

GUIDANCE

# Your Rights to Equality at Work: How You Are Managed

Equality Act 2010 Guidance for  
Employees

Volume 5 of 6

# Contents

<b>Introduction .....</b>	<b>4</b>
Other guides and alternative formats .....	4
The legal status of this guidance.....	5
What’s in this guide.....	5
<b>1   Your rights not to be discriminated against at work: what this means for how your employer must behave towards you .....</b>	<b>7</b>
Are you a worker?.....	7
Protected characteristics.....	7
What is unlawful discrimination? .....	8
Situations where equality law is different .....	11
Positive action.....	13
Treating disabled workers better than non-disabled workers .....	14
Public sector equality duty and human rights.....	14
What’s next in this guide .....	15
Your access to facilities at work .....	16
Dress codes.....	20
When you are managed and appraised .....	23
Disciplinary procedures.....	24
If you become a disabled person .....	26
Dealing with harassment.....	27
How employers can sort out equality-related conflict through good practice .....	34
<b>2   When your employer is responsible for what other people do.....</b>	<b>37</b>
When your employer can be held legally responsible for someone else’s unlawful discrimination, harassment or victimisation .....	38
How your employer can reduce the risk that they will be held legally responsible .....	39
When your employer’s workers or agents may be personally liable.....	39
What happens if the discrimination is done by a person who is not your employer’s worker or agent.....	40
What happens if a person instructs someone else to do something that is against equality law .....	41

What happens if a person helps someone else to do something that is against equality law .....	41
What happens if an employer tries to stop equality law applying to a situation.....	41
<b>3   The employer’s duty to make reasonable adjustments to remove barriers for disabled people .....</b>	<b>43</b>
Which disabled people does the duty apply to? .....	45
How can your employer find out if you are a disabled person?.....	45
The three requirements of the duty .....	46
Are you at a substantial disadvantage as a disabled person? .....	47
Changes to policies and the way an organisation usually does things.....	47
Dealing with physical barriers .....	48
Providing extra equipment or aids.....	49
Making sure an adjustment is effective .....	49
Who pays for reasonable adjustments? .....	50
What is meant by ‘reasonable’ .....	51
Reasonable adjustments in practice .....	53
Specific situations .....	58
<b>4   What to do if you believe you’ve been discriminated against .....</b>	<b>60</b>
Your choices .....	61
Was what happened against equality law? .....	62
Ways you can try to get your employer to sort out the situation by complaining directly to them.....	63
The questions procedure .....	67
Key points about discrimination cases in a work situation .....	68
Where to find out more about making a tribunal claim .....	75
<b>5   Further sources of information and advice .....</b>	<b>76</b>
<b>Glossary .....</b>	<b>85</b>
<b>Contacts .....</b>	<b>102</b>

# 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 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

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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 us to discuss your needs. Contact details are available at the end of the publication.

## The legal status of this guidance

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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 and may help employers and others 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 6 April 2014. Any future changes in the law will be reflected in further editions.

This guide was last updated in May 2014. You should check with the Equality and Human Rights Commission if it has been replaced by a more recent version.

## What's in this guide

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If your employer is making a decision, or taking action following a decision, about how to manage you, equality law applies to what they are doing.

Equality law applies:

- whatever the size of your organisation
- whatever sector you work in
- whether your employer has one worker or 10 or hundreds or thousands
- whether or not your employer uses any formal processes or forms to help them make decisions or manage your workers.

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):

- Your access to facilities at work
- Dress codes
- When you are managed and appraised
- Disciplinary procedures
- If you become a disabled person

- Avoiding and dealing with harassment.

This guide also suggests how employers can, through equality good practice:

- Avoid and sort out equality-related conflict.

These can broadly be described as management issues that are not covered in the other guides in this series. All the titles in the series are listed at the beginning of this guide.

### **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 how your employer manages you:

- Information about when an employer is responsible for what other people do, such as workers employed by them.
- 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 Glossary containing 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 and sometimes on subsequent occasions.
- Information on where to find more advice and support.

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

## Are you a worker?

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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 a **worker** directly employed by your employer. 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

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Make sure you know what is meant by:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief

*Continued...*

- sex
- sexual orientation.

These are known as **protected characteristics**.

## What is unlawful discrimination?

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Unlawful discrimination can take a number of different forms:

- Your employer must not treat you **worse** than another worker because of a protected characteristic (this is called **direct discrimination**).

**Example** — An employer refuses to give a worker access to facilities because of a protected characteristic.

- Your employer must not do something which has (or would have) a worse impact on you and other people who share your particular protected characteristic than on people who do not have the same 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.

**Example** — An employer decides to apply a 'no hats or other headgear' rule to staff. If this rule is applied in exactly the same way to every member of staff, Sikhs, Jews, Muslims and Rastafarians who may cover their heads as part of their religion will not be able to meet the requirements of the dress code and may face disciplinary action as a result. Unless the employer can **objectively justify** using the rule, this will be indirect discrimination.

- 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 they know or could reasonably be expected to know that you are a disabled person. The required knowledge is of the facts of the worker's disability but an employer does not also need to realise that those particular facts are likely to meet the legal definition of disability. This is called **discrimination arising from disability**.



**Example** — An employer imposes a ‘no beards’ rule as part of a dress code and tells staff they will be disciplined if they do not shave. An employee is a disabled person who has a skin condition that makes shaving very painful. They have been treated unfavourably (threatened with disciplinary action) because of something arising from their disability (their inability to shave). Unless the employer can objectively justify the requirement, this may well be discrimination arising from disability if they knew, or could reasonably be expected to know, that the employee had this condition. It may also be a failure to make a reasonable adjustment.

- Your employer must not treat you worse than another worker because you are **associated with** a person who has a protected characteristic.

**Example** — A manager gives the father of a disabled child a bad report because they disapprove of the man’s requests to attend his child’s hospital appointments.

- Your employer must not treat you worse than another worker because they incorrectly think you have a protected characteristic (**perception**).

**Example** — An employer incorrectly thinks one of their workers is gay. They tell them they must change their clothes in a dusty stock room rather than in the communal changing area. This is likely to be discrimination because of sexual orientation based on the employer’s perception, even though the worker is not gay (if the worker is gay, it would almost certainly be direct discrimination).

- Your employer must not treat you badly or **victimise** you because you have complained about discrimination or helped someone else complain or have done anything to uphold your own or someone else’s equality law rights.

