- They are male or female (if the requirements of the post change bringing it within the exception).
- They are a **transsexual person**.
- They marry or enter into a civil partnership, including taking into account who they are married to or in a civil partnership with (such as someone who marries a divorced person whose former spouse is still alive).
- They **manifest** a particular sexual orientation, for example, a gay or lesbian person who enters into a relationship with a same-sex partner.

The requirement must be crucial to the job or role, and not merely one of several important factors. The job or role must be closely related to the purposes of the religion, and the application of the requirement must be proportionate.

Good practice tips on using exceptions

If someone disagrees with you and brings an Employment Tribunal claim, you may need to show why you thought an exception applied. When you're making the decision:

- Look at the exceptions to see if they might apply to your situation or organisation.
- If you decide an exception does apply, keep a note of why you decided this.
- Tell people which exception you are using, for example, in any information you give workers about what you are doing.

What's next in this guide

The next part of this guide tells you more about how you can avoid all the different types of unlawful discrimination in the following situations:

- Dismissing a worker, whether that is for misconduct or because they can no longer do their job
- Making a worker redundant when their job is no longer needed
- Retiring a worker because they have reached a particular age
- Dealing with someone who used to work for you, for example if you are asked for a reference

Avoiding unlawful discrimination when dismissing a worker

First, use the information earlier in this guide to make sure you know what equality law says you must do as an employer.

This section looks at three issues:

- Reasons and procedures
- Making sure you are not discriminating unlawfully in dismissing a disabled person
- Dismissing a disabled person because they can no longer do the job

Fair and unfair dismissal

This guide only tells you about equality law. There are other laws which you need to follow to make sure a dismissal is fair. You can find out more about these from Business Link and Acas, whose contact details are in *Further sources of information and advice*. Following the procedures to make sure a dismissal is fair will also help you avoid unlawful discrimination.

Reasons and procedures

You must avoid unlawful discrimination in the reasons for doing something and the way that you do it.

Make sure that your reasons for dismissing someone do not amount to unlawful discrimination.

Make sure that the disciplinary procedures you follow are not unlawfully discriminating either.

For example:

An employer tells a worker they are going to hold a disciplinary hearing with a view to dismissing them for misconduct. The date and time are set for a day which happens to be a religious holiday for the religion the worker holds. Unless the employer can **objectively justify** insisting on the hearing on that day (which the worker may well be unable to attend), this is likely to be **indirect discrimination** because of religion or belief.

There is more information about avoiding unlawful discrimination in disciplinary procedures in the Equality and Human Rights Commission guide: *What equality law means for you as an employer: managing workers*.

Making sure you are not discriminating unlawfully in dismissing a disabled person

There are extra steps you need to take before you dismiss someone who is a disabled person. This is because you must consider not only whether you are **discriminating directly** or **indirectly** because of a person's disability, but also:

- You must not treat a disabled person **unfavourably** because of something connected to their disability where you cannot show that what you are doing is **objectively justified**. This is known as **discrimination arising from disability**. This only applies if you know or could **reasonably** be expected to know that the person is a disabled person.
- If a worker is a disabled person, you must make **reasonable adjustments** if these are needed to remove barriers the person faces in doing their job. What this means is that you must first consider what adjustments would remove the barriers for the worker and second, if they are reasonable adjustments, you must make them. Would a reasonable adjustment remove the reason you are considering dismissing that worker?

For example:

A disabled person is being considered for disciplinary action which might lead to dismissal because of their persistent lateness. Their employer should find out whether their lateness is connected to their disability. There may be a poor frequency of accessible buses. Or it could be because the person's condition is very painful in the morning so that getting to work on time is difficult for them. If the employer dismisses the worker and cannot **objectively justify** what they have done, this could be discrimination arising from disability. The answer to this may well be for the employer to consider if there are any changes they could make which would be reasonable adjustments. The employer could look at varying their starting time rather than dismissing them. If they continued to be late even with an adjusted start time the employer may of course still wish to consider disciplinary action.

Dismissing a disabled person because they can no longer do the job

You must be particularly careful to avoid unlawful discrimination if the reason why you believe you need to dismiss someone who is a disabled person is because they can no longer do the job, for example, because they have been absent from work.

Although in this situation, the term 'medical retirement' may be used, or 'retirement on ill-health grounds', what this means in reality is that a person is leaving work because they are considered incapable of doing their job for a reason related to their health, and there are benefits for them in retiring, such as a pension.

If you and your worker genuinely agree that they should leave, then it is unlikely you will face a claim for unlawful discrimination.

If there is no agreement, for example, because your employee does not want to leave, or they see a prospect of returning to work, then you must make sure that you:

- consider if there are reasonable adjustments which would mean they could return to work and continue to work for you (even if not in exactly the same job), and
- make sure you are not treating them unfavourably because of something connected to their disability, such as a need for regular breaks, if you cannot **objectively justify** your approach.

What this means in practice

Before you consider making someone leave because of disability you should have thoroughly explored all other options to make reasonable adjustments to keep them at work.

This includes looking at any changes you could make to your working arrangements, or the physical features of your workplace, or whether you can provide additional equipment.

For example:

A worker is finding working full-time difficult because of increasing fatigue. The employer considers whether it is reasonable to let them work part-time rather than automatically considering them for early medical retirement.

If the impact of a person's impairment is becoming more severe for them but this is not impacting on their ability to do their job then this should not be part of a decision about whether they continue to work for you.

However, if an impairment is making it harder for a disabled person to do their job, then the first step you must take is to consider what reasonable adjustments could be put in place to keep them at work.

If you do not look at reasonable adjustments, then requiring someone to stop working for you may be unlawful disability discrimination.

Reasonable adjustments to consider

Reasonable adjustments will vary according to the situation and the person's particular needs. However, things to consider could include:

- A phased return to work if someone has been off for a long while.
- Part-time or flexible hours if someone is finding full-time working difficult.
- Changes to premises, such as installing a ramp, improving signs, or moving someone's desk nearer essential office equipment.
- Provision of additional equipment, such as specific computer software or hardware if this is relevant to their job.
- Additional support (for example, a part-time reader for someone who has a visual impairment to help manage the volume of written information which they have to get through).
- Reassigning some elements of their job to another member of staff or transferring them to another role in your organisation.

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 3, including how to work out what is reasonable and how the government-run Access to Work scheme may be able to help.

Taking advice

In appropriate cases, as well as discussing it with the worker themselves, you may wish to consider seeking expert advice on the extent of someone's capabilities and on what might be done to change premises or working arrangements. There are organisations that specialise in working with employers and their staff to help retain disabled workers through working out what adjustments could be made and whether they are reasonable.

However, you should be cautious about relying on medical advice alone to assess someone's situation. A health professional may not be aware that employers have a duty to make reasonable adjustments, what these adjustments might be, or of the relevant working arrangements.

When it may be appropriate for someone to leave

If after consideration of:

- the impact of a person's disability on the job
- any reasonable adjustments
- discussions with the person themselves, and
- (where appropriate) expert advice

it is not possible for someone to continue at work, then it may be appropriate for the person to leave.

Avoiding unlawful discrimination when making redundancy decisions

Making redundancies is one of the most difficult situations any employer can face.

First, use the information earlier in this guide to make sure you know what equality law says you must do as an employer.

This section looks how you can make sure you are not discriminating unlawfully in selecting people for redundancy, and in particular:

- Redundancy procedures and criteria
- Which jobs are in the selection pool?
- Deciding on the matrix factors and how you score against them
 - Length of service
 - Absence record and working hours
 - Training and qualifications
- Avoiding unlawful discrimination against disabled people
- Maternity leave and suitable alternative employment
- Age and redundancy payments

Redundancy procedures and criteria

Making sure a redundancy dismissal is fair

This guide only tells you about equality law. There are other laws which you need to follow to make sure a redundancy dismissal is fair. You can find out more about these from Business Link and Acas, whose contact details are in *Further sources of information and advice*. Following the procedures to make sure a redundancy dismissal is fair will also help you avoid unlawful discrimination.

Make sure that the redundancy procedures you follow and the criteria you use do not unlawfully discriminate either. Remember that in the case of disabled people, failing to make reasonable adjustments, including adjustments to redundancy criteria and procedures, is a form of unlawful discrimination.

This applies whether you are seeking volunteers for redundancy or making compulsory redundancies.

However, it is possible to make redundancy payments based on age and there is more information about this on page 26.

Which jobs are in the selection pool?

Which jobs do you need to select from? In other words, what is the pool from which you will be making your selection?

Are you, for instance, stopping a particular service or production line or closing a geographical location?

If you are not selecting everyone in a particular category of workers, such as everyone in a particular place or doing a particular job which will no longer be needed, you must make sure that your pool selection does not discriminate unlawfully.

For example:

An organisation is facing budget cuts and decides to reduce the size of its marketing team. There are four people in the team (one man and three women) and the employer decides to put just the two people who work part-time, who are both women, into the pool for redundancy, believing that their earnings are less important to them than to those people who work full-time, who are more likely to be 'breadwinners'. Because women are more likely to work part-time, this approach will be indirectly discriminatory (having a worse impact on the two part-timers who are women and on other women than it does on men) unless the employer can **objectively justify** what they have done. An approach which would be less likely to discriminate unlawfully would be to put everyone in the marketing department into the pool.

Deciding on the matrix factors and how you score against them

Once you have decided on your pool, you still need to make sure that you think through the consequences of using particular criteria for selection for redundancy from the chosen pool. If you don't do this, you might still end up discriminating unlawfully.

Good practice tips for avoiding unlawful discrimination

- Use a selection matrix containing a number of separate selection criteria rather than just one selection criterion, to reduce the risk of any possible discriminatory impact.
- Consult your recognised trade union if you have one.
- Make sure that you – or anyone who scores employees against the criteria – have been trained on how to avoid unlawful discrimination.

We look at the following criteria in more detail, because they are criteria where you may be more at risk of discriminating unlawfully. In each case, whether there is unlawful discrimination will depend on there being a link between the impact of the criterion and the protected characteristic of the person being made redundant:

- Length of service
- Absence record and working hours
- Training and qualifications

Length of service

It is possible to use a length of service criterion for selecting people for redundancy but only in certain circumstances:

- A criterion like this needs to be used cautiously because it could indirectly discriminate.

For example:

If there are people in the pool who would end up being selected in greater numbers because a length of service criterion has been applied, such as:

- younger people who will not have built up as long an employment record
- women, who often have more interrupted careers, or
- disabled people, whose disability may have interrupted their career

for then using this criterion might be discriminatory.

- Length of service should only be one of the factors you consider when selecting people for redundancy.

- As one of several selection criteria, it will probably be lawful (in the sense that it is likely to be objectively justified direct age discrimination) if you are using it with the aim of, for example:
 - respecting loyalty and protecting older workers who may find it more difficult to re-enter employment, or
 - retaining experience
- and you can show:
 - that length of service is a **proportionate** way of achieving your aim
 - why your aim could not be achieved in another way that doesn't disadvantage the selected workers to the same extent.

Depending on the size and nature of the pool for redundancy selection, you should use additional criteria based on other factors to make sure that you are selecting in a way that does not discriminate.

Absence record and working hours

If you use workers' absence record or working hours to select people for redundancy, you must be careful to avoid direct or indirect discrimination.

For example:

- If a woman is selected because of her absence on maternity leave or because of pregnancy-related illness, this will almost always be direct discrimination because of pregnancy or maternity.
- If someone is selected because they have taken time off or because they work flexibly to care for a disabled relative, this risks being direct discrimination **by association** because of disability.
- If a disabled person is selected because they have needed time off or because they work flexibly for a reason connected to their disability, this risks being **discrimination arising from disability** unless the employer can **objectively justify** using this criterion.
- If a transsexual person is selected because they have used their right to take leave for treatment related to their gender reassignment, this may well be direct discrimination because of gender reassignment.

This means you need to consider which absences you will include if you are using attendance record as one of your criteria. Use only those which could apply to everyone regardless of their protected characteristics. This has implications for how absence is recorded, which is explained in the Equality and Human Rights Commission guide: *What equality law means for you as an employer: working hours and time off*.

Training and qualifications

The appropriateness of using qualifications to select people for redundancy will vary according to the situation. If you have two individuals working in similar roles, but one has an additional relevant qualification which adds to their ability to do the job, deciding to make the less well-qualified person redundant is unlikely to discriminate unlawfully.

You can also say that a person must have a particular qualification if that qualification is an essential requirement for the job that cannot be met by experience or further training.

However, if you use qualifications which are not especially relevant or define the qualifications too narrowly without thinking through the consequences, you may find you are unlawfully discriminating if the use of those qualifications would have a worse impact on people who share a protected characteristic and you cannot objectively justify this. For example, choosing to make redundant just those employees with a qualification from a non-British university.

Avoiding unlawful discrimination against disabled people

There are particular requirements when you are considering a redundancy situation to make sure that disabled people are not being placed at a disadvantage for reasons relating to their disability. Where necessary, you must make **reasonable adjustments** to the criteria and process.

If an employee in the pool is a disabled person, and you knew or could reasonably have been expected to have known this, you must not treat them unfavourably because of something connected to their disability unless you can show that what you are doing is **objectively justified**.

For example:

An employer knows that one of their employees is a disabled person. They select employees from the pool on the basis of absence over the past two years. The disabled person has taken a lot of time off work in relation to their disability (the time off being 'something connected with the disability'). If the employer cannot objectively justify this decision, it is likely to be discrimination arising from disability. A better approach would be for the employer to exclude disability-related absence from the absence which is used to score employees against that criterion (this would probably also be a reasonable adjustment, which we look at next).

In addition, if an employee in the pool is a disabled person, you must make 'reasonable adjustments' if these are needed to remove barriers the person faces which a non-disabled person would not face. What this means is that you must first consider what adjustments would remove the barriers for the worker and second, if they are reasonable adjustments, you must make them.

