

Briefing

Adjustments in employment

Adjustments in employment

This briefing is not an authoritative statement of the law. While we have made every effort to ensure that the information we have provided is correct, Business Disability Forum cannot accept any responsibility or liability.

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Introduction

This is one of a series of briefings, published by Business Disability Forum, which provide practical guidance for employers on specific topics relating to the employment of disabled people.

It will be particularly useful for personnel or human resources managers, occupational health advisers, line managers and employment agencies.

This briefing provides general guidance only and should not be treated as a complete and/or authoritative statement on the law relating to reasonable adjustments.

Under equality legislation, the duty to make reasonable adjustments is a requirement unique to disability, and is one of the key features which distinguishes disability from other legally protected characteristics. This briefing provides practical guidance to help the reader understand what the term 'reasonable adjustments' means and the kind of adjustments employers may have to make.

This guidance is intended to help employers to meet their legal obligations and to ensure that their disabled employees or prospective employees are treated fairly and able to fulfil their true potential in the workplace, bringing benefits to the business as a whole.

It cannot precisely define 'reasonable adjustment' because that will depend on individual circumstances. Interpretation of the law will also depend on the rulings of employment tribunals and the courts, and case law will continue to develop over time.

Promoting inclusion

Many organisations have equal opportunities policies stating that the organisation treats all employees fairly, regardless of age, ethnicity, gender, disability, sexual orientation, religion or belief.

However, forward-thinking employers recognise that true equality of opportunity cannot be guaranteed by a 'one-size fits all' approach to policies and practices. The real differences in employees' cultural and material circumstances will mean some employees are likely to be placed at a greater disadvantage by certain workplace arrangements than others. Consequently, in order to treat an employee fairly it may be necessary to treat them differently.

The law recognises that the disadvantages many disabled people face in their day-to-day lives are less a product of their particular impairment, but are instead often the result of environmental or attitudinal barriers such as the structure of a building, or particular procedures and practices that have been developed without taking into account their requirements. This is a 'social model' approach which recognises that the barriers erected by society are often far more disabling than an individual's impairment.

For example, a wheelchair user is disabled not because of his mobility impairment but because there is no lift to take him to his appointment on the third floor of the building.

This is why the law stipulates that employers have a legal duty to make reasonable adjustments. Making adjustments is a way of creating a level playing field for disabled people, enabling them to work on equal terms and have access to the same opportunities for employment and career development as non-disabled people.

Many disabled people need few if any adjustments. The most significant adjustment will often be to move away from preconceived ideas about disabled people and to shift the focus to the individual's skills and abilities.

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Responding to diversity and promoting inclusion is good for business. The principle of making alterations and adjustments to standard policies and procedures and to the built environment can assist an employer to be more responsive to the diverse requirements of all employees promoting a more inclusive workplace.

For example, an employee with young children may welcome the opportunity to work flexible hours (and has the right to request this) while another employee might welcome a quiet and private space in the workplace for prayer. Developing inclusive policies and practices will enable organisations to recruit and retain a diverse range of experience and improve reputation with customers, employees and key stakeholder groups.

Duty to make reasonable adjustments

The duty to make reasonable adjustments applies where any physical feature of the employer's premises, or any provision, criteria or practice made by or on behalf of the employer, causes a substantial disadvantage to a disabled person compared to a non-disabled person. Employers also have a duty to provide auxiliary aids where this would reduce or remove a substantial disadvantage that a disabled person faces, including providing information in accessible formats, e.g. Easy read or large print if necessary.

This duty is owed to prospective employees, applicants, and permanent and temporary members of staff. The duty to make reasonable adjustments also applies to other disabled people engaged in an occupation who are not employees, for example:

- Contract workers.
- People undertaking practical work experience for a limited period for the purposes of vocational training, e.g. apprentices, work experience students or internees.
- Police officers.
- Office-holders, e.g. company directors, judges, chairmen or members of non-departmental public bodies.
- Partners in firms.
- Barristers, barristers' clerks and advocates.

What are reasonable adjustments?

Employers are required by law to make adjustments to the physical features of their premises or to any provisions, criteria or practice made by, or on behalf of, the employer.

What are 'physical features'?

The law says that the following are to be treated as physical features:

- Any feature arising from the design or construction of a building on the premises occupied by the employer, e.g. steps, stairways, corridors and surfaces.
- Any feature on the premises or any approach to, exit from or access to, such a building, e.g. kerbs, paving, parking areas, building entrances and exits (including emergency escape routes), gates and internal and external doors.
- Any fixtures, fittings, furnishings, furniture, equipment or materials in or on the premises, e.g. toilet and washing facilities, lifts and escalators, floor coverings, signs, furniture, machinery and equipment, lighting and ventilation and any other temporary or movable items.
- Any other physical element or quality of any land comprised in the premises occupied by the employer, e.g. the distance someone has to travel to get from one place to another.

All these features are covered, whether temporary or permanent.

What are provisions, criteria and practices?

The definition of 'provisions, criteria and practices' is extremely broad and covers all aspects of employment.

The duty to make adjustments applies to all aspects of employment, including:

- Recruitment and selection.
- Training.
- Work experience placements or internships.
- The provision of contract or temporary work.
- Promotion.
- Career development.
- Transfer.
- Retention (including sickness absence policies).

The duty may also apply after employment has ended, for example:

- Benefits such as an occupational pension or group insurance scheme.
- References.

Planning ahead

The duty to make reasonable adjustments only arises when an employer knows, or could reasonably be expected to know, that a particular disabled person is at a substantial disadvantage.

This means that unlike service providers, employers do not have to make adjustments in anticipation of disabled people that they may employ in the future.

However, it is more cost effective for employers to plan ahead when it comes to ensuring that their premises and their provisions, criteria and practices are accessible to disabled people. This is particularly advisable as it is more than likely that they will employ a disabled person in the future given the incidence of disability in the population generally.

Access audits

It is good practice for employers to have access audits carried out to ensure their premises are accessible, and to identify any improvements that can be made to the built environment. Considering the needs of a range of disabled people when planning an addition or change to the physical features of your building is likely to make it easier to implement adjustments for individuals as and when the need arises.