**Example** — A worker helps a colleague with a sexual harassment claim against another worker. Because of this, their manager marks them down at their annual performance review, commenting that they are ‘not very loyal’. This would almost certainly be victimisation.

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

**Example** — A transsexual woman is subjected to offensive ‘banter’ at work, relating to her gender reassignment. This creates a hostile and offensive atmosphere for her, and is likely to be harassment.

You can read more about how your employer can prevent and deal with **harassment** at page 27.

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

**Example** — An employer usually gives workers a written copy of their draft annual appraisal and gives them a morning to read the draft and to send any comments to their line manager. The employer arranges for a worker with severe dyslexia to meet their line manager instead and talk through the draft and provide comments. This is likely to be a reasonable adjustment for the employer to make.

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

We look at the process your employer should follow if you become a disabled person or if the impact of your impairment changes at page 26: ‘If you become a disabled person’.

You must not be discriminated against or harassed or victimised in the ways described above even after your employment relationship with your employer ends if what they are doing arises out of and is closely connected to the employment relationship that you had with them.

**Example** — An employee is turned down for a promotion by his manager. The employee believes this was because of his religion and brings a claim for religion or belief discrimination against his employer at the Employment Tribunal. After the employee leaves that job he asks the employer to provide a reference for him for a new employer. The old employer provides a bad reference because the worker made a claim of religion or belief discrimination. This will be unlawful victimisation by the old employer.

## Situations where equality law is different

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

There are two exceptions which relate to managing workers and which apply to all employers:

- The possibility that direct age discrimination can be **objectively justified**.
- Health and safety considerations in relation to pregnancy and maternity.

We only list the exceptions that apply to the situations covered in this guide. There are more exceptions which apply in other situations, for example, when you are applying for a job. These are explained in the relevant guide in the series.

In addition to these exceptions, equality law allows employers to:

- Use voluntary **positive action** in the way workers are managed. While positive action is most often seen as applying in recruitment, promotion and training, it can also be helpful in addressing workers' different needs when they are being managed.
- Treat disabled people better than non-disabled people.

### Age

**Age** is different from other protected characteristics. If an employer can show that it is objectively justified, they can make a decision based on someone's age, even if this would otherwise be direct discrimination. There are only limited circumstances in which direct age discrimination will be **objectively justified**.

To show that something is **objectively justified**, your employer must be able to show that there is a good reason for doing what they are doing and that what they are doing is **proportionate**.

The test is not quite the same as for **indirect discrimination**. This is because for indirect discrimination your employer is allowed to rely on any reason for wanting to make a decision or apply a rule provided it represents a real objective consideration and it is **proportionate**.

When what you are subject to is **direct** age discrimination your employer is only allowed to rely on a limited number of reasons. These are generally those that would be in the wider public interest, like promoting access to employment for younger people, or preserving the dignity of older workers as opposed to reasons particular to

their business. Even if your employer has a good reason, their actions must still be **proportionate**.

An employer 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.

**Example** — An employer disciplines older workers more harshly than younger workers because they expect higher standards of behaviour from older people. This is almost certainly not objectively justifiable and is therefore direct age discrimination against the older worker.

### **Health and safety and pregnancy and maternity**

Different treatment is usually allowed if it is absolutely necessary to do what health and safety laws say, if these laws are designed to protect women who are pregnant or who have recently given birth or to guard against risks specific to women.

**Example** — A night-shift worker who is pregnant is certified by her GP as unable to work nights. Her employer must not dismiss her (this would be direct discrimination because of pregnancy). Instead they need to manage her by either finding her daytime work or, if they cannot do this, putting her on leave with full pay.

The general principle that women should, so far as is possible, not be disadvantaged by their pregnancy or maternity continues to apply and it is not sex discrimination against a man to make special provision for a woman in connection with her pregnancy or maternity. However, when granting special treatment to a woman who has already given birth, the treatment must be a proportionate means of compensating a woman for the disadvantages occasioned by her being pregnant or having given birth. In other words, any special treatment cannot be too remote from the fact that the woman has had a baby. It will usually be proportionate to continue any benefits that the woman has received as part of her employment for the whole of the maternity leave period, and other steps may be required to ensure that she is not disadvantaged because of absence due to pregnancy or maternity leave. If it is possible this should be done in a way that does not disadvantage another worker, though, sometimes, preferential treatment, even where this results in a disadvantage to another worker, will be necessary. As long as any special treatment does not go beyond what is necessary to rectify her disadvantage, it will not be sex discrimination against a man.

## Positive action

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'Positive action' means the steps that an employer can take to address the different needs or past track record of disadvantage or low participation of people who share a particular protected characteristic.

Although most often thought of in the context of recruitment, promotion or training, positive action is available to employers in all employment situations, including how people are managed.

**Example** — A large employer pays for specific counselling services for gay and lesbian members of staff who are found to experience greater incidents of homophobic bullying or harassment in the workplace. This is an example of positive action to meet a different need.

Positive action is not the same as '**positive discrimination**' or '**affirmative action**' which equality law does not allow.

### Does an employer have to take positive action?

Taking positive action is voluntary. An employer does not have to take positive action. However:

- Meeting the different needs of the workforce can help make staff more productive.
- If the employer is a **public authority**, positive action will help them meet the **public sector equality duty**.

### When can an employer use positive action?

Equality law says that an employer has to go through a number of tests to show that positive action is needed.

The tests say that the steps an employer is allowed to take as part of positive action must:

- be related to the level of disadvantage that exists
- not be simply for the purposes of favouring one group of people over another where there is no different need or disadvantage or under-representation in the workforce.

An employer must not have a blanket policy or practice of automatically treating people who share a protected characteristic more favourably than those who do not

have it in the way that they manage them. They must look at whether it is needed for a particular group in a particular situation.

### **The sort of positive action steps an employer can take when managing people**

The sort of steps an employer could consider include specific facilities or services for people with a particular protected characteristic.

#### **Examples —**

- Offering additional support from a mentor to a transsexual person who is undergoing gender reassignment.
- Providing childcare facilities or vouchers.
- If the organisation is large enough, setting up networks for staff who share a particular protected characteristic.

An employer will need to consider if such measures are needed and are **proportionate**.

They should regularly review what they are doing to make sure positive action is still appropriate.

## **Treating disabled workers better than non-disabled workers**

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Separately from positive action, equality law allows an employer to treat a disabled worker better – or **more favourably** – than a non-disabled worker. This can be done even if the disabled worker is not at a specific disadvantage because of their disability in the particular situation. The reason the law was designed this way is to recognise that in general disabled people face a lot of barriers to participating in work and other activities.