For example:

A manufacturer is making some employees redundant. One of the criteria for redundancy is whether someone can operate every machine on the employer's production line. A disabled person cannot operate one of the machines because of the nature of their impairment. The employer decides it is a reasonable adjustment to the criterion to adjust the employee's mark so as to ignore the absence of that machine, so they score the same as a worker who has operated that machine to a satisfactory standard.

Remember, you only need to make changes to the criteria if the employee needs these to overcome a **substantial disadvantage**. You should look at each of the criteria in turn and how the disabled person is scored against them, making adjustments to each of them where necessary. You are only required to do what is reasonable.

You also need to ensure that any disabled person being considered for redundancy or who wishes to apply for voluntary redundancy does not face a disadvantage in obtaining information, being made aware of the procedure or receiving communications about the redundancy.

For example:

A worker has a learning disability and the employer is offering voluntary redundancy. The employer provides the worker with the information in Easy Read formats and makes sure that someone suitable spends time explaining the options to the worker.

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 3, including how to work out what is reasonable.

Maternity leave and suitable alternative employment

Where during a redundancy exercise alternative jobs are available in your organisation or with an associated employer, you should make sure these are offered to potentially redundant employees using criteria which do not unlawfully discriminate.

The situation is different if any of the potentially redundant employees is a woman on maternity leave.

In this situation, she does not have to go through selection against the criteria for filling a vacant post.

Instead, you must offer her any suitable available job with you, your successor (if your organisation is being taken over or passed onto another organisation), or any associated employer.

The offer must be of a new contract to come into effect as soon as the previous contract ends and must be such that:

- the work is suitable and appropriate for her to do, and
- the capacity, place of employment and other terms and conditions are not substantially less favourable than under the previous contract.

For example:

A company decides to combine its head office and regional teams and create a 'centre of excellence' in the location where the head office already is. A new organisation structure is drawn up which involves some head count reductions. The company intends that all employees should have the opportunity to apply for posts in the new structure. Those unsuccessful at interview will be made redundant. At the time this is implemented, one of the existing members of the head office team is on ordinary maternity leave. As such, she has a prior right to be offered a suitable available vacancy in the new organisation without having to go through the competitive interview process.

Age and redundancy payments

Even though they are on the face of it indirect discrimination because of age (since younger employees are likely to lose out, since they will find it harder to build up the longer service), you are allowed to make enhanced redundancy payments based on length of service without having to objectively justify this, so long as they are calculated in the same way as statutory redundancy payments.

For example:

- An employer operates a redundancy scheme which provides enhanced redundancy payments based on employees' actual weekly pay, instead of the (lower) maximum set out in the statutory redundancy scheme. Equality law allows this.
- Using the statutory redundancy scheme formula and the scheme's maximum weekly wage, another employer calculates every employee's redundancy entitlement, then applies a multiple of two to the total. Equality law allows this too.

If you have your own contractual redundancy scheme that uses age or length of service in a different way, in other words, is not related to the statutory redundancy scheme, this may be unlawful discrimination unless you can **objectively justify** what you are doing.

If you think this may apply to you, then you need to take further advice. You can find more about where to get further information and advice later in this guide.

Managing retirement

On the face of it, making someone retire at a particular age is discrimination because of age. However, equality law provides an exception for retirement; an employer is allowed to retire a worker (generally at or over the age of 65 – see below), provided:

- the dismissal satisfies all the legal tests for retirement, and
- the correct procedures are followed.

This part of the guide looks at:

- Retirement age and the importance of procedure
- Giving your worker notice that you want them to retire
- What happens next
- What happens if the procedures aren't followed
- Normal and Default Retirement Ages

Retirement age and the importance of procedure

Retirement age is not necessarily the same as pension age – the age when a person becomes entitled to their pension. Equality law does not affect the age at which someone gets the state retirement pension. Neither does equality law affect the age at which a person can receive any **occupational pension**, which is decided by the rules of the pension scheme.

You must operate your retirement policy without unlawful discrimination. This means you must not target people for retirement because of a protected characteristic (other than age in the sort of retirement situation that is explained next) or, if a worker is a disabled person, for a reason connected with their disability unless you can objectively justify doing this.

The information earlier in this guide tells you more about unlawful discrimination and how to avoid it.

If you:

- have a Normal Retirement Age of 65 or over, or
- use the Default Retirement Age of 65, or
- have a Normal Retirement Age of below 65 which you have objectively justified,

and you follow the procedure, then it is likely you will have acted as equality law requires.

If you do not follow the procedure, then it is likely that the dismissal of the worker will be unlawful discrimination because of age, as well as unfair dismissal under other employment laws.

Workers to whom these rules apply are:

- employees
- people in Crown employment, and
- certain Parliamentary staff.

If someone is not a worker in these categories, but is in another **work situation**, a retirement policy that means they must leave work just because they have reached a particular age, whatever that age is, will have to be **objectively justified**. This includes partners in a firm, office holders, police constables or contract workers.

For example:

Business partners who set up a limited liability partnership together have fixed a retirement age of 70. This has to be objectively justified for it to be lawful.

Don't forget to provide any information about retirement to disabled workers in an alternative format if this is a reasonable adjustment.

It is likely that the rules on the Default Retirement Age will change in the future. Before this happens, this guide will be revised to tell you what you need to do to comply with the new rules.

You do not have to set a retirement age. You can, if you choose, make an individual decision in conjunction with each worker about the point at which they will stop working for you.

Good practice tip

Consider offering your workers **flexible working** as they get older. This can help you to keep their skills and expertise, perhaps to pass on to other workers, and helps them to adapt their working patterns to other circumstances which may have changed for them as they have got older.

Giving your worker notice that you want them to retire

If you want to be able to tell a worker to retire when they reach a particular age, you must decide what that age is. This is explained in more detail next. You also have to follow the procedure set out in the law.

This procedure is the same whatever retirement age your organisation uses.

You must give between six and twelve months' notice to your employee before their 'planned retirement date'. The planned retirement date is when your worker reaches whatever age has been set for retirement.

You must write and tell your worker:

- the planned retirement date
- their right to request to work beyond the planned retirement date
- your right to refuse this request.

What happens next

If your worker agrees that they should leave on the retirement date, then that is what will happen.

If your worker wishes to continue working they must ask to do so in writing no less than three months before the intended retirement date provided you have informed them of their retirement date in writing.

- The worker's request must be made in writing and state that it is made under Schedule 6 Paragraph 5 of the Employment Equality (Age) Regulations 2006.
- They should say whether they want to carry on working indefinitely or for a stated period.
- The worker may also say why they do not want to retire, although they do not have to do this.

If you agree their request at once:

- Tell the worker this in writing as soon as you have reached a decision.
- They will then continue working beyond the original retirement date (and until they decide to stop or you decide they should leave, which you would then handle like any other dismissal), and the rest of this procedure is unnecessary.

If you do not agree to their request at once, you must hold a meeting to consider the request before you make a decision. The worker has the right to be accompanied by a trade union representative or other colleague at any meeting to discuss their retirement.

If you agree to their request after the meeting, tell them in writing as soon as you have reached a decision. They will carry on working and the rest of this procedure is unnecessary.

If you do not agree to their request, you must still tell them in writing as soon as you have reached a decision. You do not have to give any reasons. Their employment continues until the intended retirement date – or the day after you have informed them of your decision if this is later.

They can appeal against your decision. You must hold a meeting as soon as possible to consider the appeal (although this could be after they have left if this has all happened very close to the retirement date). The worker has the right to be accompanied by a trade union representative or other colleague.

What happens if the procedures aren't followed

If you give less than six months' notice of the date of retirement or the employee's right to request to continue working, you will have to pay compensation of up to eight weeks' pay.

However, you may still be able to rely on the exception for retirement to escape liability for age discrimination. You would be expected to give the employee as much written notice as possible (and a minimum of 14 days) of the intended retirement date and of the right to request to continue to work. You should then comply with all other aspects of the proper procedures and show that the reason for dismissal is genuinely retirement.

For example:

Because of inaccurate records, an employer who uses a retirement age of 65 only becomes aware that an employee is approaching her 65th birthday three months beforehand. The employer immediately issues her with written notice of intended retirement on her 65th birthday and informs her of the right to request to continue working. She does not pursue the request. Because the employer has given three months' notice and followed the correct procedure, this may qualify as a retirement dismissal. But as less than six months' notice was given, they would be liable for compensation of up to eight week's pay. The employer's safest course of action would be to give six months' notice from the date the error was discovered, even though this takes the employee past their 65th birthday.

In some cases a dismissal may possibly qualify as a retirement in equality law but still be an unfair dismissal under other employment law:

- if you give the worker much less than six months' notice, or no notice at all, of the intended date of retirement
- where you have not followed the 'duty to consider' procedure.

For example:

- An employer gives an employee only a week's verbal notice that it intends to retire her on her 70th birthday, and fails to tell her of her right to request to continue working. In this case, because this is a serious breach of the legal requirements, retirement is unlikely to qualify as the reason for dismissal. The dismissal is likely to be unfair, as well as an act of unlawful age discrimination. Having breached the notice requirements, the employer would also be liable for compensation of up to eight weeks' pay.
- An employer without a Normal Retirement Age forces an employee to retire at 67 on a month's notice. The employee's request to continue working is ignored. To decide whether the dismissal is a retirement, an Employment Tribunal would look at all the circumstances. It would probably find that the retirement was not the reason for the dismissal because the employer failed to consider the request to continue working. Even if the facts do not support a claim of age discrimination, the dismissal would be unfair because of the failure to follow the duty to consider procedure.

Normal and Default Retirement Ages

A 'Normal Retirement Age' is the age at which workers in the same kind of job within an organisation are usually made to retire. It might not be the same as the retirement age set out in the workers' contract of employment, if in practice you require them to retire at a different age. If you are going to write to workers to tell them when their retirement age is, you must decide whether it is the age in their contract (if any) or if you have in effect been operating another age.

Once you have decided, as long as this age (the Normal Retirement Age for all workers in the same kind of job) is over 65, you do not have to give any reasons for requiring a worker to retire when they reach that age.

If there is no Normal Retirement Age in your organisation or your workers' contracts, but you still want to be able to require workers to retire at a particular age, you can use the Default Retirement age of 65 that is provided in equality law. This also allows you to require workers to retire at the age of 65 or above, again without giving a reason.

If you set a Normal Retirement Age lower than 65, you must be able to provide an **'objective justification'** for this early retirement policy.

For example:

An airline company has a normal retirement age of 55 for its cabin attendants. The airline would have to objectively justify the retirement age of 55 for it to be lawful.

After someone has left a job

Sometimes your responsibilities as an employer continue after someone has stopped working for you and you must still not discriminate unlawfully against them.

Use the information earlier in this guide to make sure you know what this means.

This section looks at how you can make sure you are not discriminating unlawfully in selecting people for redundancy, and in particular how this applies to references.

Apart from when you are asked for a reference for a former worker, other situations where you have a continuing relationship with them include if former workers receive any continuing benefits from you. These must not be withheld from someone if this would be unlawful discrimination.

If someone believes that they are being discriminated against after they have stopped working for you, they can take the same steps to have things put right as if they were still employed.

They may contact you and ask you to put the situation right. If it cannot be sorted out informally, then they can ask you to deal with their complaint using your usual grievance procedure.

They can also take a case to an Employment Tribunal.

Your duty to make reasonable adjustments for a disabled worker also continues after the person has stopped working for you.

For example:

Former workers are sent an annual newsletter. A reasonable adjustment might be for it to be made available in a format that makes it accessible to a former worker who has a visual impairment.

The duty exists only if the ex-worker was a disabled person when they worked for you.

What is reasonable in this situation may be different from what would be reasonable for someone who is still working.

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 3, including how to work out what is reasonable.

Avoiding unlawful discrimination when giving references

Giving references more generally

This guide only tells you about equality law. There are other laws which you need to follow when doing references, for example, laws relating to negligence or defamation. You can find out more about these from Business Link and Acas, whose contact details in *Further sources of information and advice*.

The most likely area where you will have contact with someone who used to work for you is if they (or their prospective new employer) ask you to give them a reference.

You must not:

- refuse to give a reference at all, or
- give a bad reference

because of a protected characteristic or if refusing to give a reference would count as **victimisation**.

For example:

A worker's former employer refuses to give them a reference because they supported someone else's claim for sexual harassment. This would almost certainly be victimisation.

It does not matter how long ago the person worked for you, as long as the worker could show that any unlawful discrimination arises out of and is closely connected to the previous employment relationship.

If someone is still working for you when they ask for a reference in order to change jobs, this is still part of their employment, and you must not unlawfully discriminate against them, just as in every other work situation.

Must I supply someone with a reference?

In general, there is no legal requirement for you to provide someone with a reference, provided your policy on providing references (or not providing them) is applied without unlawfully discriminating against anyone. However, if someone's employment contract says that references will be provided then you must provide one.

Be aware that in sectors where workers are subject to special rules (such as finance) and cannot get a job without a reference, the courts have said that there is an implied term in the contract that employers will provide one.

If you do give references, they must not include comments about the person's characteristic (or in the case of disability, comments about something connected with the person's disability) that might be unlawfully discriminatory.

The same rules apply to telephone and other verbal references.

Good practice tip on giving references

- If you express an opinion in a reference (as opposed to stating a fact) make sure it is not unlawfully discriminatory.
- Don't supply sensitive data, for example, on sickness absence, unless permission to do this has been given in writing explicitly by the worker. However, be aware that simply giving information about someone's total number of days' absence in a specific period does not breach the Data Protection Act 1998.

You should not refer to absence which is not sickness absence if it is related to a protected characteristic and telling the person's new employer about it would breach their confidentiality – for example, maternity leave, disability leave or gender reassignment leave, all of which this guide suggests you should record separately from sickness absence.