Access audits should be carried out by suitably qualified people such as those listed in the National Register of Access Consultants, held by the Centre for Accessible Environments (CAE) (see contact details at the end of guide).

Websites and intranet sites should also be checked for accessibility, this check should ideally include testing by people with a range of impairments. If disabled people are involved in the development of your online services from the design stage, your sites are more likely to be accessible to and usable by a wider range of users.

Policies and procedures

Employers should review all their policies bearing in mind the need to make reasonable adjustments. As well as doing this, it is advisable for employers to have a specific policy to prevent discrimination against disabled people: this should include information on reasonable adjustments such as:

- Examples of adjustments.
- A procedure for requesting and making adjustments and reviewing them for effectiveness.
- Clarity around the roles and responsibilities of key players including clear lines of responsibility.
- Timescales.
- Information about confidentiality.

In order to prevent inadvertent discrimination against disabled people, the need to make reasonable adjustments should be embedded into all policies and procedures.

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Policies and procedures which may require particular attention include:

- Recruitment.
- Flexible working.
- Appraisal and performance-related pay.
- Sickness absence.
- Monitoring.
- Redundancy.
- Emergency evacuation.
- Procurement of equipment, e.g. IT systems, software and websites.
- Outsourcing of employee services, e.g. facilities management, catering and security.
- Information provision.
- Employee training and development.
- Employee assistance schemes offering financial or emotional support.

Examples of adjustments

Any necessary adjustment should be identified and put into place swiftly and efficiently.

Always consult the disabled employee and agree the proposed adjustments, and the timetable for implementation. If the timetable or the adjustments needs to change, remember to keep the disabled person informed. This is particularly important where the person is absent from work awaiting the adjustments or in a different workplace.

The following examples suggest categories of possible adjustments. Each one is followed by a practical illustration, but many other practical adjustments are possible. Remember that steps other than those listed here, or a combination of steps, may sometimes be required.

1. Making adjustments to premises.

The direction in which a door opens is altered for a wheelchair-user and furniture in the office in which she works is rearranged to ensure she can move freely.

2. Modifying procedures for testing or assessment.

An applicant with repetitive strain injury applies for a role in which he will be required to produce word processed reports with speed and accuracy. Candidates are usually required to complete a typing exercise as part of the selection process. However, as a reasonable adjustment the candidate is allowed to use voice recognition software to demonstrate his word processing skills.

3. Giving or arranging for training or mentoring. (Whether for the disabled person or for any other person).

An employee with bi-polar affective disorder is recruited after a long period of unemployment. He is assigned a mentor to help build his confidence. He is also encouraged to join the staff disability network to access peer support.

Every member of the employee's department receives mental health awareness training. This training is organised with the employee's consent and his participation.

4. Acquiring or modifying equipment.

An employee with severe arthritis in the hands is given a portable computer with adaptive software to enable note taking during training lectures.

Modifications are also made to door handles of the office and the taps in the kitchen and washroom facilities.

5. Modifying instructions or reference manuals.

All employees are provided with an instruction manual for a new piece of equipment. A Braille version is produced for a visually impaired employee. For an employee with a learning disability the supervisor provides an easy read version of the manual with pictures and accompanies this guidance with oral instruction.

6. Providing a reader or interpreter.

A deaf employee who is being considered for promotion is to be interviewed by two senior managers. She normally lip-reads at work but to enable her to compete fairly with other candidates, a sign-language interpreter is provided for the interview.

7. Providing supervision or other support.

An organisation recruits an employee with Asperger's syndrome. A support worker assists the employee during his induction and advises on additional support that may be necessary, e.g. during appraisals.

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

An applicant has a disability which causes dizziness at heights. The job for which he is applying occasionally involves going onto an open roof, but he can otherwise do the job. The employer reallocates this minor requirement of the job to another employee.

9. Allowing absence during working hours for rehabilitation, assessment or treatment.

An employee who develops Parkinson's disease requires a course of physiotherapy. Although it is not the employer's standard policy to allow staff to attend appointments during working hours, as a reasonable adjustment this employee is given time off for treatment.

10. Altering working hours.

An employee with a mental health problem has an episode of mental illness resulting in absence from work. Upon his recovery, he is allowed a phased return to work with a gradual build up of hours until he is able to work full time again. As he takes medication with side effects he finds it difficult to be alert first thing in the morning. He is allowed to work flexi-time, starting and finishing later in the day.

11. Assigning the disabled person to a different place of work.

An employee develops a disability requiring use of a wheelchair. Her workstation on the third floor becomes inaccessible and so she is transferred to the ground floor.

12. Transferring the disabled person to fill an existing vacancy.

When all possible reasonable adjustments have been considered, if an employee is unable to perform the core duties of their existing role for reasons related to a disability, the employer has a duty to consider transferring the person to a suitable alternative vacancy or redeployment. Remember to consider reasonable adjustments that might make the vacant position suitable for the disabled person being redeployed.

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A sales representative develops multiple sclerosis and is unable to continue in the job because she has to give up driving. She is transferred to a vacant marketing post requiring computer skills, for which she is given training, and is given a modified chair and keyboard, which are suitable for her requirements.

If an employee needs to be redeployed they should be transferred to a suitable alternative vacancy. Following the House of Lords (now called the Supreme Court) decision in *Archibald v Fife* it is clear that giving employees internal vacancy bulletins and requiring them to apply and compete for posts is not sufficient to fulfil the employer's legal obligations.

What is reasonable?

There are a number of factors likely to have a bearing on whether it is 'reasonable' for the employer to make an adjustment:

How effective the adjustment is in preventing the disadvantage.

It is unlikely to be reasonable for an employer to have to make an adjustment of little benefit in removing or reducing the disadvantage faced by the disabled person. However, while one adjustment viewed alone may be of marginal benefit to a disabled person, the same adjustment taken as one of several measures may prove extremely effective. In these circumstances, it is likely to be reasonable to make it.

How practical it is.

It is more likely to be reasonable for an employer to have to take a step which is easy to take, than one that is difficult. However, in some circumstances it may be reasonable for an employer to have to implement an adjustment, even though it is difficult, if it would remove the disadvantage that the disabled person is under and is not onerous given the size and resources of the particular employer.