## **Public sector equality duty and human rights**

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Public sector employers must have what the law calls ‘due regard’ to the need to eliminate the types of conduct which are prohibited under the Equality Act 2010 discussed in this guide and to advance equality of opportunity and foster good relations between those who have particular protected characteristics and those who don’t. This is called the ‘public sector equality duty’. Other bodies who carry out

public functions on behalf of public authorities also have to comply with the public sector equality duty, in relation to those particular functions.

The three aims of the duty apply to all protected characteristics apart from marriage and civil partnership, which is only relevant to the first aim (eliminating discrimination). Thus a body subject to the duty must have due regard to the need to eliminate discrimination because of marriage or civil partnership in the context of employment, where it is prohibited under the Equality Act 2010.

Some public authorities are also subject to what are known as specific equality duties. These require those public authorities to which they apply to take specific steps which are designed to enable them to better perform the public sector equality duty. They include steps relating to their role as employers, like monitoring information about employees. These specific duties are different in England, Scotland and Wales.

In addition, public sector employers will be required to comply with the Human Rights Act 1998 and their employees may have rights against them under the Act.

Further information about the public sector equality duties and the Human Rights Act is available from the Equality and Human Rights Commission.

## What's next in this guide

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

- Your access to facilities at work
- Dress codes
- When you are managed and appraised
- Disciplinary procedures
- If you become a disabled person
- Dealing with harassment

It also suggests how an employer can, through equality good practice, avoid and sort out equality-related conflict.

## Your access to facilities at work

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Your employer must avoid unlawful discrimination in allowing you access to facilities at work.

Use the information earlier in the guide to make sure you know what equality law says your employer must do to avoid unlawful discrimination.

This does not stop your employer giving you and other workers different levels of access to facilities for a reason unrelated to any protected characteristic, such as seniority within an organisation or the nature of the job you are doing.

However, your employer needs to make sure that their rules about who has access to what facilities are not in themselves unlawfully discriminatory.

**Example** — An employer gives a mobile phone to use for work calls to employees who have to travel a lot for work. However, phones are only given to employees who work full-time. This has a worse impact on women who are more likely to work part-time because they are combining childcare responsibilities with their paid employment. Unless the employer can **objectively justify** restricting the access to this particular facility in this way, this is likely to be indirect discrimination because of sex.

### What do we mean by facilities?

Facilities can be space or equipment that is necessary for a person or group of workers to carry out their work, or they can be 'extras' that are provided for workers.

Depending on the size and nature of the organisation, facilities can include:

- access to computers, mobile phones and other technology
- toilet and washing facilities
- sleeping facilities
- kitchen or tea and coffee making facilities
- changing/locker rooms
- showers
- canteens
- parking for cars or bicycles
- prayer and quiet rooms
- facilities for breastfeeding mothers



- crèches and childcare
- social clubs
- sport and exercise facilities
- health clinics and occupational health services.

The next section of this guide looks in more detail at what avoiding unlawful discrimination means in relation to:

- Sleeping accommodation
- Single-sex facilities and transsexual workers
- Single-sex facilities and workers' religion or belief
- Facilities provided because of workers' religion or belief
- Reasonable adjustments for disabled people.

### **Sleeping accommodation**

In certain circumstances, an employer is allowed to discriminate against men or women in providing communal accommodation or benefits, facilities or services linked to that accommodation. Communal accommodation means residential accommodation which has shared sleeping accommodation (for example, dormitories) which for reasons of privacy or because of the sanitary arrangements should be used only by workers of the same sex.

The employer must still manage the accommodation in a way which is as fair as possible to both men and women. The employer should take into account the frequency of demand or need for use of the accommodation by one sex or the other. If it is reasonable to do so, the employer must also alter or extend the accommodation or find other accommodation rather than exclude a worker altogether.

**Example** — A residential training course is arranged at a residential care home which has communal sleeping accommodation for its staff who happen to be all men. A female worker wants to attend the course but is refused because there is nowhere suitable for her to sleep. Her employer should arrange alternative accommodation nearby or offer her another training course where there are no such difficulties, if it is reasonable to do so.

The employer is allowed to discriminate in the above circumstances against workers who are undergoing, have undergone or intend to undergo gender reassignment, but only if the employer can **objectively justify** doing so. The employer must consider

on a case by case basis whether it is appropriate and necessary to exclude the **transsexual** person.

Where the transsexual person is post-operative and visually and for all practical purposes indistinguishable from a non-transsexual person of that gender, they should be treated in their acquired gender unless there are compelling reasons not to.

Where someone has a gender recognition certificate they should be treated in their acquired gender for all purposes and therefore should not be excluded from single-sex communal accommodation.

### **Single-sex facilities and workers' religion or belief**

If you and other workers are provided with changing facilities or showers, your employer must provide these in a way that avoids unlawful discrimination because of religion or belief.

**Example** — An employer only provides communal changing facilities for staff to change into their uniforms. This places staff of a particular religion which requires its followers not to change their clothing in the presence of others, even of the same sex, at a disadvantage compared to people who do not follow this religion. They have to change their clothes in toilet cubicles, which is unhygienic. Unless the employer can **objectively justify** the provision of the communal changing facilities, this may be indirect discrimination.

### **Facilities provided because of workers' religion or belief**

It is not a legal requirement for an employer to provide facilities because of workers' religion or belief, although in some circumstances it may be indirect discrimination if the employer fails to do so.

Moreover, many employers recognise that it is good practice to provide facilities which cater for the different needs of staff with a particular religion or belief.

These might include making a room which is available to staff for prayer, providing separate fridge shelves for food that needs to be kept separate and, if an organisation provides refreshments or meals for staff, meeting dietary requirements.

**Example** — An orthodox Jewish worker in a small firm has a religious requirement

that her food cannot come into direct contact with pork or indirect contact through items such as cloths or sponges. As a matter of good practice, after discussion with staff, the employer allocates one shelf of a fridge for this worker's food, and separate cupboard space for the plates and cutlery that she uses. They also introduce a policy that any food brought into the workplace should be stored in sealed containers.

If your employer does provide this type of facility, the protection from unlawful discrimination because of religion or belief covers both those who have a religion or belief and those who do not.

