

6. Your rights to equality at work: dismissal, redundancy, retirement and after you have left a job.

Equality Act 2010 Guidance for employees.
Vol. 6 of 6.



Equality and
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Introduction

This guide is one of a series written by the Equality and Human Rights Commission to explain your rights under 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 six guides giving advice on your rights under equality law when you are at work, whether you are an employee or in another legal relationship to the person or organisation you are working for. The guides look at the following work situations:

1. When you apply for a job
2. Working hours and time off
3. Pay and benefits
4. Promotion, transfer, training and development
5. When you are being managed
6. Dismissal, redundancy, retirement and after you've left

Other guides and alternative formats

We have also produced:

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

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 tribunal 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. Your rights to equality at work: dismissal, redundancy, retirement and after you have left a job

What's in this guide

If your employer is making decisions about:

- dismissing you, or
- making you redundant, or
- your retirement because you are about to reach a particular age (when special procedures must be followed), or
- what they do after you have stopped working for them, such as when they give you a reference,

equality law applies to what they are doing.

Equality law applies:

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

This guide tells you what your employer must do to 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 every employer (and anyone who works for them) must do things.

It covers the following situations and subjects (we explain what any unusual words mean as we go along):

- Dismissal, whether that is for misconduct or because your employer believes you can no longer do the job
- Redundancy when your job is no longer needed
- Retirement when you have reached a particular age
- After you have stopped working for an employer, for example, if you ask 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 dismissal, redundancy, retirement or after you've stopped working for someone:

- Information about when an employer is responsible for what other people do, such as their employees.
- Information about reasonable adjustments to remove barriers if you are a disabled person.
- Advice on what to do if you believe you'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.

Your rights not to be discriminated against at work: what this means for how your employer must behave towards you

Are you a worker?

This guide calls you a **worker** if you are working for someone else (who this guide calls your **employer**) in a **work situation**. Most situations are covered, even if you don't have a written **contract of employment** or if you 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:

- Your employer must not treat you 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.

- If you are a woman who is **pregnant** or on **maternity leave**, the test is not whether you are treated worse than someone else, but whether you are treated **unfavourably** from the time you tell your employer you are pregnant to the end of your maternity leave (which equality law calls the **protected period**) because of your pregnancy or a related illness or because of maternity leave.
- Your employer must not do something to you in a way that has a worse impact on you and other people who share a particular protected characteristic than on people who do not have that protected characteristic. Unless your employer can show that what they 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.

- If you are a disabled person, your employer must not treat you **unfavourably** because of something connected to your disability where they cannot show that what they are doing is **objectively justified**. This only applies if an employer knows or could **reasonably** have been expected to know that you are 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.

- Your employer must not treat you worse than someone else because you 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.

- Your employer must not treat you worse than someone else because they incorrectly think you 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.

- Your employer must not treat you badly or **victimise** you because you have complained about discrimination or helped someone else complain or done anything to uphold your 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 if your employer dismisses you or selects you for redundancy or discriminates against you after you've stopped working for them because you have discussed whether you 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: *Your rights to equality at work: pay and benefits*.

- Your employer must not **harass** you.

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, if you are a disabled person, to make sure that you 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, your employer 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.

Your employer must make reasonable adjustments to what they do as well as the way that they 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 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**, or
- 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 applying for a job.

As well as these exceptions, equality law allows an employer 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 limits

Age is different from other protected characteristics. If your employer can show that it is **objectively justified**, they 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. Employers must 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 your employer can make redundancy payments based on someone's age, and what they must and must not do if they want an employee to retire because they have reached a particular age.

Occupational requirements

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

Obeying another law

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

National security

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

Having or not having a particular religion or belief if an employer is a religion or belief organisation

If an employer is a **religion or belief organisation**, they 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**. The employer 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 an employer is 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,

an employer 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**.

What's next in this guide

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

- Dismissing you, whether that is for misconduct or because your employer says you can no longer do the job
- Making you redundant when your job is no longer needed
- Retiring you because you have reached a particular age
- Dealing with you after you have stopped working for them, for example, if you or your new employer ask for a reference

If your employer tells you that you are facing dismissal or redundancy or if you do not want to retire at a particular age, it is worth getting advice before your employer starts the procedures that would result in your losing your job. There are a number of different organisations who may be able to help you, and you can find contact details for some of them in Chapter 5: *Further sources of information and advice*. You should also consider talking to your trade union if you have one.

Dismissal

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

This section looks at three issues:

- Reasons and procedures
- If you are a disabled person and your employer wants to dismiss you
- If you are a disabled person and your employer wants to dismiss you because they say you can no longer do the job

Fair and unfair dismissal

This guide only tells you about equality law. There are other laws which your employer needs to follow to make sure a dismissal is fair, in the sense that the proper procedures have been followed. You can find out more about these from Acas, whose contact details are in Chapter 5: *Further sources of information and advice*.

Reasons and procedures

Your employer must avoid unlawful discrimination in why they do something and the way that they do it.

They must make sure that their reasons for dismissing you do not amount to unlawful discrimination.

They must make sure that the disciplinary procedures they follow do not unlawfully discriminate 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: *Your rights to equality at work: when you are being managed*.

If you are a disabled person and your employer wants to dismiss you

If you are a disabled person, there are extra steps your employer must take before they dismiss you. This is because they must consider not only whether they are **discriminating directly** or **indirectly** because of your disability, but also:

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

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.

If you are a disabled person and your employer wants to dismiss you because they say you can no longer do the job

If you are a disabled person, your employer must be particularly careful to avoid unlawful discrimination if the reason why they believe they need to dismiss you is because you can no longer do the job, for example, because you 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 employer genuinely agree that you should leave, then it is unlikely you will have a claim for unlawful discrimination.

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

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

What this means in practice

Before your employer considers making you leave because of disability they should have thoroughly explored all other options to make reasonable adjustments to keep you at work.