A worker can give you explicit permission to disclose information if they wish you to – for example, they may want their new employer to know the reason for a period of absence. But you must not do this without permission.

Can I give someone a bad reference if they have a poor work record?

If, regardless of someone's protected characteristics, the reference would have been bad, then you are of course entitled to do this and you should resist attempts to make you change it.

However, if you have given someone an undeserved bad reference in circumstances which make this **unlawful discrimination**, they are entitled to ask you to change what you have said. If you do not do this, they may be able to bring an Employment Tribunal case against you.

Confidentiality

- Be aware that the person you are writing about may read what you have written, and make sure it is factually correct and not unlawfully discriminatory. The worker may see it because the person's new employer gives them a copy. Even if you have provided a reference 'in confidence', the new employer may decide that they should give it to the worker to comply with **data protection** rules. Usually, they will contact you to ask whether you object to the reference being disclosed, but even if you do object, they can still give your reference to the worker if they believe the worker's interest in seeing what has been written outweighs your interest in having it treated confidentially.
- If someone does not get a job, or has a job offer withdrawn, and they believe that this is because you provided a discriminatory reference, they can ask to see a copy using the **questions procedure**. You can read more about what this means – in Chapter 4 *What to do if someone says they've been discriminated against*.

2. When you are responsible for what other people do

As an **employer** or in another **work situation**, it is not just how you personally behave that matters.

If another person who is:

- employed by you, or
- carrying out your instructions to do something (who the law calls your agent)

does something that is **unlawful discrimination**, **harassment** or **victimisation**, you can be held legally responsible for what they have done.

This part of the guide explains:

- When you can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation
- How you can reduce the risk that you will be held legally responsible
- How you can make sure your employees and agents know how equality law applies to what they are doing
- When your employees or agents may be personally liable
- What happens if a person instructs someone else to do something that is against equality law
- What happens if a person helps someone else to do something that is against equality law
- What happens if you try to stop equality law applying to a situation

When you can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation

As an employer, you are legally responsible for acts of discrimination, harassment and victimisation carried out by your **employees** in the course of their employment.

You are also legally responsible as the 'principal' for the acts of your **agents** done with your authority. Your agent is someone you have instructed to do something on your behalf, but who is not an employee, even if you do not have a formal contract with them.

As long as:

- your employee was acting in the course of their employment – in other words, while they were doing their job, or
- your agent was acting within the general scope of your authority – in other words, while they were carrying out your instructions

it does not matter whether or not you:

- knew about or
- approved of

what your employee or agent did.

For example:

- A shopkeeper goes abroad for three months and leaves an employee in charge of the shop. This employee harasses a colleague with a learning disability, by constantly criticising how they do their work. The colleague leaves the job as a result of this unwanted conduct. This could amount to harassment related to disability and the shopkeeper could be responsible for the actions of their employee.
- An employer engages a head-hunter to work in-house to recruit a team of senior management. The head-hunter weeds out applications from women of child bearing age. This is almost certainly unlawful sex discrimination. Both the employer and the head-hunter (who is the employer's agent) would be legally responsible for the discrimination, except that the employer can show that they told the head-hunter to comply with equality law. This means that the authority given to the head-hunter as agent did not extend to acting in a discriminatory way, the agent acted outside the scope of the employer's authority and only the agent is liable for the discrimination.

However, you will not be held legally responsible if you can show that:

- you took **all reasonable steps** to stop an employee acting unlawfully.
- an agent acted outside the scope of your authority (in other words, that they did something so different from what you asked them to do that they could no longer be thought of as acting on your behalf).

How you can reduce the risk that you will be held legally responsible

You can reduce the risk that you will be held legally responsible for the behaviour of the people who work for you if you tell them how to behave so that they avoid unlawful discrimination, harassment or victimisation.

This does not just apply to situations where you and your staff are dealing face-to-face with other people in a work situation, but also to how you plan what happens.

When you or your employees or agents are planning what happens to people in a work situation, you need to make sure that your decisions, rules or ways of doing things are not:

- **Direct discrimination**, or
- **Indirect discrimination** that you cannot **objectively justify**, or
- **Discrimination arising from disability** that you cannot **objectively justify**, or
- **Harassment**

and that you have made **reasonable adjustments** for any disabled people who are working for you or applying for a job with you or in another work situation you are in charge of.

So it is important to make sure that your employees and agents know how equality law applies to what they are doing.

How you can make sure your employees and agents know how equality law applies to what they are doing

Tell your employees and agents what equality law says about how they must and must not behave while they are working for you.

Below are some examples of reasonable steps you can take to prevent unlawful discrimination or harassment happening in your workplace:

- telling your employees and agents when they start working for you – and checking from time to time that they remember what you told them, for example, by seeing if/how it has made a difference to how they behave. This could be a very simple checklist you talk them through, or you could give them this guide, or you could arrange for them to have **equality training**
- writing down the standards of behaviour you expect in an **equality policy**
- including a requirement about behaving in line with equality law in every worker's **terms of employment** or other contract, and making it clear that breaches of equality law will be treated as disciplinary matters or breaches of contract.

You can read more about equality training and equality policies in the Equality and Human Rights Commission guide: *Good equality practice for employers: equality policies, equality training and monitoring*.

Using written terms of employment for employees

Employment law says you must, as an employer, give every employee a written statement of the main terms of their employment. So you could include a sentence in these written terms that tells the person working for you they must meet the requirements of equality law, making it clear that a failure to do so will be a disciplinary offence.

Obviously, if you do this, it is important that you also tell the employee what it means. You could use an equality policy to do this, or you could just discuss it with them, or you could give them this guide to read. But it is important that they are clear on what equality law says they must and must not do, or you may be held legally responsible for what they do.

Remember, if the employee is a disabled person, it may be a reasonable adjustment to give them the information in a way that they can understand.

If you receive a complaint claiming unlawful discrimination by one of your employees or someone else in a work situation you are in charge of, you can use the written terms to show that you have taken a reasonable step to prevent unlawful discrimination and harassment occurring. You may need to consider if other steps would also be reasonable, such as providing training.

If someone does complain, you should investigate what has taken place and, if appropriate, you may need to discipline the person who has unlawfully discriminated against or harassed someone else, give them an informal or formal warning, or provide training; the action you take will obviously vary according to the nature of the breach and how serious it was.

If you do find that an employee has unlawfully discriminated against someone else in a work situation, then look again at what you are telling your staff to make sure they know what equality law means for how they behave towards the people they are working with.

You can read more about what to do if someone says they've been discriminated against in Chapter 4.

Good practice tip for how you and your staff should behave

Ideally, you want anyone who works for you to treat everyone they come across with dignity and respect. This will help you provide a good working environment (not just without discriminating but more generally) and can make your workers more productive.

If your staff do unlawfully discriminate against their fellow workers or others in a work situation, your reputation may suffer even if the person on the receiving end does not bring a legal case against you.

When your employees or agents may be personally liable

Your employee or agent may be personally responsible for their own acts of discrimination, harassment or victimisation carried out during their employment or while acting with your authority. This applies where either:

- you are also liable as their employer or principal, or
- you would be responsible but you show that:
 - you took **all reasonable steps** to prevent your employee discriminating against, harassing or victimising someone, or
 - that your agent acted outside the scope of your authority.

For example:

A factory worker racially harasses their colleague. The employer would be liable for the worker's actions, but is able to show that they took all reasonable steps to stop the harassment. The colleague can still claim compensation against the factory worker in an Employment Tribunal.

But there is an exception to this. An employee or agent will *not* be responsible if their employer or principal has told them that there is nothing wrong with what they are doing and the employee or agent **reasonably** believes this to be true.

It is a criminal offence, punishable by a fine, for an employer or principal to make a false statement which an employee or agent relies upon to carry out an unlawful act.

What happens if a person instructs someone else to do something that is against equality law

An employer or principal must not instruct, cause or induce their employee or agent to discriminate against, harass or victimise another person, or to attempt to do so.

'Causing' or 'inducing' someone to do something can include situations where someone is made to do something or persuaded to do it, even if they were not directly instructed to do it.

Both:

- the person who receives the instruction or is caused or induced to discriminate against, harass or victimise, and
- the person who is on the receiving end of the discrimination, harassment or victimisation

have a claim against the person giving the instructions if they suffer loss or harm as a result of the instructing or causing or inducing of the discrimination, harassment or victimisation.

This applies whether or not the instruction is actually carried out.

What happens if a person helps someone else to do something that is against equality law

A person must not help someone else carry out an act which the person helping knows is unlawful under equality law.

However, if the person helping has been told by the person they help that the act is lawful and he or she **reasonably** believes this to be true, he or she will not be legally responsible.

It is a criminal offence, punishable by a fine, to make a false statement which another person relies on to help to carry out an unlawful act.

What happens if you try to stop equality law applying to a situation

You cannot stop equality law applying to a situation if it does in fact apply. For example, there is no point in making a statement in a contract of employment that equality law does not apply. The statement will not have any legal effect. That is, it will not be possible to enforce or rely on a term in a contract that tries to do this. This is the case even if the other person has stated they have understood the term and/or they have agreed to it.

For example:

- A worker's contract includes a term saying that they cannot bring a claim in an Employment Tribunal. Their employer sexually harasses them. The term in their contract does not stop them bringing a claim for sexual harassment in the Employment Tribunal.
- A business partner's partnership agreement contains a term that says 'equality law does not apply to this agreement'. The partner develops a visual impairment and needs reasonable adjustments to remove barriers to their continuing to do their job. The other partners instead ask them to resign from the partnership. The partner can still bring a claim in the Employment Tribunal for a failure to make reasonable adjustments and unlawful disability discrimination.
- An applicant for a job is told 'equality law does not apply to this business, it is too small'. She still agrees to go to work there. When she becomes pregnant, she is dismissed. She can still bring a claim in the Employment Tribunal for pregnancy discrimination.

3. The duty to make reasonable adjustments to remove barriers for disabled people

Equality law recognises that bringing about equality for disabled people may mean changing the way in which employment is structured, the removal of physical barriers and/or providing extra support for a disabled worker.

This is the **duty to make reasonable adjustments**.

The duty to make reasonable adjustments aims to make sure that a disabled person has the same access to everything that is involved in getting and doing a job as a non-disabled person, as far as is reasonable.

When the duty arises, you are under a positive and proactive duty to take steps to remove or reduce or prevent the obstacles a disabled worker or job applicant faces.

Many of the adjustments you can make will not be particularly expensive, and you are not required to do more than what is reasonable for you to do. What is reasonable for you to do depends, among other factors, on the size and nature of your organisation.

If, however, you do nothing, and a disabled person can show that there were barriers you should have identified and reasonable adjustments you could have made, they can bring a claim against you in the Employment Tribunal, and you may be ordered to pay them compensation as well as make the reasonable adjustments.

In particular, the need to make adjustments for an individual worker or job applicant:

- must not be a reason not to appoint someone to a job or promote them if they are the best person for the job with the adjustments in place
- must not be a reason to dismiss a worker
- must be considered in relation to every aspect of a person's job

provided the adjustments are reasonable for you to make.

Many factors will be involved in deciding what adjustments to make and they will depend on individual circumstances. Different people will need different changes, even if they appear to have similar impairments.

You only have to make adjustments where you are aware – or should reasonably be aware – that an employee or applicant has a disability.

It is advisable for you to discuss the adjustments with the disabled person, otherwise the changes may not be effective.

The rest of this section looks at the detail of the duty and gives examples of the sorts of adjustments you could make. It looks at:

- Which disabled people does the duty apply to?
- Finding out if someone is a disabled person
- The three requirements of the duty
- Are disabled people at a substantial disadvantage?
- Changes to policies and the way your organisation usually does things
- Dealing with physical barriers
- Providing extra equipment or aids
- Making sure an adjustment is effective
- Who pays for reasonable adjustments?
- What is meant by 'reasonable'
- Reasonable adjustments in practice
- Specific situations
 - Employment services
 - Occupational pensions
- Questions about health or disability

Which disabled people does the duty apply to?

The duty applies to any disabled person who:

- works for you, or
- applies for a job with you, or
- tells you they are thinking of applying for a job with you.

It applies to all stages and aspects of employment. So, for example, where the duty arises you must make reasonable adjustments to disciplinary or dismissal procedures and decisions. It does not matter if the worker was a disabled person when they began working for you, or if they have become a disabled person while working for you.

The duty may also apply after employment has ended.

The duty also applies in relation to **employment services**, with some differences which are explained later in this chapter.

Reasonable adjustments may also be required in relation to occupational pension schemes. This is explained later in this chapter.

Finding out if someone is a disabled person

You only have to make these changes where you know or could reasonably be expected to know that a worker or job applicant is a disabled person. This means doing everything you can reasonably be expected to do to find out.

For example:

An employee's performance has recently got worse and they have started being late for work. Previously they had a very good record of punctuality and performance. Rather than just telling them they must improve, their employer talks to them in private. This allows the employer to check whether the change in performance could be for a disability-related reason. The employee says that they are experiencing a recurrence of depression and are not sleeping well which is making them late. Together, they agree to change the employee's hours slightly while they are in this situation and that the employee can ask for help whenever they are finding it difficult to start or complete a task. These are reasonable adjustments.

This does not, however, mean asking intrusive questions or ones that violate someone's dignity. Think about privacy and confidentiality in what you ask and how you ask.

Be aware that there are restrictions on when you can ask health- or disability-related questions before shortlisting someone or making a job offer. This is to make sure that job applicants are not discriminated against because of issues related to health or disability. The exceptions to the restriction are set out at the end of this part of this guide.

You can ask questions to find out if a job applicant needs reasonable adjustments for the recruitment process. But you must use their answers only for working out the adjustments they need and whether these are reasonable.

If the adjustments are reasonable, and you used the fact that the person needed them as a reason not to take them further into the recruitment process, this would be unlawful discrimination.