**Example** — An employer decides to provide a prayer room for use by staff who hold religious beliefs. This risks unlawful discrimination against staff who do not hold a religious belief, who do not have access to this additional facility. A better approach may be to provide a quiet room for use by any staff for personal reflection and by people of any religion or belief or of none.

If your workplace has a canteen or restaurant, it would be good practice for your employer to make sure that special dietary needs because of religion or belief, such as halal and kosher, can be met, but it is unlikely to be a legal requirement.

### **Reasonable adjustments for disabled workers**

When your employer provides facilities for your workers, they must make **reasonable adjustments** if you need them as a disabled person. Your employer's aim should be to make sure that you can, as far as is reasonable, access the facilities on the same basis and to the same extent as a non-disabled worker. In some circumstances, the employer may need to provide additional facilities especially for a disabled worker.

#### **Examples** —

- An employer provides a worker with diabetes with a private room to administer insulin.
- An employer provides a disabled worker with a small fridge in which to store medication. The employer can do this even if non-disabled workers complain that they do not have a fridge in which to store food and drinks.
- An employer provides a disabled worker with a small rest room and couch

where they can lie down and take rests. The employer does not need to provide similar facilities to non-disabled workers.

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

### Reasonable adjustments for breastfeeding mothers

If you return from maternity leave and are still breastfeeding your baby, your employer has a legal duty to provide suitable rest facilities for you to use.

Although there is no legal right for workers to take time off to breastfeed, employers should try to accommodate mothers who wish to do this, bearing in mind that:

- they have a legal duty of care to remove any hazards for a worker who is breastfeeding, and this can include stress and fatigue, and
- a refusal to allow a woman to express milk or to adjust her working conditions to enable her to continue to breastfeed may amount to unlawful sex discrimination.

Further information and guidance is available from the Health and Safety Executive's guide for employers on *New and Expectant Mothers at Work*.

## Dress codes

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Your employer must avoid unlawful discrimination in requiring you and other workers to dress or modify your personal appearance in a particular way.

Use the information earlier in the guide to make sure you know what equality law says your employer must do to avoid unlawful discrimination.

This does not stop an employer having a dress code, but they must be careful that any dress code and the way it is applied does not either:

- directly discriminate against you, or
- indirectly discriminate against you and other people who share the same protected characteristic, unless its requirements can be **objectively justified**.

Restrictions on dress, including hairstyles, could be justifiable for health and safety reasons or for other reasons that relate to your employer's ethos.

### Examples —

- An employer requires long, loose hair to be tied back to avoid danger from machinery in an industrial plant.
- Staff working in a kitchen must tie their hair back and cover it for hygiene reasons.
- An employer providing healthcare services stops staff wearing long sleeves or jewellery to reduce the transmission of infection from one patient to another.
- Staff working in a clothing company's stores are required to wear clothes made by the company itself to show customers what the clothing looks like when worn.

There are a number of other legitimate reasons for your employer to have a dress code – for example, a requirement not to wear jeans if you are in a customer-facing role or to wear a uniform that identifies staff to members of the public.

The main question for your employer to ask is whether what a member of staff wears affects their ability to do their job effectively.

If the answer to this question is 'yes', and your employer wants to have a dress code as a result, then they must apply their dress code in a way that avoids unlawful discrimination.

### **Sex discrimination and dress codes**

Having different rules about clothing or appearance for men and women can result in claims of sex discrimination. For example, if there is a dress code that applies to women but not to men or if the dress code is applied more strictly to one sex than the other, this could be direct discrimination. However, it has been established in the courts that employers do not have to impose exactly the same dress code on men and women. If the dress code applies 'conventional standards of dress and appearance', then it will be seen as applying an even handed approach between men and women

The standard of dress or appearance set should be the same for both women and men, such as 'business dress' or 'casual clothes'.

### **Religion or belief discrimination and dress codes**

Imposing the same rule on everyone may indirectly discriminate against workers with a particular religion or belief.

**Example** — An employer introduces a ‘no beards’ policy, saying this is for health and safety reasons in a plant producing food products. The policy has a disproportionate impact on workers whose religious beliefs require them not to be clean shaven. Unless the employer can **objectively justify** the policy, this will be indirect discrimination because of religion or belief. A better approach might be for the employer to provide workers with ‘beard nets’ to avoid the risk of hair falling into the food.

Some religions require their followers to dress in a modest way. A dress code which requires a shirt to be tucked inside trousers or a skirt may conflict with that requirement as it accentuates body shape. However, if the individual is allowed to wear the shirt over the outside of the trousers or a (long) skirt it may be quite acceptable. The question to ask is whether any requirement to stick to a dress code which does not allow a worker to do this can be **objectively justified**.

For some people wearing a particular item of jewellery or clothing is an expression of their religious beliefs. It may be required by their religion or be a means by which they choose to express their adherence to a religious belief. A ban on all jewellery or on the particular item of clothing may affect someone for whom the wearing of jewellery or a particular item of clothing is an expression of a religious belief. If they were stopped from wearing it, this would place them and those who share their beliefs and their way of expressing those beliefs at a particular disadvantage compared to others, and this may amount to indirect discrimination unless you can objectively justify the ban (for example on health and safety grounds).

While it is legitimate for an employer to impose a dress code in order to project a certain corporate image, you must be careful not to attach too much weight to the desire for a uniform image when the impact on a worker or workers whose religious beliefs require them to wear an item of clothing or jewellery, or for whom the wearing of it is an important way in which they express those beliefs, may be severe.

A person does not need to establish that others are also put at a particular disadvantage by a provision, criterion or practice; rather the question is whether the limitation on their right under the European Convention on Human Rights to manifest their religious beliefs is proportionate given the legitimate aims of the employer. This is because protection of the right to manifest religion under the Convention does not require ‘group disadvantage’ to be shown.

For more information on this issue see the EHRC’s guidance; “Religion or belief in the workplace: an explanation of recent European Court of Human Rights

judgments” available at [www.equalityhumanrights.com/sites/default/files/documents/RoB/religion\\_or\\_belief\\_in\\_the\\_workplace\\_an\\_explanation\\_of\\_recent\\_judgments\\_final.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/RoB/religion_or_belief_in_the_workplace_an_explanation_of_recent_judgments_final.pdf)

**Example** — An employer bans all customer-facing staff from wearing any personal jewellery at work on the basis that it does not fit with their corporate image. One employee is a devout Christian and chooses to wear a Christian crucifix as a means of expressing that belief. To avoid a claim of indirect discrimination, the employer considers allowing an exception to the ban in the employee’s case because otherwise the employer would find it difficult to **objectively justify** the ban.