This includes looking at any changes they could make to your working arrangements, or the physical features of the workplace, or whether they 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 your impairment is becoming more severe for you but this is not impacting on your ability to do the job then this should not be part of a decision about whether you continue to work.

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

If your employer does not look at reasonable adjustments, then requiring you to stop working may be unlawful disability discrimination.

Reasonable adjustments

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

- A phased return to work if you have been off for a long while.
- Part-time or flexible hours if you are finding full-time working difficult.
- Changes to premises, such as installing a ramp, improving signs, or moving your desk nearer essential office equipment.
- Provision of additional equipment, such as specific computer software or hardware if this is relevant to your job.
- Additional support (for example, a part-time reader if you have a visual impairment to help manage the volume of written information which you have to get through).
- Reassigning some elements of your job to another member of staff or transferring you to another role in the 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 you themselves, your employer may wish to consider seeking expert advice on the extent of your 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, your employer should be cautious about relying on medical advice alone to assess your 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 you to leave

If after consideration of:

- the impact of your disability on the job
- any reasonable adjustments
- discussions between you and your employer, and
- (where appropriate) expert advice

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

Redundancy decisions

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

This section looks at how your employer must make sure they are not discriminating unlawfully in selecting people for redundancy, and in particular:

- Redundancy procedures and criteria
- Which jobs are in the selection pool?
- The matrix factors and how your employer scores workers against them
 - Length of service
 - Absence record and working hours
 - Training and qualifications
- Avoiding 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 your employer needs to follow to make sure a redundancy dismissal is fair, in the sense that the proper procedures have been followed. You can find out more about these from Acas, whose contact details are in Chapter 5: *Further sources of information and advice*.

Your employer must make sure that the redundancy procedures they follow and the criteria they use do not unlawfully discriminate. If you are a disabled person, failing to make reasonable adjustments, including adjustments to redundancy criteria and procedures, is a form of unlawful discrimination.

This applies whether your employer is seeking volunteers for redundancy or making compulsory redundancies.

Which jobs are in the selection pool?

Which jobs is your employer selecting from? In other words, what is the pool from which they will be making their selection?

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

If your employer is 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, they must make sure that their 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 criterion 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.

The matrix factors and how your employer scores workers against them

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

We look at the following criteria in more detail, because they are criteria where an employer may be more likely to discriminate 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

then using this criterion might be discriminatory.

- Length of service should only be one of the factors your employer considers 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 an employer is 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 they can show:
 - that length of service is a **proportionate** way of achieving their aim
 - why their 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, they should use additional criteria based on other factors to make sure that they are selecting in a way that does not discriminate.

Absence records and working hours

If your employer uses workers' absence records or working hours to select people for redundancy, they 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 your employer needs to consider which absences they will include if they are using attendance record as one of their criteria. They should 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: *Your rights to equality at work: working hours, flexible working and time off*.

Training and qualifications

The appropriateness of using qualifications to select people for redundancy will vary according to the situation. If your employer has 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.

They 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 your employer uses qualifications which are not especially relevant or define the qualifications too narrowly without thinking through the consequences, they may find they are unlawfully discriminating if those qualifications would have a worse impact on people who share a protected characteristics and cannot be objectively justified. For example choosing to make redundant just those employees with a qualification from a non-British university.

Avoiding discrimination against disabled people

When your employer is considering a redundancy situation and you are a disabled person, there are particular requirements to make sure that you are not being placed at a disadvantage for reasons relating to your disability. Where necessary, your employer must make **reasonable adjustments** to the criteria and process.

If you are in the pool from which people will be selected for redundancy, you are a disabled person, and your employer knew or could reasonably be expected to know this, they must not treat you unfavourably because of something connected to your disability unless they can show that what they 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, your employer must make reasonable adjustments if these are needed to remove barriers you face which a non-disabled person would not face. What this means is that an employer must first consider what adjustments would remove the barriers for you and second, if they are reasonable adjustments, your employer 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.

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

Your employer also needs to make sure that, if you are a disabled person being considered for redundancy or you wish to apply for voluntary redundancy, you do 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 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 the same organisation or with an associated employer, an employer should make sure these are offered to potentially redundant employees using criteria which do not unlawfully discriminate.

The situation is different if you are on maternity leave at the time you are being considered for redundancy.

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

Instead, your employer must offer you any suitable available job with them, their successor (if the 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 you 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 as they will find it harder to build up the longer service), your employer is 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 an employer has their own contractual redundancy scheme that uses age or length of service in a different way, this may be unlawful discrimination unless they can **objectively justify** what they 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 in Chapter 5.

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
- The notice required for retirement
- 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.

An employer must operate their retirement policy without unlawful discrimination. This means they 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 you are a disabled person, for a reason connected with your disability unless they can objectively justify doing this.

If your employer:

- has a Normal Retirement Age of 65 or over, or
- uses the Default Retirement Age of 65, or
- has a Normal Retirement Age of below 65 which they have objectively justified,

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

If they do not follow the procedure, then it is likely that the retirement dismissal 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 you are not a worker in these categories, but are in another **work situation**, a retirement policy that means you must leave work just because you 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.

If you are a disabled person, your employer must provide information about retirement to you 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 the new rules mean for you.

Your employer does not have to set a retirement age. They can, if they choose, make an individual decision in conjunction with each worker about the point at which they will stop working for them because of age.

The notice required for retirement

If your employer wants to be able to tell you to retire when you reach a particular age, they must decide what that age is. This is explained in more detail later in this section of this guide. Your employer also has to follow the procedure set out in the law.

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

An employer must give you between twelve and six months' notice before your 'intended retirement date', which is sometimes called the 'planned retirement date'. The intended retirement date is when you reach whatever age has been set for retirement.

Your employer must write and tell you:

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

What happens next

If you agree that you should leave on the intended retirement date, then that is what will happen.