If a job applicant does not ask for adjustments in advance but turns out to need them, you must still make them, although what is reasonable in these circumstances may be different from what would be reasonable with more notice. You must not hold the fact that you have to make last minute adjustments against the applicant.

For example:

A job applicant does not tell an employer in advance that they use a wheelchair and the employer does not know about this. On arriving for the interview the applicant discovers that the room is not accessible. Although the employer could not have been expected to make the necessary changes in advance, it would be a reasonable adjustment to hold the interview in an alternative, accessible room if one was available without too much disruption or cost. Alternatively, it might be a reasonable adjustment to reschedule the interview if this was practicable.

There is more information about what this means in the Equality and Human Rights Commission guide: *What equality law means for you as an employer: when you recruit someone to work for you.*

Good practice tip: be prepared for making reasonable adjustments

Equality law says that you must make reasonable adjustments if you know that a worker or job applicant is a disabled person, that they need adjustments and that those adjustments are reasonable.

You don't have to put reasonable adjustments in place just in case a disabled person applies for a job, or just in case one of your existing workers becomes a disabled person.

But you may want to be prepared:

- Think in advance about what the core tasks of a particular job are and what adjustments might be possible (before starting a recruitment or promotion exercise, for example).
- Ask job applicants if they need reasonable adjustments to take part in the recruitment process. Do bear in mind the restriction on asking health- or disability-related questions and make it clear to applicants that the only reason you are asking is to make sure that you remove any barriers during the recruitment process, so far as is reasonable (or if one of the other exceptions applies).
- Put in place a process for working out reasonable adjustments in the event of an existing employee becoming disabled or a disabled person starting work with the organisation, before being faced with an individual situation.
- Make sure you know in advance what support is available to disabled people from Access to Work.
- If you are making renovations or alterations to your building, thinking about how you can make the new parts of your building more accessible for disabled people will help you if you later employ a disabled person and will allow you to attract more potential employees.

As well as avoiding a possible Employment Tribunal claim, being open to making reasonable adjustments will mean you have a wider choice of workers. A disabled applicant may be the best person for the job. Or you may be able to avoid losing the skills of someone who already works for you who has become a disabled person just by making a few changes.

The three requirements of the duty

The duty contains three requirements that apply in situations where a disabled person would otherwise be placed at a **substantial disadvantage** compared with people who are not disabled.

- The first requirement involves changing the way things are done (equality law calls this a **provision, criterion or practice**).

For example:

An employer has a policy that designated car parking spaces are only offered to senior managers. A worker who is not a manager, but has a mobility impairment and needs to park very close to the office, is given a designated car parking space. This is likely to be a reasonable adjustment to the employer's car parking policy.

- The second requirement involves making changes to overcome barriers created by the **physical features** of your workplace.

For example:

Clear glass doors at the end of a corridor in a particular workplace present a hazard for a visually impaired worker. Adding stick-on signs or other indicators to the doors so that they become more visible is likely to be a reasonable adjustment for the employer to make.

- The third requirement involves providing extra equipment (which equality law calls an **auxiliary aid**) or getting someone to do something to assist the disabled person (which equality law calls an **auxiliary service**).

For example:

An employer provides specialist software for a member of staff who develops a visual impairment and whose job involves using a computer.

Each of these requirements is looked at in more detail later in this part of the guide.

Are disabled people at a substantial disadvantage?

The question you need to ask yourself is whether:

- the way you do things
- any physical feature of your workplace
- the absence of an auxiliary aid or service

puts a disabled worker or job applicant at a substantial disadvantage compared with a person who is not disabled.

Anything that is more than minor or trivial is a substantial disadvantage.

If a substantial disadvantage does exist, then you must make reasonable adjustments.

The aim of the adjustments you make is to remove or reduce the substantial disadvantage.

But you only have to make adjustments that are reasonable for you to make. There is more information about how to work out what is reasonable a bit later in this part of the guide.

Changes to policies and the way your organisation usually does things

The first requirement involves changing the way things are done (equality law calls this a **provision, criterion or practice**).

This means looking at whether you need to change some written or unwritten policies, and/or some of the ways you usually do things, to remove or reduce barriers that would place a disabled person at a substantial disadvantage, for example, by preventing them from being able to work for you or applying for a job with you or stopping them being fully involved at work.

This includes your processes for deciding who is offered employment, criteria for promotion or training, benefits, working conditions and contractual arrangements.

For example:

- Supervisors in an organisation are usually employed on a full-time basis. The employer agrees to a disabled person whose impairment causes severe fatigue working on a part-time or job share basis. By doing this, the employer is making a reasonable adjustment.
- The design of a particular workplace makes it difficult for a disabled person with a hearing impairment to hear, because the main office is open plan and has hard flooring, so there is a lot of background noise. Their employer agrees that staff meetings should be held in a quieter place that allows that person to fully participate in the meeting. By doing this, the employer is making a reasonable adjustment.

Dealing with physical barriers

The second requirement involves making changes to overcome barriers created by the **physical features** of your workplace.

This means you may need to make some changes to your building or premises for a disabled person who works for you, or applies for a job with you.

Exactly what kind of change you make will depend on the kind of barriers your premises present. You will need to consider the whole of your premises. You may have to make more than one change.

Physical features include: steps, stairways, kerbs, exterior surfaces and paving, parking areas, building entrances and exits (including emergency escape routes), internal and external doors, gates, toilet and washing facilities, public facilities (such as telephones, counters or service desks), lighting and ventilation, lifts and escalators, floor coverings, signs, furniture, and temporary or movable items (such as equipment and display racks). Physical features also include the sheer scale of premises (for example, the size of a building). This is not an exhaustive list.

- These could be something to do with the structure of the actual building itself like steps, changes of level, emergency exits or narrow doorways.
- Or it could be something about the way the building or premises have been fitted out, things like heavy doors, inaccessible toilets or inappropriate lighting.
- It could even be the way things are arranged inside the premises such as fixtures and fittings like shelf heights in storage areas or fixed seating in canteens.

For example:

An employer has recruited a worker who is a wheelchair user and who would have difficulty negotiating her way around the office. In consultation with the new worker, the employer rearranges the layout of furniture in the office. The employer has made reasonable adjustments.

Providing extra equipment or aids

The third requirement of the duty involves providing extra equipment – which equality law calls **auxiliary aids** – and **auxiliary services**, where someone else is used to assist the disabled person, such as a reader, a sign language interpreter or a support worker.

An auxiliary aid or service may make it easier for a disabled person to do their job or to participate in an interview or selection process. So you should consider whether it is reasonable to provide this.

The kind of equipment or aid or service will depend very much on the individual disabled person and the job they are or will be doing or what is involved in the recruitment process. The disabled person themselves may have experience of what they need, or you may be able to get expert advice from some of the organisations listed in *Further sources of information and advice*.

Making sure an adjustment is effective

It may be that several adjustments are required in order to remove or reduce a range of disadvantages and sometimes these will not be obvious to you. So you should work, as much as possible, with the disabled person to identify the kind of disadvantages or problems that they face and also the potential solutions in terms of adjustments.

But even if the disabled person does not know what to suggest, you must still consider what adjustments may be needed.

For example:

A disabled employee has been absent from work as a result of depression. Neither the employee nor their doctor is able to suggest any adjustments that could be made. Nevertheless the employer should still consider whether any adjustments, such as working from home for a time or changing working hours or offering more day-to-day support, would be reasonable.

You may be able to get expert advice from some of the organisations listed in *Further sources of information and advice*.

Who pays for reasonable adjustments?

If something is a reasonable adjustment, you must pay for it as the employer or prospective employer. The cost of an adjustment can be taken into account in deciding if it is reasonable or not.

However, there is a government scheme called Access to Work which can help a person whose health or disability affects their work by giving them advice and support. Access to Work can help with extra costs which would not be reasonable for an employer or prospective employer to pay.

For example, Access to Work might pay towards the cost of getting to work if the disabled person cannot use public transport, or for assistance with communication at job interviews.

A person may be able to get advice and support from Access to Work if they are:

- in a paid job, or
- unemployed and about to start a job, or
- unemployed and about to start a Work Trial, or
- self-employed

and

- their disability or health condition stops them from being able to do parts of their job.

Make sure your worker or job applicant knows about Access to Work. Although the advice and support are given to the worker or job applicant themselves, you will obviously benefit too. Information about Access to Work is in *Further sources of information and advice*.

What is meant by 'reasonable'

You only have to do what is reasonable.

Various factors influence whether a particular adjustment is considered reasonable and the responsibility for making the decision about reasonableness rests with you as the employer.

When deciding whether an adjustment is reasonable you can consider:

- how effective the change will be in avoiding the disadvantage the disabled person would otherwise experience
- its practicality
- the cost
- your organisation's resources and size
- the availability of financial support.

Your overall aim should be, as far as possible, to remove or reduce any disadvantage faced by a disabled worker or job applicant.

Issues to consider:

- You can treat disabled people better or 'more favourably' than non-disabled people and sometimes this may be part of the solution.
- The adjustment must be effective in helping to remove or reduce any disadvantage the disabled person is facing. If it doesn't have any impact then there is no point.
- In reality it may take several different adjustments to deal with that disadvantage but each change must contribute towards this.
- You can consider whether an adjustment is practical. The easier an adjustment is, the more likely it is to be reasonable. However, just because something is difficult doesn't mean it can't also be reasonable. You need to balance this against other factors.
- If an adjustment costs little or nothing and is not disruptive, it would be reasonable unless some other factor (such as impracticality or lack of effectiveness) made it unreasonable.
- Your size and resources are another factor. If an adjustment costs a significant amount, it is more likely to be reasonable for you to make it if you have substantial financial resources. Your resources must be looked at across your whole organisation, not just for the branch or section where the disabled person is or would be working. This is an issue which you have to balance against the other factors.
- In changing policies, criteria or practices, you do not have to change the basic nature of the job, where this would go beyond what is reasonable.

- What is reasonable in one situation may be different from what is reasonable in another situation, such as where someone is already working for you and faces losing their job without an adjustment, or where someone is a job applicant. Where someone is already working for you, or about to start a long-term job with you, you would probably be expected to make more permanent changes (and, if necessary, spend more money) than you would to make adjustments for someone who is attending a job interview for an hour.
- If you are a larger rather than a smaller employer you are also more likely to have to make certain adjustments such as redeployment or flexible working patterns which may be easier for an organisation with more staff.
- If advice or support is available, for example, from Access to Work or from another organisation (sometimes charities will help with costs of adjustments), then this is more likely to make the adjustment reasonable.
- If making a particular adjustment would increase the risks to the health and safety of anybody, including the disabled person concerned, then you can consider this when making a decision about whether that particular adjustment or solution is reasonable. But your decision must be based on a proper assessment of the potential health and safety risks.

If, having taken all of the relevant issues into account, you decide that an adjustment is reasonable then you must make it happen.

If there is a disagreement about whether an adjustment is reasonable or not, in the end, only an Employment Tribunal can decide this.

Providing information in an alternative format

Equality law says that where providing information is involved, the steps which it is reasonable for the employer to take include steps to make sure that the information is provided in an accessible format.

For example:

- A job applicant asks for information about the job to be read onto an audio CD and sent to them. This is likely to be a reasonable adjustment that the employer must make.

Reasonable adjustments in practice

Examples of steps it might be reasonable for you to have to take include:

- Making adjustments to premises.

For example:

An employer makes structural or other physical changes such as widening a doorway, providing a ramp or moving furniture for a wheelchair user; relocates light switches, door handles, or shelves for someone who has difficulty in reaching; or provides appropriate contrast in decor to help the safe mobility of a visually impaired person.

- Allocating some of the disabled person's duties to another person.

For example:

An employer reallocates minor or subsidiary duties to another employee as a disabled person has difficulty doing them because of their disability. For example, the job involves occasionally going onto the open roof of a building but the employer transfers this work away from an employee whose disability involves severe vertigo.

- Transferring the person to fill an existing vacancy.

For example:

An employer should consider whether a suitable alternative post is available for a worker who becomes disabled (or whose disability worsens), where no reasonable adjustment would enable the worker to continue doing the current job. This might also involve retraining or other reasonable adjustments such as equipment for the new post or a transfer to a position on a higher grade.

- Altering the person's hours of working or training.

For example:

An employer allows a disabled person to work flexible hours to enable them to have additional breaks to overcome fatigue arising from their disability. It could also include permitting part-time working, or different working hours to avoid the need to travel in the rush hour if this is a problem related to an impairment. A phased return to work with a gradual build-up of hours might also be appropriate in some circumstances.

- Assigning the person to a different place of work or training.

For example:

An employer relocates the work station of a newly disabled employee (who now uses a wheelchair) from an inaccessible third floor office to an accessible one on the ground floor. If the employer operates from more than one workplace, it may be reasonable to move the employee's place of work to other premises of the same employer if the first building is inaccessible and the other premises are not.

- Allowing the person to be absent during working or training hours for rehabilitation, assessment or treatment.

For example:

An employer allows a disabled person who has recently developed a condition to have more time off work than would be allowed to non-disabled workers to enable them to have rehabilitation. A similar adjustment would be appropriate if a disability worsens or if a disabled person needs occasional treatment anyway.

- Giving, or arranging for, training or mentoring (whether for the disabled person or any other person). This could be training in particular pieces of equipment which the disabled person uses, or an alteration to the standard employee training to make sure it is accessible for the disabled employee.

For example:

- All workers are trained in the use of a particular machine but an employer provides slightly different or longer training for an employee with restricted hand or arm movements, or training in additional software for a visually impaired person so that they can use a computer with speech output.
- An employer provides training for employees on conducting meetings in a way that enables a Deaf staff member to participate effectively.
- A disabled person returns to work after a six-month period of absence due to a stroke. Their employer pays for them to see a work mentor, and allows time off to see the mentor, to help with their loss of confidence following the onset of their disability.

- Acquiring or modifying equipment.