Financial and other costs as well as how disruptive it is.

If an adjustment costs little or nothing and is not disruptive, it is more likely to be reasonable for an employer to make it. The significance of the cost of an adjustment may depend in part on what the employer might otherwise spend in the circumstances.

An example of a reasonable cost might be that of adapting a workstation to accommodate an employee with a visual impairment, where the cost of adaptations is the same as or similar to, the cost of recruiting and training a replacement employee.

In assessing the likely cost of an adjustment the availability of external funding (e.g. funding from the Access to Work (AtW) scheme) should be taken into account.

The value of the employee's experience and expertise to the employer is also a factor to take into account when assessing what constitutes a reasonable cost.

Factors to be taken into account in assessing 'reasonable cost' include:

- 1. The resources such as training that have been invested in the individual by the employer.**
- 2. The employee's length of service.**
- 3. The employee's level of skill and knowledge.**
- 4. The value of the employee's knowledge and relationships with clients.**

The level of inconvenience or disruption caused by an adjustment can also be taken into account when considering whether or not it is reasonable. An adjustment which causes only minor inconvenience to the employer or to other employees is more likely to be reasonable than one which results in significant disruption, or which prevents other employees from being able to do their job.

The employer's financial and other resources.

It is more likely to be reasonable for an employer with substantial financial resources to have to make an adjustment with a significant cost than for an employer with fewer resources. The resources available to an organisation as a whole should be taken into account as well as other demands on those resources.

This means that, for an organisation with more than one branch or outlet, it is the total sum of resources available to all of the branches that will be taken into account when judging the resources available to the employer to make an adjustment. Beware of setting arbitrary budgets as each case should be looked at on its own merits when determining what is reasonable.

Some employers have opted for a centralised budget to pay for reasonable adjustments. This approach means that the resources of the organisation as a whole are considered when assessing what is a reasonable cost rather than the budgets of individual departments. It also means the employer can monitor how much it spends on reasonable adjustments.

Other resources available to the employer should also be taken into account. For example, it may be reasonable for an employer with a large workforce to make certain adjustments such as offering mentoring or providing additional supervision or support, even if they do not have substantial financial resources. It may also be reasonable for a smaller employer to make these kinds of adjustments but not if it involved a disproportionate effort.

The availability of financial or other assistance to help make an adjustment.

The availability of external help, such as advice and assistance from the Access to Work (AtW) scheme, is a relevant factor in identifying whether an adjustment is reasonable. For example, a small employer may find that with the support of the Access to Work (AtW) scheme it is reasonable to make adjustments for a disabled employee which would otherwise be too costly to be feasible.

The Access to Work (AtW) programme, run by the Department for Work and Pensions (DWP), provides help towards the extra costs of employing someone with a disability. It is available to unemployed, employed and self-employed people and can apply to any job, full-time or part-time, permanent or temporary. For more information about the Access to Work (AtW) scheme visit the Business Disability Forum website at businessdisabilityforum.org.uk.

The disabled person must not be asked to contribute to the cost of an adjustment. However, in some cases the individual may be prepared to use their own equipment for work purposes. It would be appropriate in these circumstances for the employer to cover any additional costs for maintenance and insurance.

Help and assistance may also be available from other statutory and voluntary sector organisations such as disability charities and supported employment schemes, and employers should also consider this assistance in determining the feasibility of an adjustment.

The nature of the employer's activities and the size of its undertaking.

All employers have a duty to make reasonable adjustments for their disabled employees or prospective employees regardless of the size of their organisation or the number of people they employ. Only the armed forces are exempt.

However, the size of an employers' organisation and the nature of its activities may still be relevant in determining the reasonableness of a particular step, especially in relation to reallocating duties in a wider team and transferring the employee to an alternative vacancy.

Effect on other employees.

If making an adjustment is likely to result in substantial discomfort or inconvenience to other employees or prevent other employees from being able to perform their roles this should be taken into account by an employer when considering if it is reasonable to take a step. However, employers are advised to remember that the duty to make reasonable adjustments is only owed to disabled employees, not to their non-disabled colleagues.

When an employer makes an adjustment for a disabled employee they are not required to replicate similar measures for the rest of their non-disabled workforce. However, in many cases (e.g. permitting flexible working or conducting an ergonomic assessment) it may be good practice and beneficial to the organisation as a whole to do so.

Adjustments made or required for other employees.

If an employer has a number of staff with mobility problems this may mean that it would be reasonable to make significant structural changes to the work premises that might have been considered unreasonable if only one employee was placed at a disadvantage by such features.

The extent to which the disabled person is willing to co-operate.

If an employee refuses to co-operate with the only adjustments that are reasonable, and all alternatives have been exhausted, the employer does not have a duty to do any more.

If making a particular adjustment would result in unacceptable risks to the health and safety of any person (including the disabled person) the employer does not have to make the adjustment.

Suitable and sufficient risk assessments such as those carried out for the purposes of the Management of Health and Safety at Work Regulations (1999) should be used to help evaluate the severity of the risks and whether they are likely to arise in the particular circumstances.

For further guidance see the 'health and safety and the Equality Act 2010' briefing.

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Employers can use Business Disability Forum's 'reasonable adjustments request form' to help them make decisions about what is reasonable:

This form helps ensure employers are using relevant criteria when assessing the 'reasonableness' of an adjustment. It also enables an employer to document the reasons for any decisions.

It is advisable that when a manager does not consider a particular adjustment to be reasonable that it is escalated to a more senior manager for a final decision.

Once adjustments have been agreed, they can then be recorded in Business Disability Forum's 'tailored adjustment agreement'. A copy of this form can be downloaded from the Business Disability Forum website at businessdisabilityforum.org.uk.

Contract workers or work experience students.

In the case of contract workers or work experience students the length of time the worker or student is likely to be with the employer or placement provider is a relevant factor to be taken into account when considering what is reasonable.

What if the employer's lease prevents changes being made to the physical features of a property?

Equality legislation imposes an implied term into every lease stating that it is unlawful for a landlord to unreasonably withhold consent to alterations made in accordance with the Act. However, landlords are lawfully entitled to attach reasonable conditions to their consent.