If you wish to continue working, you must ask to do so in writing no less than three months before the intended retirement date provided you have been informed of your retirement date in writing.

- Your request to keep working must be made in writing and state that it is made under Schedule 6 Paragraph 5 of the Employment Equality (Age) Regulations 2006.
- You should say whether you want to carry on working indefinitely or for a set period. If it is a set period, say what that period is
- You can also say why you do not want to retire, but you do not have to do this.

You can only make one request (and one appeal) in relation to an intended retirement date.

If your employer agrees your request to keep working, they must:

- Tell you this in writing as soon as they have reached a decision.

- You will then continue working beyond the intended retirement date, and the rest of this procedure is unnecessary.

If your employer does not agree to your request at once or does not agree the period you have asked to carry on working for, they must hold a meeting to consider the request before they make a decision. You have the right to be accompanied by a trade union representative or other colleague at any meeting to discuss your retirement.

If, after the meeting, your employer agrees your request to keep working, you must be told in writing as soon as they have reached a decision. You can carry on working and the rest of this procedure is unnecessary.

If, after the meeting, your employer still does not agree to your request to continue working, you must still be told in writing as soon as a decision has been reached. Your employer does not have to give any reasons. Your employment continues until the intended retirement date – or the day after they have been informed of the decision if this is later.

You can appeal against a decision. The appeal can be either because your employer has refused your request altogether or because they have proposed a different period for you to continue working. Your employer must hold a meeting as soon as possible to consider your appeal (although this could be after you have left if this has all happened very close to your retirement date). You have the right to be accompanied by a trade union representative or other colleague.

If your employer does agree that you can continue to work beyond the original retirement date, whether they agree this when you first request it or at any other stage of the process, this will be for a set period or indefinitely.

The procedures your employer has to follow when you approach your new intended retirement date will depend on what was agreed:

- If your employer agreed a set period, and this is six months or less beyond the original intended retirement date, they do not have to go through this procedure again. You will stop working on that date. You cannot make a further request to continue working beyond that date using these procedures. This does not, of course, stop you and your employer agreeing a new date further ahead if this is what you both want.
- If:
 - your employer agreed a set period, and this is more than six months beyond the original intended retirement date, or
 - your employer agreed an indefinite period,

then your employer must go through this procedure again, between twelve and six months before the new intended retirement date. If your employer agreed an indefinite period, they can decide when to start the procedure, as long as this is at least six months after the original intended retirement date.

What happens if the procedures aren't followed

If you are given less than six months' notice of the date of retirement or your right to request to continue working, your employer will have to pay compensation of up to eight weeks' pay.

However, your employer may still be able to rely on the exception for retirement to escape liability for age discrimination. They would be expected to give you 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. Provided they then follow the rest of the proper procedures and can show that the reason for dismissal is genuinely retirement, they will not be liable.

For example:

Because of inaccurate records, an employer who uses a retirement age of 65 only becomes aware that an employee is approaching their 65th birthday three months beforehand. The employer immediately issues the employee with a written notice of intended retirement on their 65th birthday and informs them of their 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 weeks' 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 the employee is given less than six months' notice, or no notice at all, of the intended date of retirement
- where the employer has 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 an employee's contract of employment, if in practice they are required by their employer to retire at a different age. If an employer is going to write to workers to tell them when their retirement age is, they must decide whether it is the age in their contract (if any) or if they have in effect been operating another age.

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

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

If Normal Retirement Age lower than 65 is set, the employer 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 you have left a job

Sometimes your former employer's responsibilities continue after you have stopped working for them and they must still not discriminate unlawfully against you.

This section looks at your rights after you have stopped working for an employer, and in particular how this applies to references.

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

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

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

You can also take a case to an Employment Tribunal.

If you are a disabled person, the duty to make reasonable adjustments also continues after you have stopped working for that employer.

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 you were a disabled person when you worked for your former employer.

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 reasonable adjustments to remove barriers for disabled people in Chapter 3, including how to work out what is reasonable.

References

Giving references more generally

This guide only tells you about equality law. There are other laws which your employer must follow to make sure a reference does not break other laws, for example, laws relating to negligence or defamation. You can find out more about these from Acas, whose contact details are in Chapter 5: *Further sources of information and advice*.

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

An employer 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 you worked for the employer, as long as you can show that any unlawful discrimination arises out of and is closely connected to the previous employment relationship.

If you are still working for the employer when you ask for a reference in order to change jobs, this is still part of your employment, and you must not be unlawfully discriminated against, just as in every other work situation.

Must my former employer give me a reference?

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

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 an employer does 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.

Can someone be given a bad reference if they have a poor work record?

If, regardless of someone's protected characteristics, the reference would have been bad, then an employer is of course entitled to do this.

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

Confidentiality

You may be able to get hold of a copy of your employer's reference even if the reference was supplied 'in confidence':

- Your new employer may give you a copy if you ask for one. Even if your previous employer has provided a reference 'in confidence', your new employer may decide that they should give it to you to comply with **data protection** rules. Usually, your new employer will contact your previous employer to ask whether they object to the reference being disclosed, but even if they do object, the new employer can still give the previous employer's reference to you if they believe your interest in seeing what has been written outweighs your previous employer's interest in having it treated confidentially.
- If you do not get a job, or you have a job offer withdrawn, and you believe that this is because your previous employer provided a discriminatory reference, you can ask to see a copy using the **questions procedure**. You can read more about what this means in Chapter 4.

2. When your employer is responsible for what other people do

It is not just how your employer personally behaves that matters.

If another person who is:

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

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

This part of the guide explains:

- When your employer can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation
- How your employer can reduce the risk that they will be held legally responsible
- When your employer's 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 an employer tries to stop equality law applying to a situation

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

Your employer is legally responsible for acts of discrimination, harassment and victimisation carried out by their employees in the course of their employment.