For example:

An employer might have to provide special equipment (such as an adapted keyboard for someone with arthritis or a large screen for a visually impaired person), an adapted telephone for someone with a hearing impairment, or other modified equipment for disabled workers (such as longer handles on a machine).

You do not have to provide or modify equipment for personal purposes unconnected with a worker's job, such as providing a wheelchair if a person needs one in any event but does not have one. This is because the disadvantages do not flow from things you have control over.

- Modifying instructions or reference manuals.

For example:

The format of instructions and manuals might need to be modified for some disabled people (such as being produced in Braille or on audio CD) and instructions for people with learning disabilities might need to be conveyed orally with individual demonstration or in Easy Read.

- Modifying procedures for testing or assessment.

For example:

A person with restricted manual dexterity would be disadvantaged by a written test, so the employer gives that person an oral test instead.

- Providing a reader or interpreter.

For example:

An employer arranges for a colleague to read hard copy post to a person with a visual impairment at particular times during the working day. Alternatively, the employer might hire a reader.

- Providing supervision or other support.

For example:

An employer provides a support worker or arranges help from a colleague, in appropriate circumstances, for someone whose disability leads to uncertainty or lack of confidence.

- Allowing a disabled worker to take a period of disability leave.

For example:

A worker who has cancer needs to undergo treatment and rehabilitation. Their employer allows a period of disability leave and permits them to return to their job at the end of this period.

- Participating in supported employment schemes, such as **Work step**.

For example:

A person applies for a job as an office assistant after several years of not working because of depression. They have been participating in a supported employment scheme where they saw the job advertised. As a reasonable adjustment the person asks the employer to let them make private phone calls during the working day to a support worker at the scheme.

- Employing a support worker to assist a disabled worker.

For example:

An adviser with a visual impairment is sometimes required to make home visits to clients. The employer employs a support worker to assist them on these visits.

- Modifying disciplinary or grievance procedures.

For example:

A person with a learning disability is allowed to take a friend (who does not work with them) to act as an advocate at a meeting with the person's employer about a grievance. The employer also makes sure that the meeting is conducted in a way that does not disadvantage or patronise the disabled person.

- Adjusting redundancy selection criteria.

For example:

A person with an autoimmune disease has taken several short periods of absence during the year because of the condition. When their employer is taking the absences into account as a criterion for selecting people for redundancy, they discount these periods of disability-related absence.

- Modifying performance-related pay arrangements.

For example:

A disabled person who is paid purely on their output needs frequent short additional breaks during their working day – something their employer agrees to as a reasonable adjustment. It is likely to be a reasonable adjustment for their employer to pay them at an agreed rate (e.g. their average hourly rate) for these breaks.

It may sometimes be necessary for an employer to take a combination of steps.

For example:

A woman who is blind is given a new job with her employer in an unfamiliar part of the building. The employer

- arranges facilities for her assistance dog in the new area
- arranges for her new instructions to be in Braille, and
- provides disability equality training to all staff.

In some situations, a reasonable adjustment will not work without the co-operation of other workers. Your other staff may therefore have an important role in helping make sure that a reasonable adjustment is carried out in practice. You must make sure that this happens. It is unlikely to be a valid 'defence' to a claim under equality law for a failure to make reasonable adjustments to argue that an adjustment was unreasonable because your other staff were obstructive or unhelpful when you tried to make an adjustment happen. You would at least need to be able to show that you took all reasonable steps to try and resolve the problem of the attitude of your other staff.

For example:

An employer makes sure that a worker with autism has a structured working day as a reasonable adjustment. As part of the reasonable adjustment, it is the responsibility of the employer to make sure that other workers co-operate with this arrangement.

If the worker does not agree to your involving other workers, you must not breach their confidentiality by telling the other workers about the disabled person's situation.

If a worker is reluctant for other staff to know, and you believe that a reasonable adjustment requires the co-operation of the worker's colleagues, explain that you cannot make the adjustment unless they are prepared for some information to be shared. It does not have to be detailed information about their condition, just enough to explain to other staff what they need to do.

Specific situations

Employment services

An employment service provider must not unlawfully discriminate against people who are using or want to use its services. There is more information about what this means in the list of words and key ideas.

In addition, an employment service provider has a duty to make reasonable adjustments, except when providing a **vocational service**.

For employment service providers, unlike for employers, the duty is 'anticipatory'. If you are an employment service provider, this means you cannot wait until a disabled person wants to use your services, but must think in advance (and on an ongoing basis) about what disabled people with a range of impairments might reasonably need, such as people who have a visual impairment, a hearing impairment, a mobility impairment, or a learning disability.

For example:

An employment agency makes sure its website is accessible to disabled people and that it can provide information about job opportunities in a range of alternative formats. It also makes sure its staff are trained to assist disabled people who approach it to find out about job opportunities.

Occupational pensions

Occupational pension schemes must not unlawfully discriminate against people. There is more information about what this means in the Equality and Human Rights Commission guide: *What equality law means for you as an employer: pay and benefits*.

In addition, an occupational pension scheme must make reasonable adjustments to any provision, criterion or practice in relation to the scheme which puts a disabled person at a substantial disadvantage in comparison with people who are not disabled.

For example:

The rules of an employer's final salary scheme provide that the maximum pension receivable is based on the member's salary in the last year of work. Having worked full-time for 20 years, a worker develops a condition which leads them to reduce their working hours two years before their pension age. The scheme's rules put them at a disadvantage as a result of their disability, because their pension will only be calculated on their part-time salary. The trustees decide to convert the worker's part-time salary to its full-time equivalent and make a corresponding reduction in the period of their part-time employment which counts as pensionable. In this way, their full-time earnings will be taken into account. This is likely to be a reasonable adjustment to make.

Questions about health or disability

Except in very restricted circumstances or for very restricted purposes, you are not allowed to ask any job applicant about their health or any disability until the person has been:

- offered a job either outright or on conditions, or
- included in a pool of successful candidates to be offered a job when a position becomes available (for example, if an employer is opening a new workplace or expects to have multiple vacancies for the same role but doesn't want to recruit separately for each one).

This includes asking such a question as part of the application process or during an interview. Questions relating to previous sickness absence count as questions that relate to health or disability.

No-one else can ask these questions on your behalf either. So you cannot refer an applicant to an **occupational health practitioner** or ask an applicant to fill in a questionnaire provided by an occupational health practitioner before the offer of a job is made (or before inclusion in a pool of successful applicants) except in very limited circumstances, which are explained next.

The point of stopping employers asking questions about health or disability is to make sure that all job applicants are looked at properly to see if they can do the job in question, and not ruled out just because of issues related to or arising from their health or disability, such as sickness absence, which may well say nothing about whether they can do the job now.

You can ask questions once you have made a job offer or included someone in a group of successful candidates. At that stage, you could make sure that someone's health or disability would not prevent them from doing the job. But you must consider whether there are reasonable adjustments that would enable them to do the job.

What happens if I ask questions about health or disability?

A job applicant can bring a claim against you if:

- you asked health- or disability-related questions of a kind that are not allowed, and
- they believe there has been unlawful discrimination as a result of the information that they gave (or failed to give) when answering such questions.

The Equality and Human Rights Commission can take legal action against you if you ask job applicants any health- or disability-related questions that are not allowed by equality law. This includes sending them a questionnaire about their health for them to fill in before you have offered them a job.

When you are allowed to ask questions about health or disability

You can ask questions about health or disability when:

- You are asking the questions to find out if any applicant needs reasonable adjustments for the recruitment process, such as for an assessment or an interview.

For example:

An application form states: 'Please contact us if you need the application form in an alternative format or if you need any adjustments for the interview'. This is allowed.

- You are asking the questions to find out if a person (whether they are a disabled person or not) can take part in an assessment as part of the recruitment process, including questions about reasonable adjustments for this purpose.

For example:

An employer is recruiting play workers for an outdoor activity centre and wants to hold a practical test for applicants as part of the recruitment process. It asks a question about health in order to ensure that applicants who are not able to undertake the test (for example, because they are pregnant or have an injury) are not required to take the test. This is allowed.

- You are asking the questions for **monitoring** purposes to check the **diversity** of applicants.
- You want to make sure that an applicant who is a disabled person can benefit from any measures aimed at improving disabled people's employment rates. For example, the **guaranteed interview scheme**. Make it clear to job applicants that this is why you are asking the question.
- You are asking the question because having a specific impairment is an **occupational requirement** for a particular job.

For example:

An employer wants to recruit a Deafblind project worker who has personal experience of Deafblindness. This is an occupational requirement of the job and the job advert states this. The employer can ask on the application form or at interview about the applicant's disability.

- Where the questions relate to a requirement to vet applicants for the purposes of **national security**.
- Where the question relates to a person's ability to carry out a function that is intrinsic (or absolutely fundamental) to that job. Where a health- or disability-related question would mean you would know if a person can carry out that function with reasonable adjustments in place, then you can ask the question.

For example:

A construction company is recruiting scaffolders. The company can ask about health or disability on the application form or at interview if the questions relate specifically to an applicant's ability to climb ladders and scaffolding to a significant height. The ability to climb ladders and scaffolding is intrinsic or fundamental to the job.

In practice, even if a function is intrinsic to the job, you should ask a question about a disabled person's ability to do the job with reasonable adjustments in place. There will therefore be very few situations where a question about a person's health or disability needs to be asked.

Most of the time, whether on an application form or during an interview, you can ask a question about whether someone has the relevant skills, qualities or experience to do the job, not about their health or about any disability they may have.

For example:

An employer is recruiting a person as a cycle courier. They ask applicants to send in a CV setting out their relevant experience and a covering letter saying why they would be suitable for the job. The employer will score candidates on their experience of and enthusiasm for cycling. It is not necessary to ask applicants questions about health or disability. If the employer considers a health check is necessary, for example, for insurance purposes, this can be carried out once an applicant has been offered the job, and the job offer can be made conditional on the health check.

4. What to do if someone says they've been discriminated against

If a **worker** says that you or your **employee** or **agent** have **unlawfully discriminated** against them in a work situation, your responsibility is to deal with the complaint in a way that finds out if there has been unlawful discrimination and, if there has been, to put the situation right.

This guide focuses on the equality law aspects of dealing with a complaint from a worker. If a worker makes a complaint (which is often called 'bringing a grievance') about something else at work, which is not related to a **protected characteristic**, then you can get advice from the Arbitration and Conciliation Service (Acas) about how to deal with this. Contact details for Acas are in *Further sources of information and advice*.

A worker may:

- complain to you
- make a claim in the Employment Tribunal.

These are not alternatives, since the person complaining still has a right to make a claim in the Employment Tribunal even if they first complained to you.

This part of this guide covers:

- If a worker complains to you
 - Dealing with the complaint informally
 - If a worker makes a formal complaint
 - Getting more information about involving other people in sorting the situation out (this is often called alternative dispute resolution)
- What you can do if you find that there has been unlawful discrimination
- What you can do if you find that there wasn't any unlawful discrimination
- Monitoring the outcome
- The questions procedure, which someone can use to find out more information from you if they think they may have been unlawfully discriminated against, harassed or victimised

- Key points about discrimination cases in a work situation
 - Where claims are brought
 - Time limits for bringing a claim
 - The standard and burden of proof
 - What the Employment Tribunal can order you to do
- More information about defending an Employment Tribunal case

Good practice tips for avoiding and sorting out claims about discrimination at work

A worker who believes they have experienced unlawful discrimination has a right to make an Employment Tribunal claim.

Defending an Employment Tribunal claim can be lengthy, expensive and draining, and it can have a damaging impact on the reputation of your organisation.

It is likely to be in everyone's interest to try to put things right before a claim is made to an Employment Tribunal.

If you have good procedures for sorting out complaints about discrimination, you may be able to avoid the person feeling it is necessary to bring a claim against you.

An important factor will be for your workers to be sure that complaints about unlawful discrimination will be taken seriously, even if they are raised less formally, outside your formal grievance procedures, and that something will happen to put the situation right if someone has discriminated unlawfully.

Tell your workers what the options are for bringing unlawful discrimination to your attention, and how to use your procedures, including:

- discussing the situation informally with you or a manager, and
- using your formal grievance procedures.

Make it clear what will happen if, after investigating, you find out that someone has discriminated unlawfully against someone else:

- that if necessary you will take any disciplinary action you decide is appropriate
- that if necessary you will change the way you do things so the same thing does not happen again, then do this.

Also:

- consider **equality training** for yourself and/or people working for you
- think about having an **equality policy**.

If a worker complains to you

You have two ways of sorting out the situation:

- trying to deal with the complaint informally
- using your grievance procedures.

You may also want to use other people to help you sort the situation out through something like conciliation or mediation. This is often called 'alternative dispute resolution' and this guide tells you where you can find out more about it.

Make sure that in the way you respond to a complaint, you do not unlawfully discriminate against anyone.

For example:

An employer takes what a disabled person who has a learning disability says less seriously than what the person they say has unlawfully discriminated against them says. If the employer's attitude is because of the disabled person's learning disability, this is likely to be unlawful discrimination.

If anyone involved in a complaint is a disabled person who needs **reasonable adjustments** to remove barriers they would otherwise face in taking part in the complaints process, you must make these. You can read more about reasonable adjustments in Chapter 3.

Dealing with the complaint informally

It may be that you can look into the complaint and decide what to do without it being necessary for your worker to make a formal complaint.

If the complaint is about the way you or your organisation does something, think about getting it changed.

If it is about how the person's manager or colleagues are behaving towards them, it may help to speak informally to the person or people involved before getting into formal procedures.

This will only be possible if the person who has complained agrees that you should speak to the other person informally.

Make sure you tell the worker what the result of their informal complaint is, otherwise they may make a formal complaint or bring an Employment Tribunal claim.

If a worker makes a formal complaint

If a worker makes a formal complaint, this is often referred to as a 'grievance'.