What if binding obligations other than the lease restrict the ability to make changes to the physical features of a property?

The employer's duty to make reasonable adjustments to the physical features of its premises does not override the need to obtain statutory consents before making any adjustments, for example:

1. Planning permission.

2. Building regulations approval or in Scotland a building warrant.

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3. Listed building consent.

4. Scheduled monument consent.

5. Fire regulations approval.

Other legally binding obligations may include the terms of a mortgage, charge or restrictive covenant or, in Scotland a 'feu disposition', which would require an employer to seek consent before making any changes to its premises.

In these circumstances it is always reasonable for an employer to seek consent, but it is never reasonable for an employer to have to make any alterations prior to gaining the necessary consent to do so.

Employers should plan for and anticipate the need to obtain consent to make a particular adjustment. It may take time to obtain such consent, but it could be reasonable to make an interim or other adjustment – one that does not require such consent – in the meantime.

Where consent has been refused there is likely to be a means of appeal. Whether or not it is reasonable for an employer to pursue an appeal in fulfilling their duty to make reasonable adjustments will depend on the circumstances of the case. However, employers should consider doing so, specifically citing their legal obligations to their disabled employees.

The reasonableness of an adjustment does not depend upon any of one of these factors in isolation, but on a cost/benefit analysis that addresses how the particular costs of an adjustment in terms of time, finances and other resources may be compared to the overall benefits for both the individual employee and the organisation as a whole.

For example, a community centre recruits a new employee who uses a wheelchair. They identify that the employee will require a number of adjustments to be made to the physical features of their premises, including the installation of an accessible toilet.

The costs of the adjustments are substantial but the centre decides that by making their building more accessible for the new recruit not only will they gain from the skills and experiences of a valuable employee, they are also likely to make their services more accessible to the community as a whole. They ask the disabled person to apply for an Access to Work (AtW) grant and are able to make the adjustments.

What if you do not know your employee has a disability?

Legally, an employer is not obliged to make an adjustment if there is no reason to suppose that an individual has a disability which is likely to affect his or her work. However, an employer must take all reasonable steps to find out whether this is the case. When recruiting, for example, you should invite applicants to indicate if they need changes or reasonable adjustments to the interview processes.

Organisations are advised not only to monitor for disability through formal processes, but also to be alert to signs and symptoms that could reasonably lead them to suspect that an employee may have a disability which they have either not told their employer about or which has not yet been diagnosed. Substantial evidence that an employee has a disability, even if the employee has not formally told the employer, may trigger the duty to make reasonable adjustments.

Common indicators that employers should be alert to include:

- High levels of sporadic or prolonged absenteeism.
- Poor time keeping.
- A significant change in mood or uncharacteristic behaviour.
- An unusual deterioration in the standard of the employee's work, reduced productivity, poor judgement or indecision.
- Uncharacteristic mistakes or accidents.
- Frequent complaints of tiredness or aches and pains.
- Significant weight gain or weight loss.

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Embedding questions about reasonable adjustments into both the recruitment and the appraisal process for all employees can provide an opportunity to identify whether prospective or existing employees would benefit from reasonable adjustments.

Ensuring that those involved in the recruitment or the appraisal process are aware of their legal obligations is also important to ensure that disabled people are not placed at a disadvantage by your provisions, criteria or practices.

For example, an organisation advertises that they are prepared to make reasonable adjustments to their recruitment procedures and offer their application materials in alternative formats. All candidates short-listed for interview are asked if they require any adjustments to the process. One candidate explains she is profoundly deaf and communicates using British Sign Language (BSL), and so the employer arranges for an interpreter to be present at interview.

Another organisation arranges disability awareness training for all line managers. Managers are reminded to be alert to the possibility that poor performance could be linked to a non-visible disability and a need for reasonable adjustments.

The law does not require private sector employers to make changes in anticipation of employing a disabled person. An employer does not, for example, have to produce application forms in accessible formats until a disabled applicant asks for one.

Public sector employers and sensible private sector employers should, however, prepare for the possibility that someone will make such a request and be ready to send the application pack electronically or in alternative formats, e.g. large print or as an accessible Word document.

Similarly, if you are introducing a new telecommunications system or intranet system it is likely to be more cost effective in the long run to make it accessible to disabled people even if you know of no disabled employees at the moment. Having a system that disadvantages a group of disabled people, e.g. those with visual impairments could also be indirect discrimination.

Non-visible disabilities and confidentiality

Job applicants and employees are often reluctant to say they have or have had a disability.

Remember it is unlawful for an employer to ask candidates about a disability or health condition prior to job offer unless the questions relate directly to how they will perform some intrinsic part of the job.

A disabled employee may choose not to mention their condition when they are first appointed or indeed until they have been in a job for some time.

Factors which will have an impact on employee's willingness to discuss their disability

Invasion of privacy and confidentiality

Questions relating to health and disability are regarded as highly personal and potentially intrusive. Anxiety about confidentiality will discourage people from talking about a disability.

Individual perceptions and stigma

Many people who are protected by the law reject the label 'disabled', either because of the stigma attached (e.g. they associate it with being unemployable) or because they associate 'disability' with very serious and visible physical or mental impairment.

Irrelevance

Many will reject the word 'disabled' as simply irrelevant, given that they are doing a good job and are leading a 'normal' life. Ironically, it can be the best practice organisation that gets the lowest numbers of employees who identify themselves as being disabled, precisely because it has removed barriers to the point where disabled managers and staff do not experience the disadvantage widely associated with 'disability' and so do not consider themselves to be disabled.

Understanding what is meant by 'disabled'

Many people do not know who 'disabled people' are. They will not be familiar with the legal definition and will not, for example, expect people with mental health problems or diabetes to be covered by the term.

The fear factor

Monitoring exercises that ask, "Are you disabled?" can cause anxiety through fear that ticking

the 'yes' box could lead to discrimination or could change the way colleagues behave. This is particularly true at times of uncertainty, for instance if your organisation has redundancies pending.

If applicants know that you have a positive equal opportunity policy, and in particular that there is a willingness to make reasonable adjustments for all disabled applicants and employees, they will be much more inclined to discuss their condition.