### Disability discrimination and dress codes

If you are a disabled person and your employer puts in place a dress code for their workers (or you start working somewhere that already has a dress code), they must make **reasonable adjustments** for you.

**Example** — An employer has a policy of requiring all customer-facing male staff to wear a tie. This disadvantages a man with a skin condition that is made worse by contact with tight clothing. As a reasonable adjustment the employer allows the man to work on the reception desk in an open-necked shirt, but still requires him to be of smart appearance.

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

Your employer also needs to make sure that they avoid:

- **direct discrimination** because of disability
- **indirect discrimination** because of disability
- **discrimination arising from disability.**

### When you are managed and appraised

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Every organisation manages the performance of its workers to make sure they are getting their job done in the way that the employer wants them to.

Your employer may be managing your performance formally through an appraisal scheme, with regular 'line management' meetings and annual reports.

Or they may do it informally, just by talking over your performance as you carry out your job.

Many organisations will have a mixture of both formal and informal management and appraisal.

Your employer must avoid unlawful discrimination in the way that they manage and appraise your performance.

Use the information earlier in the guide to make sure you know what equality law says your employer must do to avoid unlawful discrimination.

## Disciplinary procedures

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Your employer must avoid unlawful discrimination in the way that they discipline their workers, in other words, telling them they need to improve something about their work.

Use the information earlier in the guide to make sure you know what equality law says your employer must do to avoid unlawful discrimination.

### Is your employer's disciplinary process fair?

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

### Protected characteristics and disciplinary procedures

Your employer must not discipline you, formally or informally, simply because you have a protected characteristic. This would almost certainly be direct discrimination.

**Example** — A worker aged 21 and a worker aged 42 are both sending and receiving personal emails at work and in working hours. Their employer gives the 21-year-old a written warning because they think that 'a younger person needs a



firmer telling off', while the 42-year-old is informally told to be more careful. This is likely to be direct age discrimination against the younger worker unless the employer can **objectively justify** it, which is unlikely.

Of course, this does not mean people with protected characteristics are immune from the usual performance and conduct standards that apply in your workplace.

**Example** — A male worker and a female worker are both sending and receiving personal emails at work and in working hours. Their employer gives them both an oral warning. The man says (believing it to be true) 'you would not take the situation as seriously as this if I was a woman'. By applying the same standards to both workers and having a valid reason for the disciplinary action, the employer has acted without discrimination and can show the man that his allegation is not true.

However, your employer must be careful to make sure that what happened during a previous disciplinary situation does not lead to a complaint of victimisation.

**Example** — The male worker who complained in the previous example must not be treated badly because of his complaint. This means that if there is a need to discipline him again, the same action must be taken against him as would be taken against someone who had not complained.

### **Reasonable adjustments for disabled workers**

If you are a disabled worker, your employer must make reasonable adjustments so that you can participate in the disciplinary procedure to the same standard as a non-disabled worker. This is especially important when it comes to completing and/or reading documents and attending meetings. For example, you might need:

- Documents provided in a different format – perhaps on audio CD, or in large print or in Braille, if you have a visual impairment.
- Meetings to be held in an accessible room, if you have a mobility impairment.
- A British Sign Language (BSL) interpreter if you are a Deaf person who uses BSL.
- Someone to help you complete a form if you have severe dyslexia.

- A personal assistant to accompany you, in addition to your ‘official companion’ (your trade union representative or colleague who may address the meeting for you if you decide to have one). You may need a personal assistant for this situation even if you do not normally use one at work.
- Changes to the process, such as more breaks to ask for an explanation from your official companion, if you have a learning disability.

Your employer must also think about whether they should make reasonable adjustments to the standards they apply to workers where these standards place disabled workers at a **substantial** disadvantage compared to people who are not disabled.

If necessary, your employer must make reasonable adjustments to what they do as well as the way that they do it.

**Example** — A disabled worker has a condition that causes them severe pain. One day, the worker shouts at their employer. This is completely out of character, and is because of the pain they are experiencing. Usually, this would lead to a worker being considered for disciplinary action. However, their employer knows about the worker’s disability and, as a reasonable adjustment, operates a higher threshold before considering their behaviour to be unacceptable. (They have also encouraged the disabled worker 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 worker 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 worker unfavourably because of 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.

## If you become a disabled person

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If you become a disabled person, this may mean making changes to the way you do your job.

Use the information earlier in the guide to make sure you know what equality law says your employer must do to avoid unlawful discrimination.

In this situation, your employer must think about whether there are reasonable adjustments they need to make so that, as far as is reasonable, you have the same access to everything that is involved in doing your job as a non-disabled worker.

Your employer is under a positive and proactive duty to take steps to remove or reduce or prevent the obstacles you face.

Sometimes this will involve making adjustments to the way that your employer does things or to their premises. It could mean providing you with extra or adapted equipment.

Your employer should also review any existing adjustments if the effects of your condition change or if you change jobs.

Many factors will be involved in deciding what adjustments to make and these 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 have a disability. The required knowledge is of the facts of your disability but an employer does not also need to realise that those particular facts are likely to meet the legal definition of disability.

It is advisable for your employer to discuss the adjustments with you. Otherwise the changes may not be effective. They may also need to get expert advice. This process is sometimes called an 'Employment Retention Assessment'.

There is a lot more information about reasonable adjustments to remove barriers for disabled people in Chapter 3.

## Dealing with harassment

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### What is harassment?

Harassment at work is sometimes linked to bullying. Bullying behaviour may or may not amount to harassment in equality law.

For behaviour to count as harassment in equality law, it has to be one of three types:

- **Type 1:** Unwanted behaviour related to the protected characteristics listed below
- **Type 2:** Sexual harassment

- **Type 3:** Less favourable treatment because of submission to or rejection of previous sex or gender reassignment harassment.

## Type 1

The first type of harassment is unwanted behaviour related to age, disability, race, sex, gender reassignment, religion or belief or sexual orientation, which has the purpose or effect of:

- violating a person's dignity, or
- creating for that person an intimidating, hostile, degrading, humiliating or offensive environment.

'Unwanted behaviour' can include any kind of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour.

'Related to' a protected characteristic covers situations:

- where the harassment is related to the worker's own protected characteristic, or
- where a person is abusive to other workers generally, but a particular worker feels harassed because they have a protected characteristic.