You can find out about investigating and handling grievances (whether they relate to discrimination or to other workplace issues) from Acas. Contact details for Acas are in *Further sources of information and advice*.

If your worker is not happy about the outcome of a grievance procedure, then they have a right to appeal.

Alternative dispute resolution

If you want to get help in sorting out a complaint about discrimination, you could see if the person complaining will agree to what is usually called 'alternative dispute resolution' or ADR. ADR involves finding a way of sorting out the complaint without a formal tribunal hearing. ADR techniques include mediation and conciliation.

In complaints relating to work situations, this can happen:

- as part of an informal process
- when your formal grievance procedures are being used, or
- before an Employment Tribunal claim has been brought or finally decided.

There are different organisations who may be able to help with this:

- Trade Unions
- Acas
- ADRnow, an information service run by the Advice Services Alliance (ASA).

Details of how to contact these organisations are in *Further sources of information and advice*.

What you can do if you find that there has been unlawful discrimination

The action you take will depend on the specific details of the case and its seriousness. You should take into consideration any underlying circumstances and the outcome of previous similar cases. Actions you take could be:

- Some form of alternative dispute resolution (which is explained above).
- **Equality training** for the person who discriminated.
- Appropriate disciplinary action (you can find out more about disciplinary procedures from Acas).

What you can do if you find that there wasn't any unlawful discrimination

If your investigation and any appeal find that there was no unlawful discrimination, then you need to find a way for everyone to continue to work together.

You may be able to do this yourself, or it may be helpful to bring in help from outside as with alternative dispute resolution (which is explained above).

Monitoring the outcome

Whether you decide that there had been unlawful discrimination or not, make sure that you do not treat the person who complained badly. For example, forcing the person who complained to transfer to another part of your organisation (if it is big enough) may be **victimisation**. However, if they ask to be transferred, you should do this if you are sure this is what they really want, and it is not a sign that you have not dealt with their complaint properly.

Monitor the situation to ensure that the unlawful discrimination (if you found there was discrimination) has stopped and that there is no victimisation of the person who complained or anyone who helped them.

If your worker is not satisfied with what has happened, they may decide to bring a claim in the Employment Tribunal.

The questions procedure

If someone thinks they may have been unlawfully discriminated against, harassed or victimised against equality law, then they can obtain information from you to help them decide if they have a valid claim or not.

There is a set form to help them do this which you can see at: www.equalities.gov.uk, but their questions will still count even if they do not use the form, so long as they use the same questions.

If you receive questions from someone, you are not legally required to reply to the request, or to answer the questions, but it may harm your case if you do not.

The questions and the answers can form part of the evidence in a case brought under the Equality Act 2010.

Someone can send you the questions before a claim is made to the Employment Tribunal, or at the same time, or after the claim has been sent.

If it is before, then you must receive the questions within three months of what the person complaining says happened that was unlawful discrimination. If a claim has already been made to the Employment Tribunal, then you must receive the questions:

- within 28 days of the claim being sent to the Employment Tribunal if the claim involves disability discrimination (including a failure to make **reasonable adjustments**) or
- within 21 days of the claim being sent to the Employment Tribunal in all other cases.

If you do not respond to the questionnaire within eight weeks of its being sent to you, the Employment Tribunal can take that into account when making its decision. The Employment Tribunal can also take into account answers which are evasive or unclear.

- There is an exception to this. The Employment Tribunal cannot take the failure to answer into account if a person or organisation states that to give an answer could prejudice criminal proceedings and this is reasonable. Most of the time, breaking equality law only leads to a claim in a civil tribunal or court. Occasionally, breaking equality law can be punished by the criminal courts. In that situation, the person or organisation may be able to refuse to answer the questions, if in answering they might incriminate themselves and it is reasonable for them not to answer. If you think this might apply to you, you should get more advice on what to do.

If someone who is working for you sends you questions, you must not treat them badly because they have done this. If you did, it would almost certainly be **victimisation**.

Key points about discrimination cases in a work situation

The key points this guide explains are:

- Where claims are brought
- Time limits for bringing a claim
- The standard and burden of proof
- What the Employment Tribunal can order you to do

Where claims are brought

An Employment Tribunal can decide a complaint involving unlawful discrimination in a **work situation**.

Employment Tribunals can also decide cases about:

- Collective agreements, which can cover any terms of employment, such as pay or other benefits or working conditions.
- Equal pay and occupational pensions cases, which you can read more about in the Equality and Human Rights Commission guide: *What equality law means for you as an employer: pay and benefits*.
- Requirements an employer places on someone to discriminate against people as part of their job, for example, if someone works in a shop, telling them not to serve customers with a particular protected characteristic.

If the complaint is about a health- or disability-related enquiry during recruitment, the Employment Tribunal cannot hear a case just because an enquiry was made. Only the Equality and Human Rights Commission can take up this sort of case.

But a job applicant who believes they were discriminated against because of disability, or for a reason connected with their disability, can bring a claim in the Employment Tribunal.

For example:

A job applicant who is a disabled person is asked questions about their health and disability during their interview. They do not get the job. They believe this is because of the answers they gave to the questions. They can bring a claim in the Employment Tribunal. However, only the Equality and Human Rights Commission could take up the wider case (in the County Court in England or Wales, and the Sheriff Court in Scotland) to challenge the employer just for asking the questions if no individual was personally affected.

An Employment Tribunal can only hear a case from a member of the armed forces if their **service complaint** has been decided.

Time limits for bringing a claim

A person must bring their claim within three months (less one day) of the claimed unlawful discrimination taking place.

There are two situations where this is slightly different:

- in equal pay cases, different time limits apply – see the Equality and Human Rights Commission guide: *What equality law means for you as an employer: pay and benefits*, and
- for cases involving the armed forces, the time limit is six months (less one day).

If a person brings a claim after this, it is up to the Employment Tribunal to decide whether it is fair to everyone concerned, including both the employer and the employee, to allow a claim to be brought later than this.

When a claim concerns behaviour over a length of time, the time limit starts when the behaviour has ended.

For example:

An employer operates a mortgage scheme for married couples only. Someone who is a civil partner would be able to make a claim for unlawful discrimination because of sexual orientation to a tribunal at any time while the scheme continues to operate in favour of married couples or within three months of the scheme ceasing to operate in favour of married couples.

If the person is complaining about a failure to do something, for example, a failure to make **reasonable adjustments**, then the three months begins when the decision was made not to do it. If there is no solid evidence of a decision, then the decision is assumed to have been made either:

- when the person who failed to do the thing does something else which shows they don't intend to do it, or
- at the end of the time when they might reasonably have been expected to do the thing.

For example:

A wheelchair-user asks their employer to install a ramp to enable them to get over the kerb between the car park and the office entrance more easily. The employer indicates that it will do so but no work at all is carried out. After a period in which it would have been reasonable for the employer to commission the work, even though the employer has not made a positive decision not to install a ramp, it may be treated as having made that decision. A court can hear a claim if it is brought outside this time limit if the court thinks that it would be 'just and equitable' (fair to both sides) for it to do this.

The standard and burden of proof

The standard of proof in discrimination cases is the usual one in civil (non-criminal) cases. Each side must try to prove the facts of their case are true on the balance of probabilities, in other words, that it is more likely than not in the view of the tribunal that their version of events is true.

If someone is claiming unlawful discrimination, harassment or victimisation against you, then the burden of proof begins with them. They must prove enough facts from which the tribunal can decide, without any other explanation, that the discrimination, harassment or victimisation has taken place.

Once they have done this, then, in the absence of any other explanation, the burden shifts onto you to show that you or someone whose actions or omissions you were responsible for did not discriminate, harass or victimise the person making the claim.

What the Employment Tribunal can order you to do

What the tribunal can order if you lose your case is called a remedy.

The main remedies available to the Employment Tribunal are to:

- Make a declaration that you have discriminated.
- Award compensation to be paid for the financial loss the claimant has suffered (for example, loss of earnings), and damages for injury to the claimant's feelings. There is no legal upper limit on the amount of compensation.
- Make a recommendation, requiring the employer to do something specific within a certain time to remove or reduce the bad effects which the claim has shown to exist on the individual.

For example:

Providing a reference or reinstating the person to their job, if the tribunal thinks this would work despite the previous history.

The Employment Tribunal can also make a recommendation requiring the employer to do something specific within a certain time to remove or reduce the bad effects which the claim has shown to exist on the wider workforce (although not in equal pay cases). This might be particularly applicable where the claimant has already left that employer so any individual recommendation would be pointless.

For example:

- introducing an equal opportunities policy
- ensuring its harassment policy is more effectively implemented
- setting up a review panel to deal with equal opportunities and harassment/grievance procedures
- re-training staff, or
- making public the selection criteria used for transfer or promotion of staff.

If the recommendation relates to an individual and if an employer does not do what they have been told to do, the tribunal may order them to pay compensation, or an increased amount of compensation, to the claimant instead.

In cases of **indirect discrimination**, if you can prove that you did not intend what you did to be discriminatory, the tribunal must consider all of the remedies before looking at damages.

The tribunal can also order you to pay the legal costs and expenses of the person bringing the claim on top of your own legal costs and expenses, although this does not often happen in Employment Tribunal cases.

More information about defending an Employment Tribunal case

You can find out more about what to do if someone brings an Employment Tribunal case against you from:

- In England and Wales: Business Link – see *Further sources of information and advice for contact details*.
- In Scotland: Business Gateway Scotland – see *Further sources of information and advice for contact details*.

5. Further sources of information and advice

Equality and Human Rights Commission:

The Equality and Human Rights Commission is the independent advocate for equality and human rights in Britain. It aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights. The Equality and Human Rights Commission helplines advise both individuals and organisations such as employers and service providers.

Website: www.equalityhumanrights.com

Helpline – England

Email: info@equalityhumanrights.com

Telephone: 0845 604 6610

Textphone: 0845 604 6620

Fax: 0845 604 6630

08:00–18:00 Monday to Friday

Helpline – Wales

Email: wales@equalityhumanrights.com

Telephone: 0845 604 8810

Textphone: 0845 604 8820

Fax: 0845 604 8830

08:00–18:00 Monday to Friday

Helpline – Scotland

Email: scotland@equalityhumanrights.com

Telephone: 0845 604 5510

Textphone: 0845 604 5520

Fax: 0845 604 5530

08:00–18:00 Monday to Friday

Acas – The Independent Advisory, Conciliation and Arbitration Service:

Acas aims to improve organisations and working life through better employment relations. It provides impartial advice, training, information and a range of problem resolution services.

Website: www.acas.org.uk

Telephone: 08457 47 47 47 (Monday–Friday: 08:00–20:00; Saturday: 09:00–13:00)

Access to Work:

Access to Work can help disabled people or their employers if their condition or disability affects the ease by which they can carry out their job or gain employment. It gives advice and support with extra costs which may arise because of certain needs.

Website:

www.direct.gov.uk/en/disabledpeople/employmentsupport/workschemesandprogrammes

London, East England and South East England:

Telephone: 020 8426 3110

Email: atwosu.london@jobcentreplus.gsi.gov.uk

Wales, South West England, West Midlands and East Midlands:

Telephone: 02920 423 29

Email: atwosu.cardiff@jobcentreplus.gsi.gov.uk

Scotland, North West England, North East England and Yorkshire and Humberside:

Telephone: 0141 950 5327

Email: atwosu.glasgow@jobcentreplus.gsi.gov.uk

Association of Disabled Professionals (ADP):

The ADP website offers advice, support, resources and general information for disabled professionals, entrepreneurs and employers.

Website: www.adp.org.uk

Telephone: 01204 431638 (answerphone only service)

Fax: 01204 431638

Email: info@adp.org.uk

British Chambers of Commerce (BCC):

The BCC is the national body for a network of accredited Chambers of Commerce across the UK; each Chamber provides representation, services, information and guidance to its members.

Website: www.britishchambers.org.uk

Telephone: 020 7654 5800

Fax: 020 7654 5819

Email: info@britishchambers.org.uk

British Retail Consortium (BRC):

The BRC is a trade association representing a broad range of retailers. It provides advice and information for its members.

Website: www.brc.org.uk

Telephone: 020 7854 8900

Fax: 020 7854 8901

Department for Business, Innovation and Skills (BIS):

BIS is the UK government department with responsibility for trade, business growth, employment and company law and regional economic development.

Website: www.bis.gov.uk

Telephone: 020 7215 5000

Business Gateway :

Business Gateway provides practical help, advice and support for new and growing businesses in Scotland.

Website: www.bgateway.com

Telephone: 0845 609 6611

Business in the Community:

Business in the Community mobilises businesses for good, working to improve businesses in terms of their responsibilities to both the local and global community, helping to work towards a sustainable future.

Website: www.bitc.org.uk

Telephone: 020 7566 8650

Email: information@bitc.org.uk

Twitter: @BITC1

Business Link:

Business Link is a free business advice and support service, available online and through local advisers.

Website: www.businesslink.gov.uk

Telephone: 0845 600 9 006

Minicom: 0845 606 2666

Chartered Institute of Personnel and Development (CIPD):

The CIPD is Europe's largest human resources development professional body, with over 135,000 members. It supports and develops those responsible for the management and development of people within organisations.

Website: www.cipd.co.uk

Telephone: 020 8612 6208

ChildcareLink:

ChildcareLink provides details of local childcare providers for employees and employers, as well as general information about childcare.

Website: www.childcarelink.gov.uk

Telephone: 0800 2346 346

Close the Gap Scotland:

Close the Gap Scotland works to close the gender pay gap by working with companies and trade unions as well as carrying out research to illustrate the gender pay gap.

Website: www.closesthegap.org.uk

Telephone: 0141 337 8131

The Confederation of British Industry (CBI):

The CBI is the UK's leading business organisation, speaking for some 240,000 businesses that together employ around a third of the private sector workforce.