Employers should distinguish between questions about disability for monitoring purposes and questions about whether an employee needs reasonable adjustments. It should be possible for a manager to have a conversation with an employee about reasonable adjustments without needing to discuss personal medical details, by focusing only on the impact that the disability has on them at work.

This can be beneficial because:

- The stress of not talking about a disability can exacerbate the person's difficulties at work.
- The employee and their manager can then determine together what adjustments, if any, would maintain or improve performance.
- The support of fellow workers can be enlisted.

Confidentiality

Under the Data Protection Act you need to safeguard the confidentiality of an applicant or employee's personal and medical information. Disclosure should only occur when:

- Absolutely necessary.
- With the explicit consent of the individual.
- It is necessary to facilitate the person's ability to do the job.

In some cases, a breach of confidentiality by an employer could be unlawful under the Equality Act 2010.

You should record medical and personal information securely. Under the Data Protection Act, the applicant or employee should know who will have access to this information and have agreed to this in writing.

Remember that if an adjustment is necessary, (e.g. time off work, or non-standard hours) the employee's line manager will need to know the adjustment is required but neither they nor colleagues need to be told the precise medical reasons.

It is unlawful to ask someone about their disability on application forms or at interview. You only need to know if adjustments are needed for application and interview process itself. If you are a two ticks symbol holder, however, you should permit candidates to identify themselves as disabled in order to be guaranteed an interview if they meet the minimum criteria for the job.

Adverse decisions made about an employee or applicant as a result of their telling you about a physical or mental impairment are unlawful if they are made simply because of someone's disability. This could be direct discrimination, which is unjustifiable.

If an adverse decision is made for a reason arising out of someone's disability, e.g. their sickness absence record, this could be unlawful unless the decision can be justified as being a proportionate means of achieving a legitimate aim. Such justification is unlikely to be possible if the employer has not considered reasonable adjustments that might have overcome the problems identified, e.g. to improve attendance.

Post job offer health screening may also be discriminatory if telling the employer about a disability leads to a job offer being unjustifiably withdrawn or altered.

Joint problem solving

There is no onus on the disabled person to suggest what adjustments should be made.

Because of their day-to-day experience, some disabled people who have had their disability for some time will often be the experts on the effects of their impairment and how these can be overcome. However, don't expect every disabled person to know what adjustments they need or even that are possible in the workplace. Remember that the onus is on the employer to identify and implement reasonable adjustments.

Where a disabled person does make a suggestion of a possible adjustment that might help to overcome a disadvantage, the employer should consider these suggestions seriously to see if they are reasonable and effective.

Discuss possible adjustments and engage in joint problem-solving. Be open to suggestions about how jobs or working arrangements might be done differently.

When adjustments have been identified, be specific and put decisions in writing, with a timetable if necessary. Recognise that needs may change, and set up a simple mechanism for reviewing adjustments periodically, for example, identifying the need for, and evaluating the effectiveness of, reasonable adjustments at regular appraisals or one-to-one reviews.

Employers can use Business Disability Forum's 'tailored adjustment agreement' to record an employee's adjustments: it can also form the basis for regular reviews. A copy of this form can be downloaded from the Business Disability Forum website at www.businessdisabilityforum.org.uk

Remember, however, that not every disabled person is an expert on their disability and they may not know what reasonable adjustments will work best for them. It is your responsibility as an employer to conduct assessments, consult appropriate experts and find out which reasonable adjustments will reduce or remove the disadvantage that a particular employee is facing.

Getting the support of other employees

In some cases a reasonable adjustment will not be possible without the support and co-operation of other employees. Other employees may therefore have an important role in helping to ensure that reasonable adjustments are carried out in practice. Subject to considerations about confidentiality, employers must ensure that this happens.

A failure to implement reasonable adjustments effectively cannot be justified on grounds that other employees were unhelpful or obstructive. It is the employers' responsibility to implement and uphold anti-discriminatory policies and procedures and ensure that all staff adhere to them.

Employers should:

- Establish a policy which aims to prevent discrimination against disabled people and includes information on making reasonable adjustments.
- Communicate the policy to all employees and agents.
- Implement disability awareness and equality training for all staff, and ensure line managers with responsibility for managing disabled employees are given additional resources and support if required.
- Inform all employees and agents that conduct which breaches your disability policy will not be tolerated, and respond quickly and effectively to any breaches of policy through your disciplinary procedures.
- Have clear policies to prevent and deal with bullying and harassment for a reason related to a person's disability.
- Monitor the implementation and effectiveness of your disability policy or policies and consult with disabled employees to identify areas for improvement.
- Regularly review the effectiveness of reasonable adjustments made for disabled people in your organisation and act on the findings of these reviews.

What if no adjustment is possible?

If no adjustment is possible which will enable a disabled person to perform the essential tasks of a job, there is no requirement to recruit or retain that person. You will, however, need to be able to show that:

- Essential job requirements were identified.
- Possible adjustments were considered and discussed with the person.
- Expert advice, where possible, was sought.

Regulatory framework

Disability discrimination under the Equality Act 2010

Direct discrimination

It is unlawful for an employer to treat a disabled job applicant, or employee, less favourably, simply because of their disability. This type of discrimination is known as direct discrimination. It is unlawful and cannot be justified.

Discrimination arising from disability

Discrimination arising out of disability occurs when:

- An employer knows or could reasonably be expected to know that the person is disabled.
- The disabled person experiences unfavourable treatment which arises as a consequence of their disability.

There is no requirement for a comparator, i.e. the disabled person does not have to show that they have been treated or would have been treated less favourably than someone else.

An employer can justify detrimental treatment arising out of a disability if they can show that it is a proportionate means of achieving a legitimate aim.

Indirect discrimination

The Equality Act 2010 has introduced the new concept of indirect disability discrimination.

Indirect discrimination occurs when a seemingly neutral provision, criterion or practice that applies to everyone places a group who share a characteristic, e.g. a disability at a particular disadvantage. An example could be a requirement for every employee to drive or hold a driving licence, which places people who cannot drive because of their disability at a greater disadvantage than other people.