Your employer is also legally responsible as the 'principal' for the acts of their agents done with their authority. Their agent is anyone your employer has instructed to do something on their behalf, even if your employer does not have a formal contract with them.

As long as:

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

it does not matter whether or not your employer:

- knew about, or
- approved of

what their 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, your employer will not be held legally responsible if they can show that:

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

How your employer can reduce the risk that they will be held legally responsible

Your employer can reduce the risk that they will be held legally responsible for the behaviour of their employees or agents if they tell them how to behave so that they avoid unlawful discrimination, harassment or victimisation.

This does not just apply to situations where your employer and their other staff are dealing face-to-face with you, but also to how your employer and the people who work for them plan what happens in your workplace.

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

- **direct discrimination**, or
- **indirect discrimination** that they cannot **objectively justify**, or
- **discrimination arising from disability** that they cannot **objectively justify**, or
- **harassment**,

and that they have made **reasonable adjustments** for you if you are a disabled person.

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

When your employer's employees or agents may be personally liable

An 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 their employer's authority. This applies where either:

- your employer is also liable as their employer or principal, or
- your employer would be responsible but they show that:
 - they took **all reasonable steps** to prevent their employee discriminating against, harassing or victimising you, or
 - that their agent acted outside the scope of their 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 an employer tries to stop equality law applying to a situation

An employer cannot stop equality law applying to a situation if it does in fact apply. For example, there is no point in an employer 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 for the employer 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 employer's 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** or **job applicant**.

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

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

When the duty arises, your **employer** is under a positive and proactive duty to take steps to remove or reduce or prevent the obstacles you face as a disabled worker or job applicant.

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

If, however,

- you are a disabled person, and
- you can show that there were barriers your employer should have identified and reasonable adjustments your employer could have made, and
- your employer does nothing,

you can bring a claim against your employer in the Employment Tribunal, and your employer may be ordered to pay you compensation as well as make the reasonable adjustments. A failure to make reasonable adjustments counts as unlawful discrimination. You can read more about what to do if you believe you've been discriminated against in Chapter 4.

In particular, if you are a disabled person, the need to make adjustments for you as a worker or job applicant:

- must not be a reason not to appoint you to a job or promote you if you are the best person for the job with the adjustments in place
- must not be a reason to dismiss you
- must be considered in relation to every aspect of your job

provided the adjustments are reasonable for your employer 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.

Your employer only has to make adjustments where they are aware – or should **reasonably** be aware – that you are a disabled person.

It is advisable for your employer to discuss the adjustments with you, otherwise any changes they make may not be effective.

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

- Which disabled people does the duty apply to?
- How can your employer find out if you are a disabled person?
- The three requirements of the duty
- Are you at a substantial disadvantage as a disabled person in that work situation?
- Changes to policies and the way an 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 you if you:

- are working for an employer, or
- apply for a job with an employer, or
- tell an employer you are thinking of applying for a job with them.

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

The duty may also apply after you have stopped working for an employer.

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

Reasonable adjustments may also be required in relation to occupational pension schemes. This is explained later in this part of the guide.

How can your employer find out if you are a disabled person?

Your employer only has to make these changes where they know or could **reasonably** be expected to know that you are a disabled person. This means your employer must do everything they 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 that an employer should be asking intrusive questions or ones that violate your dignity. Employers must still think about privacy and confidentiality in what they ask and how they ask it.

Be aware that there are restrictions on when an employer can ask health- or disability-related questions during recruitment 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.

An employer can ask you questions to find out if you need reasonable adjustments for the recruitment process. But they must use your answers only for working out the adjustments you need and whether these are reasonable.

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

If you are applying for a job and you do not ask for adjustments in advance but turn out to need them, the employer must still make them, although what is reasonable in these circumstances may be different from what would be reasonable with more notice. The employer must not hold the fact that they have to make last minute adjustments against you.

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: *Your rights to equality at work: when you apply for a job*.

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 a 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 you (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 you at a substantial disadvantage as a disabled person?

The question an employer needs to ask themselves is whether:

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

puts you, as 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 the employer must make reasonable adjustments.

The aim of the adjustments the employer makes is to remove or reduce the substantial disadvantage.

But the employer only has to make adjustments that are reasonable for them 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 an 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 the employer must look at whether they need to change some written or unwritten policies, and/or some of the ways they usually do things, to remove or reduce barriers that would place you at a substantial disadvantage, for example, by stopping you working for that employer or applying for a job with that employer or stopping you being fully involved at work.

This includes your employer's processes for deciding who is offered a job, 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 an employer's workplace.

This means your employer may need to make some changes to their building or premises.

Exactly what kind of change the employer makes will depend on the kind of barriers the premises present to you. The employer will need to consider the whole of their premises. They 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.

- Physical features 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 you, such as a reader, a sign language interpreter or a support worker.

This means an employer may need to provide some extra equipment, auxiliary aids or services for you if you work for them or apply for a job with them.

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

The kind of equipment or aid will depend very much on:

- you as an individual disabled person and
- the job you are or will be doing or what is involved in the recruitment process.

You may well have experience of what you need, or you and your employer may be able to get expert advice from some of the organisations listed in Chapter 5: *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 the employer. So your employer should work, as much as possible, with you to identify the kind of disadvantages or problems that you face but also the potential solutions in terms of adjustments.

But even if you don't know what to suggest, your employer 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 and/or your employer may be able to get expert advice from some of the organisations listed in Chapter 5: *Further sources of information and advice*.

Who pays for reasonable adjustments?

If something is a reasonable adjustment, your employer or prospective employer must pay for it. 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 you if your health or disability affect your work. They help by giving advice and support. Access to Work can also help with extra costs which would not be reasonable for your employer or prospective employer to pay.

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

You may be able to get advice and support from Access to Work if you 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

- your disability or health condition stops you from being able to do parts of your job.

You should make sure your employer knows about Access to Work. Although the advice and support are given to you, your employer will obviously benefit too. Information about Access to Work is in Chapter 5: *Further sources of information and advice*.

