

## **DISABILITY DISCRIMINATION – REASONABLE ADJUSTMENTS**

Discrimination legislation imposes a duty on your businesses to make reasonable adjustments to premises or working practices where a disabled job applicant or employee is placed at a substantial disadvantage. Failing to comply with this duty is a form of disability discrimination. There is **no limit** to the amount of compensation that can be awarded for a successful disability discrimination claim.

### **When does the duty to make reasonable adjustments arise?**

The duty can arise in three circumstances, where:

- A **provision, criterion or practice** puts a disabled person at a substantial disadvantage in comparison with individuals who are not disabled.
- A **physical feature** puts a disabled person at a substantial disadvantage in comparison with individuals who are not disabled.
- A disabled person would, but for the provision of an **auxiliary aid**, be put at a substantial disadvantage in comparison with individuals who are not disabled.

### **What is a provision, criterion or practice?**

The phrase “provision, criterion or practice” is wide ranging and includes:

- Recruitment criteria.
- Provisions in the employment contract.
- Employment policies.
- Informal practices.

### **What is a physical feature?**

The physical feature must be part of your business premises for the duty to arise. For example:

- Parking areas.
- Toilet and washing facilities.
- Building entrances and exits.
- Furniture and temporary or movable items.

**What is an auxiliary aid?**

An auxiliary aid is something which provides support or assistance to a disabled person (for example, a specialist piece of equipment, such as an adapted keyboard or text to speech software).

**What is a substantial disadvantage?**

Discrimination legislation describes “substantial” as “more than minor or trivial”. It is a relatively low threshold and, therefore, an employment tribunal is likely to find it easy to conclude that a claimant suffered a substantial disadvantage. Whether an employee is placed at a substantial disadvantage depends on the individual facts of the situation.

**Taking steps to identify disability**

Your business is not expected to make reasonable adjustments if you do not know, or could not reasonably be expected to know, that the disabled person has a disability and is likely to be placed at a substantial disadvantage. Reasonable steps should be taken to put a system in place to help your business identify whether individuals are disabled and at a substantial disadvantage.

**What is a “reasonable” adjustment?**

Although each situation will be different, there are a number of factors which may be taken into consideration when deciding if the steps your business took were “reasonable”, including:

- Whether the adjustment would actually solve the disadvantage identified.
- The practicality of the adjustment.
- The impact of the adjustment on your business as a whole.
- The financial and other costs of making the adjustment.
- The size of your business.

It is good practice for your business to ask the disabled person about possible adjustments. It is also advisable to agree any proposed adjustments with that person before they are made.

**Adjustments your business may be required to make**

There are a variety of reasonable adjustments that your business may be required to make. They will obviously depend on the facts of the individual situation. However, examples can include:

- Making adjustments to premises (for example, by widening a doorway or providing a ramp).
- Providing information in accessible formats (for example, producing instructions and manuals in Braille or on audio tape).
- Reinstatement (for example, reinstating an employee who resigned while depressed).
- Transferring a disabled employee to a new role (for example, moving them to fill an existing vacancy).
- Altering the disabled person's hours of working or training (for example, permitting part-time working or different working hours to avoid the need to travel in the rush hour).

The comments in this note are of a general nature only. Full advice should be sought on any specific problems.

**More information**

If you have any questions about the content of this note, please contact Kathryn Meir or David Hardstaff