**Example** — During a training session attended by male and female workers, a male trainer directs a number of remarks of a sexual nature to the group as a whole. A female worker finds the comments offensive and humiliating to her as a woman. She can claim harassment even though the remarks were not specifically directed at her.

- where the worker who is harassed does not have the relevant protected characteristic. For example, a worker might be incorrectly perceived to have a characteristic or they may be associated with a person who has a characteristic, such as a family member.
- A worker is known not to have the protected characteristic, but nevertheless is subjected to harassment related to that characteristic.

**Example** — A worker is subjected to homophobic banter and name calling, even though his colleagues know he is not gay. Because the form of the abuse relates to a protected characteristic (specifically, sexual orientation) this could amount to harassment related to sexual orientation.

- The unwanted behaviour does not have to be specifically aimed at the person who finds it violates their dignity or creates for them an intimidating, hostile, degrading, humiliating or offensive environment.

#### **Examples —**

- A white worker in an office where most of the other workers are also white finds the habitual racist comments of another member of staff also creates a hostile and intimidating environment for them. This may amount to harassment.
  - Male members of staff looking at pornography on work computers may create an intimidating or offensive environment for their female colleagues. Even though they do not specifically draw the women's attention to the pornography or speak about it with them, this could amount to harassment.
- It may also be harassment where the unwanted conduct is related to the protected characteristic, but does not take place because of the protected characteristic.

**Example —** A female worker has a relationship with her male manager. On seeing her with another male colleague, the manager suspects she is having an affair. As a result, the manager makes her working life difficult by continually criticising her work in an offensive manner. The behaviour is not because of the sex of the female worker, but because of the suspected affair, which is related to her sex. This could amount to harassment related to sex.

## **Type 2**

The second type of harassment is sexual harassment.

Sexual harassment takes place when a person does something of a sexual nature (which might be verbal, non-verbal or physical) which has the purpose or effect of:

- violating a person's dignity, or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

'Of a sexual nature' can include unwelcome sexual advances, touching, forms of sexual assault, sexual jokes, displaying pornographic photographs or drawings or sending emails with material of a sexual nature.

### Type 3

The third type of harassment is where a worker is treated badly because they either submit to or reject sexual harassment or harassment related to sex or gender reassignment.

**Example** — A shopkeeper propositions one of his shop assistants, she rejects his advances and is then turned down for promotion which she believes she would have got if she had accepted her boss's advances. This almost certainly amounts to harassment.

This kind of harassment also applies where the person who treats the worker badly is someone different from the person carrying out the original harassment.

#### Other things to remember about all the types of harassment:

- The word 'unwanted' means 'unwelcome' or 'uninvited'. This does not mean that express objection must be made to the conduct before it is considered unwanted. A worker does not need to make it clear in advance that offensive or stereotyped remarks are unwanted.

**Example** — A project manager of Indian ethnic origin has lived in England all her life. After she gives notice that she intends to resign from her job with a company, the Director comments, 'We will probably bump into each other in future, unless you are married off in India'. This remark is unwanted conduct related to the worker's ethnic origin which, though unintended, has the effect of violating the worker's dignity. It is reasonable for the worker to take what was said as a stereotypical view of Indian women and to be offended.

- In some situations, a woman may need to make clear that unexceptional behaviour is unwanted, before it can be considered harassment.

**Example** — A woman is asked for a drink after work on a few occasions by her work colleague. She makes an excuse and says she cannot come. On the third occasion, she explicitly states that she does not want to go for a drink with him at all. Her colleague continues to ask her. His continued invitations after she has stated clearly that she does not want to go out with him may be harassment. On the first few occasions, before this was clear, his invitations are unlikely to be considered harassment.

- A serious one-off incident may also amount to harassment.
- If the person carrying out the unwanted behaviour actually intends to violate the other person's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for them, this will of itself amount to harassment and you will not have to consider the effect on the individual.
- If the person carrying out the unwanted behaviour does not intend to violate someone's dignity or create a hostile environment and so on, the behaviour will amount to harassment if it has the effect of creating such an environment and it is reasonable to consider that the behaviour would have that effect.

**Example** — An employee with a learning disability is teased by colleagues who tell him to go to the stores and ask for non-existent items such as a 'long weight' as they think he will fall for the trick. The worker finds it humiliating so is likely to be able to bring a claim for harassment even though his colleagues may not have intended to create a hostile environment for him or undermine his dignity.

### **Harassment of workers by people other than their fellow workers**

Until October 2013, the Equality Act said that an employer could be held responsible for harassment of a worker by someone who didn't work for them, such as a customer. This is sometimes called 'third party harassment'. The Act said that an employer could be held responsible if they knew that a third party had harassed a worker on at least two other occasions and the employer had failed to take reasonably practicable steps to prevent it. This part of the Act has now been repealed.

This means that usually an employer will not be responsible for harassment by someone other than their employee or agent. However, case law indicates that it is possible that an employer could be found to be legally responsible for failing to take action in specific circumstances. There is more information in the section of this guide called *'What happens if the discrimination is done by a person who is not a worker of the employer or the employer's agent'*

### **What good practice steps can your employer take to tackle third-party harassment?**

It would be good practice for your employer not to wait for repeated complaints from you about harassment by a third party before taking action to prevent it.

Steps your employer could take include:

- making sure that any **visitors, clients, suppliers or customers** who come into contact with the workers or job applicants are aware of the harassment policy and behave in line with it, for example, using signs in your reception area about acceptable and unacceptable behaviour
- speaking to the person who has harassed you to tell them their behaviour was not acceptable. In some cases, it may be appropriate for your employer to stop the person visiting their premises to make sure you are protected
- including a term in all contracts with third parties notifying them of the employer's policy on harassment and requiring them to adhere to it
- encouraging workers to report any acts of harassment by third parties and taking action on every reported complaint
- putting notification of unacceptable behaviour on their website, on computer 'pop up' messages, on any plasma screens in their workplace
- including information regarding protection from third-party harassment and the complaints procedure in the induction training for new staff, in any staff handbook or information available to service users
- including information on protection from third-party harassment in any training for key stakeholders
- amending their harassment policies to notify staff of the protection from third-party harassment and what forms it could take
- speaking to frontline staff, particularly those most at risk such as reception, to check that the protection and complaints procedure is known and whether they have any ideas about how to improve awareness of the policy

### **Harassment by fellow workers**

An employer can also be held legally responsible for harassment by people who work for them.