What is meant by 'reasonable'

Your employer only has to do what is reasonable.

Various factors influence whether a particular adjustment is considered reasonable. The responsibility for making the decision about reasonableness rests with the employer, although you could challenge it if you felt this was necessary.

When deciding whether an adjustment is reasonable an employer can consider:

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

Your employer's overall aim should be, as far as possible, to remove or reduce any substantial disadvantage faced by you as a worker or job applicant which would not be faced by a non-disabled person.

Issues your employer can consider:

- Employers are allowed to 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 you are facing. If it doesn't have any impact at all or only a very minor one, 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.
- The employer 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. The employer needs 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 employer's size and resources are another factor. If an adjustment costs a significant amount, it is more likely to be reasonable for your employer to make it if your employer has substantial financial resources. Your employer's resources must be looked at across their whole organisation, not just for the branch or section where you are or would be working. This is an issue which the employer has to balance against the other factors.
- In changing policies, criteria or practices, the employer does 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 you are already working for your employer and face losing your job without an adjustment, or where you are a job applicant. Where you are already working for an employer, or about to start a long-term job with them, they would probably be expected to make more permanent changes (and, if necessary, spend more money) than for someone who is attending a job interview for an hour.
- If they are a larger rather than a smaller organisation, the employer is 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 yours, then the employer can consider this when making a decision about whether that particular adjustment or solution is reasonable. But the employer's 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, the employer decides that an adjustment is reasonable, then they must make it happen.

If you do not agree with them about whether an adjustment is reasonable or not, in the end, only an Employment Tribunal can decide this. You can read more about what to do if you believe you've been discriminated against in Chapter 4. This includes if an employer has failed to make what you believe are reasonable adjustments to remove barriers you are facing.

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 an employer 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 your 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 the employer transfers this work away from an employee whose disability involves severe vertigo.

- **Transferring you 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 your 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 you 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 you 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 you or for other people). This could be training in particular pieces of equipment which you will be using, or an alteration to the standard employee training to reflect your particular impairment.**

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).

The employer does not have to provide or modify equipment for personal purposes unconnected with your job, such as providing a wheelchair if you need one in any event but do not have one. This is because in this situation the disadvantages you are facing do not flow from things your employer has 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 you 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 employer's other staff may therefore have an important role in helping make sure that a reasonable adjustment is carried out in practice. Your employer must make this happen. It is unlikely to be a valid 'defence' to a claim under equality law for a failure to make reasonable adjustments for an employer to argue that an adjustment was unreasonable because other staff were obstructive or unhelpful when the employer tried to make an adjustment happen. The employer would at least need to be able to show that they took all reasonable steps to try and resolve the problem of the attitude of their 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 you do not want your employer to involve other workers, the employer must not breach your confidentiality by telling them about your situation.

But if you are reluctant for other staff to know about your impairment, and your employer believes that a reasonable adjustment requires the co-operation of your colleagues, it may not be possible for the employer to make the adjustment unless you are prepared for some information to be shared. It does not have to be detailed information, 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 an organisation is an employment service provider, this means they cannot wait until you or another a disabled person wants to use their 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: *Your rights to equality at work: 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 you 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, employers 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, where more than one post is being recruited to (for example, if an employer is opening a new workplace or expects to have multiple vacancies for the same role).

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

This applies whether or not you are a disabled person.

No-one else can ask these questions on the employer's behalf either. So an employer cannot refer you to an **occupational health practitioner** or ask you to fill in a questionnaire provided by an occupational health practitioner before the offer of a job is made (or before you have been included 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.

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

What happens if an employer asks questions about health or disability?

You can bring a claim against an employer if:

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

Separately, the Equality and Human Rights Commission can take legal action against the employer if they ask job applicants any health or disability-related questions that are not allowed by equality law. Contact details for the Equality and Human Rights Commission are at the end of this guide.

When an employer is allowed to ask questions about health or disability

An employer can ask questions about health or disability when:

- They are asking the questions to find out if you need 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.

- They are asking the questions to find out if you (whether you 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.

- They are asking the questions for **monitoring** purposes to check the **diversity** of applicants.
- They want to make sure that any 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**. The employer should make it clear to job applicants that this is why they are asking the question.
- They 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 that this is an occupational requirement. 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 the employer would know you can carry out that function with reasonable adjustments in place, then the employer 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, the employer should be asking you (if you are a disabled person) about your ability to do the job with reasonable adjustments in place. There will 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, an employer should ask you a question about whether you have the relevant skills, qualities or experience to do the job, not about your health or about any disability you 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 you believe you've been discriminated against

If you believe you have been **unlawfully discriminated** against by your **employer**, or their **employee** or **agent**, in a **work situation**, what can you do about it? Or if you have applied for a job (or been stopped from applying) and believe you have been unlawfully discriminated against during the application process, what can you do about it?

This part of this guide covers:

- Your choices
- Was what happened against equality law?
- Ways you can try to get your employer to sort out the situation by complaining directly to them:
 - Making a complaint informally
 - Using your employer's grievance procedures
 - Alternative dispute resolution (getting more information about involving other people in sorting the situation out)
 - What your employer can do if they find that there has been unlawful discrimination
 - What your employer can do if they find that there wasn't any unlawful discrimination
 - Monitoring the outcome
- The questions procedure, which you can use to find out more
- Key points about discrimination cases in a work situation:
 - Where claims are brought
 - Time limits for making a claim
 - The standard and burden of proof
 - What the Employment Tribunal can order your employer to do.
- Where to find out more about making a tribunal claim

Read the whole of this part of the guide before you decide what to do, so you know all the options you have.

It is especially important that you work out when the last day is that you can tell the Employment Tribunal about your complaint, so that you don't miss that deadline, even if you are trying to work things out with your employer first.