Website: www.cbi.org.uk

Telephone: 020 7379 7400

Directgov:

Directgov is the UK government's digital service for people in England and Wales. It delivers information and practical advice about public services, bringing them all together in one place.

Website: www.direct.gov.uk

EEF:

EEF is a membership organisation which provides business services to help members manage people, processes, environment and more, so that members can meet their regulatory commitments.

Website: www.eef.org.uk

Telephone: 020 7222 7777

Fax: 020 7222 2782

Employers Forum on Age (EFA):

EFA is an independent network of leading employers who recognise the value of an age diverse workforce. In addition to supporting employers, the EFA influences Government, business and trade unions, campaigning for real practical change in preventing age discrimination at work and in the job market.

Website: www.efa.org.uk

Telephone: 0845 456 2495

Email: efa@efa.org.uk

Employers Forum on Belief (EFB):

EFB offers employers practical guidance and shares good practice around issues such as dress codes, religious holidays, the inter-relationship between religious belief and other diversity strands and conflict in the workplace. The forum is not affiliated to any religious group or philosophical belief.

Website: www.efbelief.org.uk

Telephone: 0207785 6533

Email: info@efbelief.org.uk

Employers Forum on Disability (EFD):

EFD is the world's leading employers' organisation focused on disability as it affects business.

Website: www.efd.org.uk

Telephone: 020 7403 3020

Email: enquiries@staging.efd.org.uk

Equality Britain:

Equality Britain aims to promote opportunities in employment, education, housing and sport to people from ethnic minorities.

Website: www.equalitybritain.co.uk

Telephone: 0151 707 6688

Federation of Small Businesses (FSB):

The FSB works to protect, promote, and further the interests of the self-employed and small business sector. It provides a range of member services.

Website: www.fsb.org.uk

Telephone: 01253 336 000

Fax: 01253 348 046

Flexible Support for Business:

Flexible Support for Business provides information and advice for businesses in Wales across all areas of commerce, working with specialists within the Government to help businesses expand, save time and money with instant access to clear, simple and trustworthy advice.

Website: www.business-support-wales.gov.uk

Telephone: 03000 6 03000

Email: businesssupport@wales.gsi.gov.uk

The Gender Trust:

The Gender Trust is the UK's largest charity working to support Transsexual, Gender Dysphoric and Transgender people or those who are affected by gender identity issues. It has a helpline and provides training and information for employers and organisations.

Website: www.gendertrust.org.uk

Telephone: 0845 231 0505

Gender Identity Research and Education Society (GIRES):

GIRES provides a wide range of information and training for Trans people, their families and professionals who care for them.

Website: www.gires.org.uk

Telephone: 01372 801 554

Fax: 01372 272 297

Email: info@gires.org.uk

Government Equalities Office (GEO):

The GEO is the Government department responsible for equalities legislation and policy in the UK.

Website: www.equalities.gov.uk

Telephone: 020 7944 4400

Health and Safety Executive (HSE):

The HSE provides information and guidance on health and safety.

Website: www.hse.gov.uk

Telephone: 08701 545 500

Email: hseinformationservices@natbrit.com

Healthy Minds at Work:

Healthy Minds at Work is a Wales-based initiative to help prevent absence from work due to stress-related illnesses through improving the welfare of employees.

Website: www.healthymindsatwork.org.uk

Email: info@healthymindsatwork.org.uk

Investors in People (IiP):

IiP offers a business improvement tool designed to help all kinds of organisations develop performance through their people. It provides tailored assessments designed to support organisations in planning, implementing and evaluating effective strategies and is relevant for organisations of all sizes and sectors.

Website: www.investorsinpeople.co.uk

Telephone: 020 7467 1900

Email: info@investorsinpeople.co.uk

Mindful Employer:

Mindful Employer provides information, advice and practical support for people whose mental health affects their ability to find or remain in employment, training, education and voluntary work.

Website: www.mindfulemployer.net

Telephone: 01392 208 833

Email: info@mindfulemployer.net

Opportunity Now:

Opportunity Now is a membership organisation representing employers who want to ensure inclusiveness for women, supporting their potential to be as economically active as men. Opportunity Now is part of Business in the Community.

Website: www.opportunity.org.uk

Telephone: 0207 566 8650

Press for Change (PfC):

PfC is a political lobbying and educational organisation. It campaigns to achieve equality and human rights for all Trans people in the UK through legislation and social change. It provides legal advice, training and consultancy for employers and organisations as well as undertaking commissioned research.

Website: www.transequality.co.uk / www.pfc.org.uk

Telephone: 0161 432 1915 (10:00–17:00, Thursdays only until further notice)

Email: transequality@pfc.org.uk

Race for Opportunity (RfO):

RfO is a network of private and public sector organisations working across the UK to promote the business case for race and diversity. It is part of Business in the Community.

Website: www.raceforopportunity.org.uk

Telephone: 0207 566 8716

Sainsbury Centre for Mental Health:

The Sainsbury Centre for Mental Health works to improve the quality of life for people with mental health conditions. They carry out research, policy work and analysis to improve practice and influence policy in mental health as well as public services.

Website: www.scmh.org.uk

Telephone: 020 7827 8300

Email: contact@scmh.org.uk

Small Business UK:

Small Business UK provides resources, products and services for small business owners and start-ups. It offers free online advice in the form of news articles, guides, tips and features to help people set up and run small businesses.

Website: www.smallbusiness.co.uk

Telephone: 020 7250 7010

Stonewall:

Stonewall is the UK's leading lesbian, gay and bisexual charity and carries out campaigning, lobbying and research work as well as providing a free information service for individuals, organisations and employers.

Website: www.stonewall.org.uk

Telephone: 08000 50 20 20

Email: info@stonewall.org.uk

The Age and Employment Network (TAEN):

An independent charity whose mission is to promote an effective job market that serves the needs of people in mid- and later life, employers and the economy.

Website: www.taen.org.uk

Telephone: 020 7843 1590

TUC – the Trades Union Congress (England and Wales):

With 59 member unions representing over six and a half million working people, the TUC campaigns for a fair deal at work and for social justice at home and abroad.

Website: www.tuc.org.uk

Telephone: 020 7636 4030

Scottish Trades Union Congress (STUC):

Website: www.stuc.org.uk

Telephone: 0141 337 8100

Email: info@stuc.org.uk

Train to Gain:

Advice and resources for businesses looking for support in training their staff.

Website: www.traintogain.gov.uk

Telephone: 0845 600 9006

Working Families:

Working Families is a work–life balance organisation, helping children, working parents and carers and their employers find a better balance between responsibilities at home and work.

Website: www.workingfamilies.org.uk

Telephone: 0800 013 0313

Email: office@workingfamilies.org.uk

Workwise:

Workwise aims to make the UK one of the most progressive economies in the world by encouraging the widespread adoption of smarter working practices in order to gain better productivity and to balance work–life pressures.

Website: www.workwiseuk.org

Telephone: 01252 311 557

Email: enquiries@workwiseuk.org

6. Glossary

accessible venue	A building designed and/or altered to ensure that people, including disabled people, can enter and move round freely and access its events and facilities.
Act	A law or piece of legislation passed by both Houses of Parliament and agreed to by the Crown, which then becomes part of statutory law (ie is <i>enacted</i>).
affirmative action	Positive steps taken to increase the participation of under-represented groups in the workplace. It may encompass such terms as positive action and positive discrimination. The term, which originates from the United States of America, is not used in the Equality Act.
age	This refers to a person belonging to a particular age group, which can mean people of the same age (e.g. 32-year-olds) or range of ages (e.g. 18–30-year-olds, or people over 50).
agent	A person who has authority to act on behalf of another ('the principal') but who is not an employee.
all reasonable steps	In relation to harassment by an employee, all the things which the employer could reasonably have done to stop it; in relation to reasonable adjustments, 'reasonable steps' is another term for the things that the employer could reasonably have done to remove the disadvantage.
alternative format	Media formats which are accessible to disabled people with specific impairments, for example Braille, audio description, subtitles and Easy Read.
anticipatory duty	For service providers, the duty to make reasonable adjustments is anticipatory; within reason, it is owed to all potential disabled customers and not just to those who are known to the service provider.
armed forces	Refers to military service personnel.

associate members	A person who has access to some or all of an association's benefits, facilities and services because they are a member of another associated private club.
associated with	Where a victim of discrimination does not have a protected characteristic but is discriminated against because of their association with someone who does e.g. the parent of a disabled child.
association	An association of people sharing a particular characteristic or interest which has at least 25 members, where admission to membership is regulated and involves a process of selection.
association with	See associated with.
auxiliary aid	Usually a special piece of equipment to improve accessibility.
auxiliary service	A service to improve access to something often involving the provision of a helper/assistant.
Bill	A draft Act, not passed or in force.
breastfeeding	When a woman feeds her baby with breast milk. Breastfeeding is specifically protected for the first 26 weeks after birth by the pregnancy and maternity discrimination provisions in relation to non-work cases.
by association	In the Act, this refers to discrimination against a person who does not have a protected characteristic but because of their association with someone who has a protected characteristic. See <i>also</i> 'associated with'.
charity	A body (whether corporate or not) which is for a statutory charitable purpose that provides a benefit to the public.
civil, diplomatic, armed or security and intelligence services	Respectively, this refers to (i) the civil service, (ii) the diplomatic service (iii) the armed forces, (iv) organisations responsible for internal security and counter-intelligence (but not civil police forces).
clients	A customer or patron of a service or organisation, generally where the service provider is professional and is in a position of trust and confidence.

Code of Practice	A statutory guidance document which must be taken into account by the Courts when applying the law and which may assist people to comply with the law.
Comparator	A person with whom a claimant compares themselves to establish less favourable treatment in a discrimination case.
customers	People who buy or use goods or services.
Data Protection	Safeguards concerning personal data provided for by statute, mainly the Data Protection Act 1998.
different needs	Refers to the different requirements that people with protected characteristics may have which either must or should be met to provide equality, including equality of opportunity and access.
direct discrimination	Less favourable treatment of a person compared with another person because of a protected characteristic.
directly discriminatory	See direct discrimination.
disability	A person has a disability if he or she has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.
disabled person	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.
disadvantage	A detriment or impediment – something that the individual affected might reasonably consider changes their position for the worse.
disadvantaged	When someone suffers a detriment or finds an impediment to enjoying a benefit in comparison with others because of a characteristic of theirs; encountering a pre-existing barrier which is inherent in their workplace but which doesn't have the same effect on others.
discriminate unlawfully	See unlawful discrimination.

discriminating directly or indirectly	Refers to discrimination because of a person's protected characteristic (direct); or discrimination that occurs when a provision, criteria or practice is applied that creates disproportionate disadvantage for a person with a protected characteristic as compared to those who do not share that characteristic (indirect).
discrimination arising from disability	When a person is treated unfavourably because of something arising in consequence of their disability.
disproportionately low	Refers to situations where people with a protected characteristic are under-represented (e.g. in the workforce or among service users) compared to their numbers in the population.
diversity	Where many different types of people are included.
duty to make reasonable adjustments	Where a disabled person is at a substantial disadvantage in comparison with people who are not disabled, there is a duty to take reasonable steps to remove that disadvantage by (i) changing provisions, criteria or practices, (ii) altering, removing or providing a reasonable alternative means of avoiding physical features, and (iii) providing auxiliary aids.
educational establishments	Schools, colleges and higher educational institutions.
employee	A person who carries out work for a person under a contract of service, a contract of apprenticeship, or a contract personally to do work; or a person who carries out work for the Crown or a relevant member of the Houses of Parliament staff. See <i>also</i> worker.
employer	A person who makes work available under a contract of service, a contract of apprenticeship, the Crown or a relevant member of the Houses of Parliament staff.
employment service provider	A person who provides vocational training and guidance, careers services and may supply employers with workers.
employment services	Vocational training and guidance, finding employment for people, supplying employers with workers.

equal pay audit	Comparing the pay of women and men who are doing equal work in an organisation, and investigating the causes of any pay gaps by gender or working pattern. The provisions in the Act directly relating to equal pay refer to sex equality but an equal pay audit could be applied to other protected characteristics to help an employer equality proof their business.
equal work	A woman's work is equal to a man's in the same employment (and vice versa) if it is the same or broadly similar (like work); rated as equivalent to his work under a job evaluation scheme or if she can show that her work is of equal value to his in terms of the demands made of her.
equality clause	A sex equality clause is read into a person's contract of employment so that where there is a term which is less favourable than that enjoyed by someone of the opposite sex doing equal work, that term will be modified to provide equal terms.
equality policy	A statement of an organisation's commitment to the principle of equality of opportunity in the workplace.
equality training	Training on equality law and effective equality practice.
exceptions	Where, in specified circumstances, a provision of the Act does not apply.
flexible working	Working different hours or at home, including to accommodate disability or childcare commitments.
gender reassignment	The process of changing or transitioning from one gender to another. <i>See also</i> transsexual person.
Gender Recognition Certificate	A certificate issued under the Gender Recognition Act to a transsexual person who has, or has had gender dysphoria, has lived in the acquired gender throughout the preceding two years, and intends to continue to live in the acquired gender until death.
goods, facilities or services	Goods refer to moveable property; facilities to opportunities to enjoy a benefit or do something; and services to provisions for meeting people's needs. Goods, facilities and services are available to the public or any part of it.