If the person who harasses you works for your employer, equality law says that the employer will not be held legally responsible if they can show that they took **all reasonable steps** to prevent the worker harassing someone.

If the person who harasses you is your employer's **agent**, the employer will not be held legally responsible if they can show that their agent exceeded the scope of their authority.

There is more information about when an employer is legally responsible for what other people do in Chapter 2.



## What can your employer do to prevent harassment?

Equality law does not specify exactly what 'reasonable steps' are, but these steps are likely to help. They are good practice, and not a legal requirement.

Your employer could:

- Put in place a harassment policy (sometimes this will be included in a wider **equality policy**).
- Involve their staff in the policy-making process, including agreeing the policy with a trade union and/or other worker representatives if appropriate.
- Make sure all workers are aware of the policy's existence and of their responsibilities to make it work, for example, by providing them with training.
- Make sure that any visitors, clients, suppliers or customers who come into contact with workers or job applicants are also aware of the policy and behave in line with it, for example, using signs in a reception area.
- Use their policy to explain the steps being taken to prevent harassment.
- What a harassment policy should do:
  - Describe the protected characteristics and clearly state that any harassment of workers or job applicants related to any of these characteristics will not be tolerated.
  - Make it clear that harassment will be treated as a disciplinary offence.
  - Clearly explain how a worker can make a complaint, informally and formally.
  - Make it clear that complaints of harassment will be dealt with within a reasonable time, treated seriously and confidentially, and that someone complaining will be protected from victimisation.
  - Describe what support is available to a worker if they think they are being harassed, for example, counselling or a worker assistance programme.
  - Describe any training/other resources available for workers to help them spot and stop harassment.
  - Describe how the policy will be implemented, reviewed and monitored.
  - Build in a review process; this is particularly important if someone has complained of harassment, as an employer will need to make sure that their policy was effective in dealing with the incident.

## **How can your employer deal with complaints of harassment?**

These suggestions are good practice, not a legal requirement. But your employer should have a process for dealing with the situation if one of the workers says they have been harassed.

Things for your employer to consider are how they can:

- Handle a complaint of harassment with sensitivity and with respect for everyone's rights.
- Make sure they do not dismiss what is said to have happened as the person complaining being 'oversensitive' without investigating exactly what has gone on and assessing whether it comes within the equality law definition of harassment.
- Try not to require someone complaining of harassment to repeatedly recount the events complained of where this is unnecessary, as this may be difficult and upsetting for them.
- If the worker who says they have been harassed wants to make an anonymous complaint (so that the person they are complaining about will not know who has complained) then the employer could:
  - Try to maintain their confidentiality while the employer finds out what has happened and during any formal disciplinary proceedings it is decided are necessary.
  - Remember though that the person who is said to have harassed the worker is entitled to know the details of what they are said to have done so they can defend themselves.
  - Try to make sure that workers not involved do not find out about what has happened.

There is more general information in Chapter 4 about what to do if you believe you've been discriminated against. This includes having been harassed.

## **How employers can sort out equality-related conflict through good practice**

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Conflicts at work between people who have different characteristics or different aspects of the same characteristic are not especially common. Most people will get on with each other at work, because they recognise that this is the best way of getting the job done. So even people who disagree strongly – for example, they have

very different religious or philosophical beliefs, or disapprove of someone else's lifestyle, whatever that lifestyle is – will put their differences aside and work together.

Very occasionally, people's differences because of their protected characteristics will cause conflict.

But unlawful discrimination cannot be excused just because the person who discriminates is sincerely motivated by, for example, their religion or belief. You and your fellow workers have a responsibility to do what equality law says you must do.

The advice this section of the guide contains is not a legal requirement for employers but it may help them avoid complaints of unlawful discrimination from their workers because of what another worker has said or done.

### **General information about dealing with conflicts at work**

You can find out more about dealing with conflicts at work from Acas, whose contact details are in Chapter 5: *Further sources of information and advice*.

The main way an employer can help avoid an equality-related conflict is by making sure all their workers understand what equality law means for them and how they must behave towards other people while they are at work.

Possible ways for employers to make sure their staff members know what equality law means for them are by:

- telling staff when they start working for them – and checking from time to time that staff remember what they have been told, for example, by seeing if/how it has made a difference to how they behave. This could be a very simple checklist the employer talks through, perhaps using some of the Equality and Human Rights Commission's guides to equality law, or arranging for workers to have **equality training**
- writing down the standards of behaviour they expect using an **equality policy**
- including a requirement about behaving in line with equality law in every worker's **terms of employment** or other contract, and making it clear that breaches of equality law will be treated as disciplinary matters or breaches of contract.

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

Responding appropriately to complaints about unlawful discrimination will also help an employer. You can read more on what to do if you believe you've been discriminated against 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), or
- 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 workers employed by your employer or your employer's agents may be personally liable
- What happens if the discrimination is done by a person who is not a worker of yours or your agent
- 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

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Your employer is legally responsible for acts of discrimination, harassment and victimisation carried out by workers employed by them 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 worker 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 worker or agent did.

### Examples —

- A shopkeeper goes abroad for three months and leaves a worker employed by him in charge of the shop. This worker 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 the worker.
- An employer engages a financial consultant to act on their behalf in dealing with their finances internally and with external bodies, using the employer's headed notepaper. While working on the accounts, the consultant sexually harasses an accounts assistant. The consultant would probably be considered an agent of the employer and the employer is likely to be responsible for the harassment.

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

- they took **all reasonable steps** to prevent a worker employed by them 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

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Your employer can reduce the risk that they will be held legally responsible for the behaviour of workers employed by them or their 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 workers 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 workers and agents know how equality law applies to what they are doing.

## When your employer's workers or agents may be personally liable

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A worker employed by your employer or your employer's agent may be personally responsible for their own acts of discrimination, harassment or victimisation carried out during their employment or while acting with the 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 worker discriminating against, harassing or victimising you, or
  - that their agent acted outside the scope of their authority.

**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. A worker 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 worker 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 the discrimination is done by a person who is not your employer's worker or agent**

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Usually employers will not be responsible for discrimination, harassment or victimisation by someone other than their employee or agent. However, case law indicates that it is possible that they could be found to be legally responsible for failing to take action in specific circumstances. These would arise where the employer has some degree of control over a situation where there is a continuing course of offensive conduct of which they are aware but do not take action to prevent its recurrence.