Your choices

There are three things you can do:

- Complain informally to your employer.
- Bring a grievance using your employer's grievance procedures.
- Make a claim to the Employment Tribunal.

You do not have to choose only one of these. Instead, you could try them in turn. If you cannot get your employer to put things right, then you can make a claim to the Employment Tribunal.

Just be aware that if you do decide to make a claim to the Employment Tribunal, you need to tell the tribunal about your claim (by filling in a form) within three months (less one day) of what happened.

You do not have to go first to your employer before making a claim to the Employment Tribunal.

But there are two reasons for doing this:

- You should think carefully about whether making a claim to the Employment Tribunal is the right thing for you personally.

Making a claim may be demanding on your time and emotions, and before starting the process you may want to look at whether or not you have a good chance of succeeding. You may also want to see if there are better ways of sorting out your complaint.

- If you do not use your employer's procedures for solving a problem before you make a claim to the Employment Tribunal, and you win your case, the tribunal can reduce any money it tells your employer to pay you by up to a quarter if it thinks you acted unreasonably.

Was what happened against equality law?

Write down what happened as soon as you can after it happened, or tell someone else about it so they can write it down. Put in as much detail as you can about who was involved and what was said or done. Remember, the problem will sometimes be that something was not done.

For example:

- If you are a disabled person and you asked for a **reasonable adjustment** which was not made.
- If someone did not change a decision they had made or stop applying a rule or way of doing things and this had a worse impact on you and other people with the same protected characteristic (**indirect discrimination**).

Read the rest of this guide. Does what happened sound like any of the things we say a person or organisation must or must not do?

Sometimes it is difficult to work out if what happened is against equality law. You need to show that your protected characteristics played a part in what happened. The rest of this guide tells you more about what this means for the different types of unlawful discrimination or for harassment or victimisation.

If you think you need more information from the person or organisation before deciding what to do, then you can use the questions procedure, which we explain at page 72.

If you feel you need to get more advice on whether what happened was against equality law, you will find information on places where you can get help in Chapter 5: *Further sources of information and advice*.

Is your complaint about equality law or is it about another sort of problem at work?

This guide focuses on making a complaint about something that is against equality law.

You may have a complaint (which is often called ‘bringing a grievance’) about something else at work, which is not related to a **protected characteristic**.

Sometimes it is difficult to work out which laws apply to a situation.

If you are not sure what to do, you can get advice about your situation from other organisations, particularly the Arbitration and Conciliation Service (Acas) or Citizens Advice or your trade union. Contact details for these and other organisations who may be able to help you are in Chapter 5: *Further sources of information and advice*.

Ways you can try to get your employer to sort out the situation by complaining directly to them

Making a complaint informally

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

Often all it needs to stop something happening is for the other person to understand the effect of what they have done or that the situation is being taken seriously by you – and their – employer.

This is especially the case if they did not intend something to have the impact it did – for example, if what has happened is indirect discrimination or discrimination arising from disability.

Making a complaint informally means talking to the person at your workplace who can make the situation better. This may be your manager or, if it is your manager who is behaving in the way you believe is unlawful discrimination, someone higher up. In a small organisation, it may be your employer themselves.

It is a good idea to ask your manager or employer for a meeting, so that there is enough time for you to talk about what has happened and to say what you’d like them to do.

The meeting needs to be somewhere where you can talk to your manager or employer without other people hearing what you are saying.

Even though it is an informal meeting, you can still prepare for the meeting by writing down what you want to say. This can help you make sure you have said everything you want to say to your manager or employer.

This may be especially important if you work for a small organisation and it is the person in charge (who may be the only manager) who has done what you want to complain about. If you can, you may get a better result from the meeting if you can explain what has happened in a way that does not immediately make your employer feel you are blaming them for doing something wrong.

If you need help with this, you could contact one of the organisations listed in Chapter 5 or you could ask your trade union if you have one or a colleague or friend. It may help to practise what you want to say.

Tell the person you are meeting:

- what has happened
- what effect it had or is having on you
- what you want them to do about it, for example, talking informally to the person or people who have done something

Your manager or employer may need time to think about what has happened and what to do about it. They may need to talk to other people to find out if they saw or heard anything. Tell your manager or employer if you agree to them doing this. If you do not agree, this may make it harder for them to find out what happened.

Your manager or employer should tell you what they are going to do, and then later what the result was.

If after investigating what has happened, your manager or employer decides:

- no unlawful discrimination took place, or
- that they are not responsible for what has happened (see page 38)

then they should tell you this is what they have decided within a reasonable time.

If they don't explain why they decided this, you can ask them to explain. They do not have to explain, but if they do it may help you to decide what to do next: for example, if it is worth taking things further.

You then have two options:

- accepting the outcome
- taking things further by making a formal complaint using any procedures your employer has for doing this.

If your employer or manager agrees with you that what happened was unlawful discrimination, then they will want to make sure it does not happen again.

This may mean you don't need you to do anything other than carry on with your job as usual. Or they may want you to do something such as meeting the person who discriminated against you. In any case, you may need to go on working with that person.

Don't feel that you have to do anything you are not comfortable with. But it may help sort things out to do what your employer suggests, if necessary with some expert help, for example, from your trade union or from another person or organisation, such as a mediator. You can read more about this on page 71: *Alternative dispute resolution*.

If the discrimination was serious or just one of a series of events, your employer may want to take disciplinary action against the person who discriminated against you. You would probably have to explain to a disciplinary hearing what happened. You may be able to get help or support in doing this from your trade union if you have one or from one of the organisations listed in Chapter 5: *Further sources of information and advice*.

If your employer does not tell you what they have decided, even after you have reminded them, then you can either make a formal complaint or make an Employment Tribunal claim. Make sure you know when the last day is for bringing your claim so you don't miss this deadline.

Using your employer's grievance procedures

If you are not satisfied with the result of your informal complaint, then you can make a formal complaint, using the set procedures your employer has. It is the use of the set procedures that makes it 'formal'.