Adjustments in employment

Indirect discrimination may, however, be justified if it can be shown that the provision, criterion or practice is a proportionate means of achieving a legitimate aim, e.g. if driving is an essential part of the job.

Reasonable adjustments

An employer has a duty under the Equality Act 2010 to make reasonable adjustments (which includes providing auxiliary aids such as a support worker or information in alternative formats) to prevent a disabled employee from being placed at a substantial disadvantage by any physical feature of the premises, or by any provision, criteria or practice of the employer.

The duty applies to all aspects of employment, including recruitment and selection, training, transfer, career development and retention and redundancy. Failure to make a reasonable adjustment to a provision, criteria or practice, or to a physical feature of the workplace where this is placing a disabled person at a substantial disadvantage compared to people without a disability, is unlawful and cannot be justified. Examples of reasonable adjustments for people with asthma are given throughout this briefing.

When deciding whether or not an adjustment is reasonable an employer should consider the:

- Effectiveness of the adjustment in preventing the disadvantage.
- Practicality of the adjustment.
- Financial and other costs of the adjustment and the extent of any disruption caused.
- Extent of the employer's financial or other resources.
- Availability to the employer of financial or other assistance to help make an adjustment, for example through the Access to Work (AtW) scheme and the support of Jobcentre Plus.

Equality duty

Public authorities and those carrying out public functions are required by the Equality Act 2010 to promote equality of opportunity for disabled people. This includes ensuring that third parties, such as recruitment agencies who provide services to the authority, do not discriminate against disabled people and that they positively encourage disabled candidates to apply for jobs within the authority. The duty also means that authorities need to think in advance about the needs of both disabled employees and potential disabled employees. Authorities should bear this in mind when reading this briefing.

As well as the Equality Act 2010, there is also a 'statutory' Code of Practice on Employment. 'Statutory' means that it is produced under the legislation, it is admissible as evidence and must be taken into account by courts and tribunals where relevant.

What is a disability?

The Equality Act 2010 gives rights to disabled people who have, or have had, a disability which makes it difficult for them to carry out normal day-to-day activities. The term 'disability' covers both physical and mental impairments that have a substantial and a long-term (i.e. has lasted or is expected to last for at least 12 months) adverse effect on the person's ability to carry out normal day-to-day activities. 'Substantial' means more than minor or trivial.

Medical or other treatment and aids, including therapeutic treatments such as psychotherapy, which alleviate or remove the effect of the impairment are to be disregarded when assessing whether the impairment has a substantial adverse effect on normal day-to-day activities. Thus people with conditions such as insulin dependent diabetes, epilepsy or depression may be protected.

The only exceptions are people who wear spectacles or contact lenses – the effect on them must be assessed while the person is wearing the spectacles or contact lenses. However people who are registered as blind or partially sighted with an ophthalmologist or their local authority are deemed to be disabled.

Adjustments in employment

Progressive conditions, which have a slight effect on day-to-day activities but are expected to become substantial, are covered, as are conditions that have a substantial effect for short periods but are likely to recur. However, HIV, multiple sclerosis and cancer are deemed to be disabilities from the point of diagnosis. Severe disfigurement is also classed as a disability if it is long term.

People who have had a disability in the past which had a substantial adverse effect on their normal day-to-day activities for a period of at least 12 months are also protected by the Act. This is the case even if their disability existed before the Equality Act 2010 or its predecessor the Disability Discrimination Act (DDA) came into force and they have now fully recovered.

People associated with a disabled person and people who are wrongly perceived to have a disability are also protected from direct discrimination and harassment. The duty to make reasonable adjustments, however, does not extend to people associated with a disabled person or who are perceived to be disabled.

There is always a level of risk of both litigation and loss of reputation for an employer who fails to follow the requirements of the law because they assume that an employee will not meet the definition of disability. Remember that the purpose of a reasonable adjustment is to enable

an employee to perform to the best of their ability and to make a valuable contribution to your organisation.

If you are uncertain whether an individual is covered by the law, it would be prudent to assume that they are covered, and to consider what adjustments, if any, are necessary for them to do their job.

Further information

Contact Business Disability Forum

Business Disability Forum

Nutmeg House, 60 Gainsford Street,
London SE1 2NY.

Telephone: **+44-(0)20-7403-3020**

Textphone: **+44-(0)20-7403-0040**

Fax: **+44-(0)20-7403-0404**

Email: **enquiries@businessdisabilityforum.org.uk**

Website: **businessdisabilityforum.org.uk**

About Business Disability Forum

Business Disability Forum is a not-for-profit member organisation that makes it easier and more rewarding to do business with and employ disabled people.

We have more than twenty years experience of working with public and private sector organisations, formerly as the Employers' Forum on Disability.

Our 400 members employ almost 20% of the UK workforce and together, we seek to remove the barriers between public and private organisations and disabled people. We are a key stakeholder for both business and government. We have contributed to the establishment and development of meaningful disability discrimination legislation in the UK.

Business Disability Forum provides pragmatic support by sharing expertise, giving advice, providing training and facilitating networking opportunities. This helps organisations become fully accessible to disabled customers and employees.

If you would like further information, contact Business Disability Forum's advice service on **+44-(0)20-7403-3020** or **advice@businessdisabilityforum.org.uk**.

Business Disability Forum products and services

Line manager guides

- Performance management
- Non-visible disabilities
- Reasonable adjustments
- Attendance management and disability
- Working with disabled colleagues
- Mental health at work

The line manager guide series, plus other best practice and etiquette guides, are available to purchase as electronic toolkits, in hard copy or licensed for your organisation's intranet. Please contact the team on **+44-(0)20-7089-2410** or email **publications@businessdisabilityforum.org.uk**.

Business Disability Forum membership enables you to:

- Access specialist advice and training on disability legislation and related employment regulations.
- Enhance your reputation with disabled people, employees, customers and government.
- Improve your business performance, enabling you to become a disability-smart organisation that has access to the widest possible talent and customer base.

Other Business Disability Forum products and services:

Advice service

Our Members and Partners receive access to our free and confidential advice service. Our team of expert disability consultants are proud of the prompt and professional service they provide. They are available during normal working hours and will aim to respond within 24 hours or as quickly as possible in more complicated cases.