guaranteed interview scheme	This is a scheme for disabled people which means that an applicant will be invited for interview if they meet the essential specified requirements of the job.
guests	People invited to enjoy an association's benefits, facilities or services by that association or a member of it.
harass	To behave towards someone in a way that violates their dignity, or creates a degrading, humiliating, hostile, intimidating or offensive environment.
harassment	Unwanted behaviour that has the purpose or effect of violating a person's dignity or creates a degrading, humiliating, hostile, intimidating or offensive environment. <i>See also</i> sexual harassment.
impairment	A functional limitation which may lead to a person being defined as disabled according to the definition under the Act. <i>See also</i> disability.
indirect discrimination	The use of an apparently neutral practice, provision or criterion which puts people with a particular protected characteristic at a disadvantage compared with others who do not share that characteristic, and applying the practice, provision or criterion cannot be objectively justified.
indirectly discriminatory	<i>See</i> indirect discrimination.
Information Society Service Provider (ISSP)	A service provider which provides electronic data storage, usually for payment, for example, selling goods online.
instruction to discriminate	When someone who is in a position to do so instructs another to discriminate against a third party. For example, if a GP instructed her receptionist not to register anyone who might need help from an interpreter, this would amount to an instruction to discriminate.
insurance business	An organisation which provides financial protection against specified risks to clients in exchange for payment.

job evaluation study	This is a study undertaken to evaluate jobs in terms of the demands made on a person, using factors such as effort, skill and decision-making. This can establish whether the work done by a woman and a man is equal, for equal pay purposes. See <i>also</i> equal work.
judicial review	A procedure by which the High Court supervises the exercise of public authority power to ensure that it remains within the bounds of what is lawful.
less favourably	Worse, not as well as.
like work	See equal work.
manifest	Refers to the appearance or expression of a protected characteristic. For example manifestations of sexual orientation can include the person's appearance, the places they visit or the people they mix with.
manifestation	Appearance or expression. See manifest.
marriage and civil partnership	Marriage is defined as a 'union between a man and a woman'. Same-sex couples can have their relationships legally recognised as 'civil partnerships'. Civil partners must not be treated less favourably than married couples.
maternity	See pregnancy and maternity.
maternity leave	Leave which a woman can take whilst she is pregnant and after the birth of her child divided into compulsory, ordinary and additional maternity leave. How much leave a woman is entitled to will vary, but all women employees are entitled to 26 weeks.
members	People who have been formally accepted into membership of an association.
minister	Someone who is authorised to perform religious functions, such as weddings.
monitor	See monitoring.
monitoring	Monitoring for equality data to check if people with protected characteristics are participating and being treated equally. For example, monitoring the representation of women, or disabled people, in the workforce or at senior levels within organisations.

monitoring form	A form which organisations use to collect equality monitoring data – from, for example, job applicants or service users. It records information about a person’s sex, age, disability, race, religion, or sexual orientation. It is kept separately from any identifying information about the person.
more favourably	To treat somebody better than someone else. This is unlawful under the Act if it is because of a protected characteristic except in very limited circumstances e.g. the duty to make reasonable adjustments for a disabled person. The law can require pregnant workers to be treated more favourably in some circumstances.
national security	The security of the nation and its protection from external and internal threats, particularly from activities such as terrorism and threats from other nations.
needs that are different	See different needs.
Normal retirement age	This is the retirement age at which, in practice, employees in a particular job and workplace would normally expect to retire. Normal retirement age can differ from the contractual retirement age. If it is under 65, it must be objectively justified.
objective justification	When something (e.g. an otherwise discriminatory action) can be objectively justified. <i>See also</i> objectively justified.
objectively justified	When something can be shown to be a proportionate means of achieving a legitimate aim – that is, the way of achieving the aim is appropriate and necessary.
occupational health	Occupational health can be defined as the ongoing maintenance and promotion of physical, mental and social wellbeing for all workers.
occupational health practitioner	A health professional providing occupational health services.
occupational pension	A pension which an employee may receive after retirement as a contractual benefit.

occupational requirement	Where having a protected characteristic is an occupational requirement, certain jobs can be reserved for people with that protected characteristic (e.g. Women support workers in women's refuges; Ministers of Religion).
office-holders	There are personal and public offices. A personal office is a remunerated office or post to which a person is appointed personally under the direction of someone else. A public office is appointed by a member of the government, or the appointment is recommended by them, or the appointment can be made on the recommendation or with the approval of both Houses of Parliament, the Scottish Parliament or the National Assembly for Wales.
organised religion	Refers to a religion which manifests its beliefs through organised worship.
palantypist	Also known as 'Speech to Text Reporter'. A palantypist reproduces speech into a text format onto a computer screen at verbatim speeds for Deaf or hard of hearing people to read.
past disability	A person who has had a disability as defined by the Equality Act.
perception	In the Equality Act, the belief that someone has a protected characteristic, whether or not they do have it.
physical barriers	A physical feature of a building or premises which places disabled people at a substantial disadvantage compared to non-disabled people when accessing goods, facilities and services or employment. <i>See also</i> physical features.
physical features	Anything that forms part of the design or construction of a place of work, including any fixtures, such as doors, stairs etc. Physical features do not include furniture, furnishings, materials, equipment or other chattels in or on the premises.

positive action	Refers to a range of lawful actions that seek to overcome or minimise disadvantages (e.g. in employment opportunities) that people who share a protected characteristic have experienced, or to meet their different needs.
positive discrimination	Treating someone with a protected characteristic more favourably to counteract the effects of past discrimination. It is generally not lawful although the duty to make reasonable adjustments is an exception where treating a disabled person more favourably may be required by law.
practicable	Capable of being carried out or put into effect.
pregnancy and maternity	Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.
pregnant	See pregnancy and maternity.
private disposals	When an owner-occupier disposes of property (i.e. sells or leases etc.) without using an estate agent or publishing an advert in connection with the 'disposal'.
procurement	The term used in relation to the range of goods and services a public body or authority requires and delivers. It includes sourcing and appointment of a service provider and the subsequent management of the goods and services being provided.
professional organisations	A body of persons engaged in the same profession, formed usually to provide advice, maintain standards, and represent the profession in discussions with other bodies about professional concerns.
proportionate	This refers to measures or actions that are appropriate and necessary. Whether something is proportionate in the circumstances will be a question of fact and will involve weighing up the discriminatory impact of the action against the reasons for it, and asking if there is any other way of achieving the aim.

protected characteristics	These are the grounds upon which discrimination is unlawful. The characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
protected period	This refers to the time in a work context when the specific prohibition against unfavourable treatment of expectant and new mothers applies. The period begins at the start of a woman's pregnancy and continues until the end of her maternity leave.
provision, criterion or practice	Identifying a provision, criterion or practice is key to establishing indirect discrimination. It can include, for example, any formal or informal policies, decisions, rules, practices, arrangements, criteria, conditions, prerequisites or qualifications.
public authority	Organisations and individuals that carry out public functions – this would include, for example, government departments, local authorities, health authorities and hospitals, schools, prisons, and police.
public bodies	Public bodies are defined as bodies which have a role in the processes of national Government but are not a Government department or part of one. They operate to a greater or lesser extent at arm's length from Ministers.
public functions	Any act or activity undertaken by a public authority in relation to delivery of a public service or carrying out duties or functions of a public nature e.g. the provision of policing and prison services, healthcare, including residential care of the elderly, government policy-making or local authority planning services.
public sector equality duty	The duty on a public authority when carrying out its functions to have due regard to the need to eliminate unlawful discrimination and harassment, foster good relations and advance equality of opportunity.
qualifications bodies	An authority or body which can confer qualifications.

questions procedure	A discrimination law procedure whereby a pre-action questionnaire is issued to the respondent/defendant, i.e. the person or organisation against whom a discrimination claim may be made.
race	Refers to the protected characteristic of race. It refers to a group of people defined by their race, colour, nationality (including citizenship), ethnic or national origins.
rated as equivalent	An equal pay concept – see equal work.
reasonable	What is considered reasonable will depend on all the circumstances of the case including the size of an organisation and its resources, what is practicable, the effectiveness of what is being proposed and the likely disruption that would be caused by taking the measure in question as well as the availability of financial assistance.
reasonable adjustment	See the duty to make reasonable adjustments.
reasonable steps	See the duty to make reasonable adjustments.
reasonably	See reasonable.
reasonably believe	This refers to a belief based on objective grounds.
regulations	Secondary legislation made under an Act of Parliament (or European legislation) setting out subsidiary matters which assist in the Act's implementation.
religion or belief	Religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief (e.g. atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition.
religion or belief organisations	An organisation founded on an ethos based on a religion or belief. Faith schools are one example of a religion or belief organisation. See <i>also</i> religion or belief.
religious organisation	See religion or belief organisations.

retirement age	The age at which an employee retires. This may be the national default retirement age, if there is one, or an age which is set in the contract of employment but which must be capable of being objectively justified.
right to request flexible working	The legal right that qualifying employees, e.g. carers of children have, to request flexible working, e.g. a change in the way you work or the hours you work.
same employment	An equal pay concept (see equal work). Generally, women and men can compare their pay and other conditions with those employed by the same or an associated employer.
separate services	Services only provided for one sex.
service complaint	A complaint about service delivery.
service provider	Someone (including an organisation) who provides services, goods or facilities to the general public or a section of it. <i>See also</i> goods, facilities and services.
service users	Those accessing or using a particular service. <i>See also</i> goods, facilities and services.
services	<i>See</i> goods, facilities and services.
services, goods or facilities	<i>See</i> goods, facilities and services.
sex	This is a protected characteristic. It refers to whether a person is a man or a woman (of any age).
sexual harassment	Any conduct of a sexual nature that is unwanted by the recipient, including verbal, non-verbal and physical behaviours, and which violates the victim's dignity or creates an intimidating, hostile, degrading or offensive environment for them.
sexual orientation	Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.
single-sex facilities	Facilities which are only available to men or to women, the provision of which may be lawful under the Equality Act.

single-sex services	A service provided only to men or women. It is not always discriminatory to provide single-sex services, for example provision of single-sex changing facilities in a leisure centre.
small premises	Premises are small if they are not normally sufficient to accommodate more than two other households (and no more than six people in addition to the owner-occupier and/or their relatives and/or close relations).
stakeholders	People with an interest in a subject or issue who are likely to be affected by any decision relating to it and/or have responsibilities relating to it.
substantial disadvantage	A disadvantage which is more than minor or trivial.
terms of employment	The provisions of a person's contract of employment, whether provided for expressly in the contract itself or incorporated by statute, custom and practice or common law etc.
textphone	A type of telephone for Deaf or hard of hearing people which is attached to a keyboard and a screen on which the messages sent and received are displayed.
trade unions	These are organisations formed to represent workers' rights and interests to their employers, for example in order to improve working conditions, wages or benefits. They also advocate more widely on behalf of their members' interests and make recommendations to government, industry bodies and other policy makers.
transsexual person	Refers to a person who has the protected characteristic of gender reassignment. This may be a woman who has transitioned or is transitioning to be a man, or a man who has transitioned or is transitioning to be a woman. The law does not require a person to undergo a medical procedure to be recognised as a transsexual person.
Two Ticks symbol	A sign awarded by Jobcentre Plus to employers who are positive about employing disabled people and are committed to employing, keeping and developing disabled staff.

UK Text Relay Service	Text Relay is a national telephone relay service for Deaf, deafened, hard of hearing, deafblind and speech-impaired people. It lets them use a textphone to access any services that are available on standard telephone systems.
unfavourably	The term is used (instead of less favourable) where a comparator is not required to show that someone has been subjected to a detriment or disadvantage because of a protected characteristic – for example in relation to pregnancy and maternity discrimination.
unlawful	Not permitted by law (as distinct from illegal which means 'forbidden by law'). On occasions, unlawful and illegal may be synonymous, but unlawful is more correctly applied in relation to civil (as opposed to criminal) wrongs.
unlawful disability discrimination	See unlawful discrimination and discrimination arising from disability.
Unlawful discrimination	When an employer or service provider has engaged in prohibited conduct against someone with a protected characteristic (discriminated against them) and does not have a valid defence.
unlawful discrimination because of disability	See unlawful discrimination and discrimination arising from disability.
unlawful indirect discrimination	See indirect discrimination.
unlawfully discriminated	See discriminate unlawfully and unlawful discrimination
unlawfully discriminated	See unlawful discrimination
unreasonable	Not reasonable, beyond what's practicable. <i>See also</i> reasonable.
victimisation	Subjecting a person to a detriment because they have done a protected act or there is a belief that they have done a protected act i.e. bringing proceedings under the Equality Act; giving evidence or information in connection with proceedings under the Act; doing any other thing for the purposes or in connection with the Act; making an allegation that a person has contravened the Act.

victimise	The act of victimisation.
vocational service	A range of services to enable people to retain and gain paid employment and mainstream education.
vocational training	Training to do a particular job or task.
work of equal value	See equal work.
work situation	Refers to the employment and workplace context – if disputes or discrimination complaints arise in relation to work they will be heard in the Employment Tribunal.
WORKSTEP	The WORKSTEP employment programme provides support to disabled people facing complex barriers to getting and keeping a job. It also offers practical assistance to employers.
worker	The definition of 'employee' given above also encompasses that of 'worker'. However, in employment law, worker is generally a wider category than employee and includes a contract personally to do work.
worse	When someone is treated less favourably they are treated worse than someone else, literally something which is not as good as someone or something else.

This guide is one of a series written by the Equality and Human Rights Commission to explain your responsibilities under equality law if you are a person or organisation employing people to work for you.

There are 7 guides:

1. What equality law means for you as an employer: when you recruit someone to work for you
2. What equality law means for you as an employer: working hours, flexible working and time off
3. What equality law means for you as an employer: pay and benefits
4. What equality law means for you as an employer: training, development, promotion and transfer
5. What equality law means for you as an employer: managing workers
6. What equality law means for you as an employer: dismissal, redundancy, retirement and after a worker has left
7. Good equality practice for employers: equality policies, equality training and monitoring

We have also produced:

- A separate series of guides explaining the responsibilities people and organisations have if they are providing services, carrying out public functions or running an association
- Different guides which explain people's rights at work and in relation to people and organisations providing services, carrying out public functions or running an association

If you would like a copy of any of these guides or require this guide in an alternative format, please call our helpline on **0845 6046610** Monday to Friday 8am to 6pm or see our website **www.equalityhumanrights.com**.