If you make a formal complaint, this is often called a 'grievance'.

Your employer should be able to tell you what their procedures are.

If they don't have any information they can give you, there is a standard procedure which you can get from Acas. Your employer can use this too, if, for example, they don't have their own procedures. Contact details for Acas are in Chapter 5: *Further sources of information and advice*.

If you are not happy about the outcome of a grievance procedure, then you have a right to appeal.

Alternative dispute resolution

If you or your employer want to get help in sorting out a complaint about discrimination, you can 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 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:

- your trade union
- Acas
- ADRnow, an information service run by the Advice Services Alliance (ASA).

There is more information about the options at [Directgov](#).

Acas in particular runs a free conciliation service.

Details of how to contact these organisations are in Chapter 5: *Further sources of information and advice*.

What your employer can do if they find that there has been unlawful discrimination

The action your employer can take will depend on the specific details of the case and its seriousness. Your employer should take into consideration any underlying circumstances and the outcome of previous similar cases. Actions your employer could take include:

- Some form of alternative dispute resolution (which is explained above), which may be especially useful where you and the person who discriminated have to carry on working together.
- **Equality training** for the person who discriminated.
- Appropriate disciplinary action (your employer can find out more about disciplinary procedures from Acas).

What your employer can do if they find that there wasn't any unlawful discrimination

If your employer hears your grievance and any appeal but decides that you weren't unlawfully discriminated against, they still need to find a way for everyone to continue to work together.

Your employer may be able to do this themselves, or it may be better to bring in help from outside as with alternative dispute resolution (which is explained above).

Monitoring the outcome

Whether your employer decides that there has been unlawful discrimination or not, you must not be treated badly for having complained. For example, if your employer made you transfer to another part of their organisation (if it is big enough) this may be **victimisation**. However, you could ask to be transferred, and your employer should do this if you are sure this is what you really want.

Your employer should monitor the situation at your workplace to make sure that the unlawful discrimination (if your employer found there was discrimination) has stopped and that there is no victimisation of you or anyone who helped you.

If you are not satisfied with what has happened, whether that is with

- your employer's investigation
- their decision
- the action they have taken to put the situation right
- how you have been treated after you made the complaint

you could bring a claim in the Employment Tribunal. This is explained in the next part of this guide.

The questions procedure

If you think you may have been unlawfully discriminated against, then you can get information from your employer to help you decide if you have a valid claim or not.

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

If you send the questions to your employer, they are not legally required to reply to the request, or to answer the questions, but it may harm their case in the Employment Tribunal if they do not.

The questions and the answers can form part of the evidence in a case brought under the Equality Act 2010 (in other words, the law explained in this guide).

You can send your employer the questions before you make your claim to the Employment Tribunal, or at the same time, or after you have sent your claim.

If it is before, then you must send the questions to your employer so that they receive them no later than three months after what happened which you believe was unlawful discrimination.

If you have already sent your claim to the Employment Tribunal, then you must send the questions to your employer so that they receive them:

- within 28 days of your 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 your employer does not respond to the questionnaire within eight weeks of your sending it to them, 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 your employer says this applies to them, you should get more advice on what to do.

If you send your employer the questions, your employer must not treat you badly because you have done this. If your employer 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 your employer 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: *Your rights to equality at work: 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 you want to complain about questions being asked about your health or disability when you were applying for a job, you can bring a claim in the Employment Tribunal if you believe you were discriminated against because of disability, or for a reason connected with your disability and it relates to the answers you gave to those questions.

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.

You cannot bring a case against the employer just for asking the questions if these had no impact on you personally, for example, if it is clear why you did not get the job and this does not relate to the answers you gave to those questions. Of course, if other unlawful discrimination happened, you can still bring a case.

Only the Equality and Human Rights Commission can 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 unlawfully discriminated against.

If you are a member of the armed services, you can only bring your complaint to the Employment Tribunal after your **service complaint** has been decided.

Time limits for bringing a claim

You must bring your claim within three months (less one day) of the claimed unlawful discrimination taking place.

For example:

An employer unlawfully discriminates against a worker. The discrimination took place on 5 May. The worker must tell the Employment Tribunal about their claim using the proper form by 4 August at the latest.

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: *Your rights to equality at work: pay and benefits*, and
- for cases involving the armed forces, the time limit is six months (less one day).

If you bring your a claim after the date has passed, it is up to the Employment Tribunal to decide whether it is fair to everyone concerned, including both you and your employer, to allow your claim to be brought later than this.

Do not assume they will allow you to bring a late claim. They may not, in which case, you will have lost any chance to get the situation put right by the Employment Tribunal.

When a claim concerns something that was not a one-off incident, but which has happened over a period of time, the time limit starts when the period 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 you are complaining about a failure to do something, for example, a failure to make **reasonable adjustments**, then the three months begins when your employer made a decision not to do it.

If there is no solid evidence of when they made 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 anyway.

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 you are claiming unlawful discrimination, harassment or victimisation against your employer, then the burden of proof begins with you. You must prove enough facts from which the tribunal can decide, without any other explanation, that the discrimination, harassment or victimisation has taken place.

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

What the Employment Tribunal can order your employer to do

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

The main remedies available to the Employment Tribunal are to:

- Make a declaration that your employer has discriminated.
- Award compensation to be paid for the financial loss you have suffered (for example, loss of earnings), and damages for injury to your feelings.
- Make a recommendation, requiring your 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 you to your job, if the tribunal thinks this would work despite the previous history.

The Employment Tribunal can also make a recommendation requiring your 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 you have 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 your employer does not do what they have been told to do in a recommendation relating to you, the tribunal may order them to pay you compensation, or an increased amount of compensation, instead.

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

The tribunal can also order your employer to pay your legal costs and expenses, although this does not often happen in Employment Tribunal cases.