In addition to dealing with queries the service will review Members' and Partners' specific policies. This service is limited to two hours per policy and is by appointment only.

The advice service can be reached by telephone: **+44-(0)20-7403-3020**, email: **advice@businessdisabilityforum.org.uk** or textphone: **+44-(0)20-7403-0040**

Telephone surgeries

Legal

Bela Gor, expert in disability law and Business Disability Forum Legal Director runs free monthly in-house telephone surgeries. The surgeries are for members with questions on topical legal issues.

The surgeries aimed at lawyers, HR and diversity managers and employee representatives. Surgeries are limited to 20 minute slots and must be booked in advance by emailing: **events@businessdisabilityforum.org.uk** or by telephoning: **+44-(0)20-7403-3020**.

Disabled Employee Networks

Kate Nash OBE, a Business Disability Forum Associate, hosts a telephone surgery for Disabled Employee Network managers on the last Monday of every month. This advice is free for Partner Group members.

Surgery slots can be up to one hour long but must be booked in advance by emailing: **events@businessdisabilityforum.org.uk** or by telephoning: **+44-(0)20-7403-3020**.

Training and networking

Training

We develop and deliver tailored in-house disability training. Your organisation will benefit from our knowledge, experience and speakers from our network of disability experts.

Our experience of workplace disability issues, in both the private and public sectors, allows us to readily understand your training requirements and offer the right mix of training. We focus on providing value to your organisation.

Networking

We organise a comprehensive programme of events. All our events are based on promoting and sharing best practice and helping members to learn from each others experience.

You can contact our events team on:

Tel: **+44-(0)20-7403-3020**

Textphone: **+44-(0)20-7403-0040**

Email: **events@businessdisabilityforum.org.uk**

Our events are either free or discounted to Members and Partners. Paying events are open to non-member organisations and individuals.

Publications

The Business Disability Forum library is a unique source of accurate, authoritative and up-to-date information on business and disability. The briefings, toolkits and line manager guides cover every aspect of bringing organisations and disabled people together from recruitment and retention to reasonable adjustments and disabled employee networks. They provide practical advice to help organisations recruit and retain disabled people and serve disabled customers.

More than eight million copies of our publications are in circulation, used by forward-thinking organisations across the private and public sectors.

Members receive a free set of our world-leading publications on joining.

Adjustments in employment

Consultancy

Our consultants are skilled at analysing your business performance on disability against the framework of the Disability Standard and can provide you with a detailed insight of where you are on disability, where you need to be and how to get there.

We;

- Review, audit and evaluate your processes and policies across the business including recruitment, customer services and workplace adjustments.
- Carry out gap analysis of what is working well for disabled customers and employees, identify where there are concerns and highlight any legal risks.
- Provide pragmatic and effective help with planning and implementation to bring about real change.

To discuss your consultancy needs and what we can offer please contact us on tel: **+44-(0)20-7403-3020**, or email **consultancy@businessdisabilityforum.org.uk**

Other benefits popular with members include:

- Free e-check for your intranet or website.
- Free two-hour document review service.
- Participation in Business Disability Forum's Disability Standard, the authoritative measure of how disability-smart an organisation is, providing a way to improve customer and employee experiences.
- Member-only content on our Disability Standard website (which can be accessed by all employees).

Further information on joining Business Disability Forum's membership and a comprehensive list of our Partners can be downloaded from www.businessdisabilityforum.org.uk/become-a-member

Business Disability Forum

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Fax: +44-(0)20-7403-3020

Email: enquiries@businessdisabilityforum.org.uk

Website: businessdisabilityforum.org.uk

Further sources of reference

Useful organisations

National Register of Access Consultants (NRAC)

Fourth Floor, Holyer House,
20-21 Red Lion Court,
London, EC4A 3EB

Tel: **+44(0)20-7822-8282**

Email: **info@nrac.org.uk**

Website: **www.nrac.org.uk**

The National Register of Access Consultants (NRAC) is an independent register of accredited Access Auditors and Access Consultants who meet professional standards and criteria established by a peer review system. It is a UK-wide accreditation service for individuals who undertake access auditing and access consultancy.

Centre for Accessible Environments (CAE)

4th Floor, Holyer House,
20-21 Red Lion Court,
London EC4A 3EB

Tel: **+44(0)20-7822-8232**

Tel: **+44(0)20-7822-8261**

Email: **info@cae.org.uk**

Website: **www.cae.org.uk**

The CAE is an information and training body which has been the leading authority and resource in the UK, for over 30 years, on inclusive design and access to the built environment for disabled and older people.

Adjustments in employment

Equality Advisory Support Service (EASS)

Freepost equality advisory support service FPN4431

Telephone: **+44-(0)808-800-0082**

Textphone: **+44(-0)808-800-0084**

Website: **www.equalityadvisoryservice.com**

EASS provides information advice and support on discrimination and human rights issues to individuals in England, Scotland and Wales, recognising the constitutional, legal, social and policy differences

The Equality and Human Rights Commission (EHRC)

Website: **www.equalityhumanrights.com**

EHRC has a statutory remit to promote and monitor human rights; and to protect, enforce and promote equality across the nine “protected” grounds - age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment.

Equality Commission for Northern Ireland

Equality House, 7-9 Shaftesbury Square,
Belfast, BT2 7DP

Telephone: **+44-(0)28-90-500-600**

Textphone: Fax: **+44-(0)28-90-500-589**

Fax: **+44-(0)28-90-248-687**

Email: **information@equalityni.org**

Website: **www.equalityni.org**

The Commission promotes equality and challenges discrimination in Northern Ireland.

Adjustments in employment

Access to Work

London Telephone: **+44-(0)20-8426-3110**

Textphone: **+44-(0)20-8426-3133**

E-mail: **atwosu.london@jobcentreplus.gsi.gov.uk**

Scotland Telephone: **+44-(0)141-950-5327**

Textphone: **+44-(0)845-602-5850**

E-mail: **atwosu.glasgow@jobcentreplus.gsi.gov.uk**

Wales Telephone: **+44-(0)-2920-423-291**

Textphone: **+44-(0)2920-644-886**

E-mail: **atwosu.cardiff@jobcentreplus.gsi.gov.uk**

Website: **www.gov.uk/access-to-work/overview**

Access to Work (AtW) is a government scheme run by Jobcentre Plus that covers the financial cost of providing disability solutions that would otherwise not be considered a "reasonable adjustment".

Jobcentre Plus

Website: **www.gov.uk/contact-jobcentre-plus**

Jobcentre Plus supports people of working age from welfare into work and helps employers to fill their vacancies.

ACAS

Euston Tower, 286 Euston Road,
London NW1 3JJ.

Telephone: **+44-(0)8457-38-37-36**

Helpline: **+44(0)8457-47-47-47 (Monday-Friday 8am-8pm,
Saturday 9am-1pm)**

Text Relay: **18001 08457 474747**

Website: **www.acas.org.uk**

ACAS provides independent advice on employment disputes for employers and employees.

Adjustments in employment

Citizens Advice Bureau

England: +44-(0)8444-111-444

Wales: +44-(0)8444-77-20-20

TextRelay: +44-(0)8444-111-445

Website: www.citizensadvice.org.uk

The Citizens Advice Bureau advises on employment and benefits issues, including access to legal advice.

Disability guidance

Two Ticks or disability symbol

Website: www.pcs.org.uk

The two ticks scheme is a recognition given by Jobcentre Plus to employers based in Great Britain who have agreed to take action to meet five commitments regarding the employment, retention, training and career development of disabled employees.

Tailored adjustment agreement

Website: www.businessdisabilityforum.org.uk/talent-recruitment

This is a live document recording the reasonable adjustments that have been agreed for an employee.

Employment resources

Society of Occupational Medicine

Hamilton House, Mabledon Place,
London WC1H 9BB

Tel: +44-(0)20-7554-8628

Fax: +44(0)20-7554-8526

Email: admin@som.org.uk

Website: www.som.org.uk

Society for doctors providing occupational health services in the workplace, the armed services and academic institutions in the UK.

Adjustments in employment

Gov.UK

Website: www.gov.uk/browse/disabilities

The government's website has information about disability rights and employment.

Employment Tribunal (ET)

Open from 9.00am to 5.00pm Monday to Friday.

Enquiry Line: +44-(0)845-795-9775

Textphone: +44-(0)0845-757-3722

Website: www.justice.gov.uk/tribunals/employment

Provides individuals with the opportunity to pursue employment and discrimination complaints against their employer.

Employment Appeal Tribunal (EAT)

Website: www.justice.gov.uk/tribunals/employment-appeals

Provides individuals with the opportunity to appeal against Tribunal decisions regarding employment and discrimination complaints against their employer.

Legislation

Data Protection Act 1998

Website: www.dataprotectionact.org

If you handle personal information about individuals, you have a number of legal obligations to protect that information under the Data Protection Act 1998.

The Information Commissioner's Office also has guidance for organisations on handling personal data on their website: www.ico.gov.uk

Equality Act 2010

Website: www.legislation.gov.uk

The Equality Act came into force from October 2010 providing a modern, single legal framework with clear, streamlined law to more effectively tackle disadvantage and discrimination.

The Health and Safety Executive (HSE)

Website: www.hse.gov.uk

HSE is the national independent watchdog for work-related health, safety and illness. They are an independent regulator and act in the public interest to reduce work-related death and serious injury across Great Britain's workplaces.

Code of Practice on Employment

Website: www.equalityhumanrights.com

Provides guidance to individuals, businesses, employers and public authorities with the information they need to understand the Equality Act, exercise their rights and meet their obligations.

Equality duty

Website: www.equalityhumanrights.com

The public sector equality duty consists of a general equality duty, which is set out in section 149 of the Equality Act 2010 itself, and the specific duties which came into law on the 10 September 2011 in England and 6 April in Wales. The general equality duty came into force on 5 April 2011.

Flexible Working Regulations 2006

Website: www.legislation.gov.uk

Under the terms of this act employers are obliged to consider requests for flexible working from those who care for certain adults.

Disability awareness training

Business Disability Forum

Nutmeg House, 60 Gainsford Street, London, SE1 2NY

Telephone: **+44-(0)20-7403-3020**

Textphone: **+44-(0)20-7403-0040**

E-mail: **events@businessdisabilityforum.org.uk**

Business Disability Forum offers a wide range of in-house training courses which can be tailored to an organisation's specific needs.

Our organisation has over 20 years of experience and access to an extensive network of disability experts, which can benefit your business.

Enhance the UK

171, Narbeth Drive, Aylesbury, HP20 1PZ

Telephone: **+44-(0)7930-289-162**

E-mail: **info@enhancetheuk.org**

Website: **www.enhancetheuk.org**

Enhance the UK - are a user-led charity aiming to educate society about disability and assist those with a disability in playing a full and active role in society. Their aim is to remove the embarrassment of social interaction when working with disabled people by teaching simple hints and tips in a fun interactive learning environment. They provide a range of training targeted to the needs of individual organisations and companies.

Adjustments in employment

Royal National Institute of Blind People (RNIB)

RNIB Access Consultancy Services, PO Box 173, Peterborough, PE2 6WS

Telephone: **+44-(0)1733-37-53-70**

E-mail: **accessconsultancy@rnib.org.uk**

Website: **www.rnib.org.uk**

Royal National Institute of Blind People (RNIB) is the leading charity offering information, support and advice to almost two million people with sight loss. They offer training for customer facing teams to help them to identify and meet the needs of customers with disabilities.

Equo Limited

38 Alexandra Road, Lowestoft, Suffolk, NR32 1PJ

Telephone: **+44-(0)845-250-0617**

E-mail: **training@equo.co.uk**

Website: **www.equo.co.uk**

Equo Limited offers disability awareness training as an online module, with the aim of helping people be more confident in their day-to-day dealings with disabled people.



Contact us

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Nutmeg House
60 Gainsford Street
London
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Tel: +44-(0)20-7403-3020

Fax: +44-(0)20-7403-0404

Email: enquiries@businessdisabilityforum.org.uk

Web: businessdisabilityforum.org.uk

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