Where to find out more about making a tribunal claim

You can find out more about how to bring an Employment Tribunal case against your employer from the Employment Tribunal itself. They have information that tells you how to fill in the right form, and what to expect once you have made a claim.

This applies to England, Scotland and Wales, although occasionally tribunal procedures themselves are different in England and Wales and in Scotland.

You can find contact details for the Employment Tribunal in Chapter 5: *Further sources of information and advice*.

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

Advicenow:

An independent, not-for-profit website providing accurate, up-to-date information on rights and legal issues.

Website: <http://www.advicenow.org.uk/>

Advice UK:

A UK network of advice-providing organisations. They do not give out advice themselves, but the website has a directory of advice-giving agencies.

Website: www.adviceuk.org.uk

Telephone: 020 7469 5700

Fax: 020 7469 5701

Email: mail@adviceuk.org.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

Carers UK:

The voice of carers. Carers provide unpaid care by looking after an ill, frail or disabled family member, friend or partner.

England

Website: www.carersuk.org

Telephone: 020 7378 4999

Email: info@carersuk.org

Scotland

Website: www.carerscotland.org

Telephone: 0141 445 3070

Email: info@carerscotland.org

Wales

Website: www.carerswales.org

Telephone: 029 2081 1370

Email: info@carerswales.org

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

Citizens Advice:

Citizens Advice Bureaux provide free, confidential and independent advice in England and Wales. Advice is available face-to-face and by telephone. Most bureaux offer home visits and some also provide email advice. To receive advice, contact your local Citizens Advice Bureau, which you can find by visiting the website.

Website: www.citizensadvice.org.uk

Telephone: (admin only) 020 7833 2181

Fax: (admin only) 020 7833 4371

The Adviceguide website is the main public information service of Citizens Advice. It covers England, Scotland and Wales.

Website: www.adviceguide.org.uk/

Citizens Advice Scotland:

Citizens Advice Scotland is the umbrella organisation for bureaux in Scotland. They do not offer advice directly but can provide information on Scottish bureaux.

Website: www.cas.org.uk

Community Legal Advice:

Community Legal Advice offers free, independent and confidential legal advice in England and Wales.

Website: www.communitylegaladvice.org.uk

Telephone: 0845 345 4 345

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

Disability Law Service (DLS):

The DLS is a national charity providing information and advice to disabled and Deaf people. It covers a wide range of topics including discrimination, consumer issues, education and employment.

Website: www.dls.org.uk

Telephone: 020 7791 9800

Minicom: 020 7791 9801

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

Law Centres Federation:

The Law Centres Federation is the national co-ordinating organisation for a network of community-based law centres. Law centres provide free and independent specialist legal advice and representation to people who live or work in their catchment areas. The Federation does not itself provide legal advice, but can provide details of your nearest law centre.

Website: www.lawcentres.org.uk

Telephone: 020 7842 0720

Fax: 020 7842 0721

Email: info@lawcentres.org.uk

The Law Society:

The Law Society is the representative organisation for solicitors in England and Wales. Their website has an online directory of law firms and solicitors. You can also call their enquiry line for help in finding a solicitor. They do not provide legal advice.

Website: www.lawsociety.org.uk

Telephone: 020 7242 1222 (general enquiries)

They also have a Wales office:

Telephone: 029 2064 5254

Fax: 029 2022 5944

Email: wales@lawsociety.org.uk

Scottish Association of Law Centres (SALC):

SALC represents law centres across Scotland.

Website: www.scotlawcentres.blogspot.com

Telephone: 0141 561 7266

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

NHS Carers Direct:

NHS Carers Direct gives information about carers' rights in employment and beyond, as well as the services available to them.

Website: www.nhs.uk/carersdirect

Telephone: 0808 802 0202

The Office of the Pensions Advisory Service (OPAS):

OPAS provides free advice on pensions including help with problems.

Website: www.opas.org.uk

Telephone: 0845 601 2923

Email: enquiries@opas.org.uk

Pay and Work Rights Helpline:

The Pay and Work Rights Helpline provides advice on government enforced employment rights.

Website: www.payandworkrightscampaign.direct.gov.uk/index.html

Telephone: 0800 917 2368

People First Ltd:

People First is a charity run by and for people with learning difficulties. It provides information on self advocacy and provides training and consultancy for organisations and employers.

Website: www.peoplefirstltd.com

Telephone: 020 7820 6655

Email: general@peoplefirstltd.com

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 United Kingdom, through legislation and social change. It provides a free legal advice service for Trans people.

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

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

Email: transequality@pfc.org.uk

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

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

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

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

WorkSMART:

WorkSMART aims to help everyone at work – whether or not they are union members – to get a good deal from their working life. Available to help when things go wrong at work or simply to give help for planning for the future.

Website: www.worksmart.org.uk

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. |

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| 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. |

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| 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. |

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| 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. <i>See 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. |

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| 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. |

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| 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. |

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| 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. |

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| 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. |

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| 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. |

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| 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. |

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| 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. |

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| 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. |

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| 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. See <i>also</i> goods, facilities and services. |
| service users | Those accessing or using a particular service. See <i>also</i> goods, facilities and services. |
| services | See goods, facilities and services. |
| services, goods or facilities | See 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. |

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| 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. |

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| 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. See <i>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. |

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| 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 rights as an employee under equality law.

There are 6 guides:

1. Your rights to equality at work: when you apply for a job
2. Your rights to equality at work: working hours, flexible working and time off
3. Your rights to equality at work: pay and benefits
4. Your rights to equality at work: training, development, promotion and transfer
5. Your rights to equality at work: how you are managed
6. Your rights to equality at work: dismissal, redundancy, retirement and after you have left a job

We have also produced:

- A separate series of guides which explain your rights in relation to people and organisations providing services, carrying out public functions or running an association
- Different guides explaining the responsibilities people and organisations have if they are employing people to work for them or if they are 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**.