**Example** — A woman is employed to work in a hostel for young men aged between 18 and 21. Some of the young men regularly make sexually abusive comments to her and sometimes touch her inappropriately. She has complained to her manager about this many times but he has done nothing to stop it, by warning the young men that the conduct is unacceptable and that they might be required to leave the hostel if it does not stop. The employer might be legally responsible for the harassment by the young men.



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

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An employer or principal must not instruct, cause or induce a worker employed by them or their 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**

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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 they reasonably believe this to be true, they 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**

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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.

### **Examples —**

- 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 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.

The employer only has to make adjustments where they are aware – or should reasonably be aware – that you have a disability. The required knowledge is of the facts of the worker's disability but an employer does not also need to realise that those particular facts are likely to meet the legal definition of disability.

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 worker, 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 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.

It is advisable for your employer to discuss the adjustments with you, otherwise any adjustments 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?

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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; for example, where the duty arises your employer must make reasonable adjustments to disciplinary or dismissal procedures and decisions. It does not matter whether you were a disabled person when you began working for them or 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?

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Your employer only has to make these changes where they know or could reasonably be expected to know that you are a disabled person and are – or are likely to be – at a substantial disadvantage as a result. The required knowledge is of the facts of your disability but an employer does not also need to realise that those particular facts are likely to meet the legal definition of disability. This means your employer must do everything they can reasonably be expected to do to find out.

**Example** — A worker'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 worker says that they are experiencing a recurrence of depression and are not sleeping well which is making them late. Together, the employer and the worker agree to change the worker's

hours slightly while they are in this situation and that the worker can ask for help whenever they are finding it difficult to start or complete a task. These are reasonable adjustments.

This does not mean, however, 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.

## The three requirements of the duty

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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 talks about where the disabled job worker is put at a substantial disadvantage by a **provision, criterion or practice** of their employer).

**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.

**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**).

**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?

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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

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The first requirement involves changing the way things are done (equality law talks about where the disabled job worker is put at a substantial disadvantage by a **provision, criterion or practice** of their employer).

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.

### Examples —

- 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

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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.

- A physical feature 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.

**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

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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

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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.

**Example** — A disabled worker has been absent from work as a result of depression. Neither the worker 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?

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If something is a reasonable adjustment, your 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 to pay.

**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'

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Your employer only has to do what is reasonable.

Various factors influence whether a particular adjustment is considered reasonable. The test of what is reasonable is ultimately an objective test and not simply a matter of what you or your employer may personally think is reasonable.

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 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.
- 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. The employer should not make assumptions about risks which may face certain disabled workers.

If, taking all of the relevant issues into account, an adjustment is reasonable, then the employer 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.

**Example** — A manual worker asks for the health and safety rules to be read onto an audio CD and given to them. This is likely to be a reasonable adjustment that the employer must make.

## Reasonable adjustments in practice

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

- **Making adjustments to premises.**

**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.**

**Example** — An employer reallocates minor or subsidiary duties to another worker as a disabled worker 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 a worker whose disability involves severe vertigo.

- **Transferring you to fill an existing vacancy.**

**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.**

**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.**

**Example** — An employer relocates the work station of a newly disabled worker (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 worker'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.**

**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 worker 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 workplace training to reflect your particular impairment.**

**Examples** —

- 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 workers 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.**

**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. 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.**

**Example** — The format of instructions and manuals might need to be modified for some disabled workers (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.**

**Example** — A worker with restricted manual dexterity who was applying for promotion would be disadvantaged by a written test, so the employer gives that person an oral test instead.

- **Providing a reader or interpreter.**

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

- **Providing supervision or other support.**

**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.**

**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 Choice.**

**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.**

**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.**

**Example** — A worker 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. Normally the employer allows workers to be accompanied only by work colleagues. The employer also makes sure that the meeting is conducted in a way that does not disadvantage or patronise the disabled worker.

- **Adjusting redundancy selection criteria.**

**Example** — A worker 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.**

**Example** — A disabled worker 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.

**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.

**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

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### 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 Glossary.

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.

**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.

**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.

## 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 by a worker employed by them or by their **agent**, 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?
- Complaining to the employer:
  - Making an informal complaint
  - Raising a formal grievance
  - Alternative Dispute Resolution
  - Monitoring the outcome
- The questions procedure, which you can use to find out more information from an employer if you think you may have been unlawfully discriminated against, harassed or victimised. The questions procedure was abolished on 6 April 2014. However it will still apply to events that happened before that date and you can still ask an employer questions about events that happened on or after that date.
- 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 n Employment 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

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There are three things you can do:

- complain to the employer informally
- raise a grievance under your employer's grievance procedure
- 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 the 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. More information about time limits is given later on in this guide.

You do not have to go first to the employer before making a claim to the Employment Tribunal, but there are advantages in doing so, as long as you don't miss the tribunal time-limit. From 6 May 2014 you will need to comply with the Early Conciliation Procedure before you can make a claim to the Employment Tribunal. There is more information on that procedure in the section on 'Settling a dispute' in this part of the Guidance.

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 are bringing a claim after 29 July 2013, you will also have to pay a fee to make a claim to the Employment Tribunal and another fee to have your case heard. The fees may be as much as £1200 if your claim goes to a full hearing. However, if you are successful, it is likely that the Tribunal will order the employer to reimburse your fees. Also, there are remission arrangements in place which mean that if your income is below a certain level the fee will be reduced or waived entirely.

The Government has published online guidance on fees: [www.gov.uk/employment-tribunals/apply-to-the-tribunal](http://www.gov.uk/employment-tribunals/apply-to-the-tribunal)

## Was what happened against equality law?

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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.

### Examples —

- 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 ask them questions about what happened. We explain how you can do this at page 67.

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 about something that happened at work which is not related to a **protected characteristic**. Sometimes it is difficult to work out

which laws (if any) 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

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### **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 Chapter 2)

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 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.

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, for example your trade union or Acas.

From 6 May 2014 in almost all cases you will have to contact Acas under the early conciliation procedure before you can make a claim to the Employment Tribunal. There is more information on Acas, the early conciliation procedure and different ways of settling your dispute with your employer in the section called 'Settling the dispute' later in this part of the Guidance.

### **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 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.

### **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

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If you believe you may have experienced unlawful discrimination, harassment or victimisation under equality law it is good practice to seek relevant information from the employer. This can help you decide if you have a valid claim or not.

How you can do this will depend on whether or not the claim is about something that happened before 6 April 2014.

### Claims about events which happened before 6 April 2014

If the claim is about something that happened before 6 April 2014, there is a set procedure which you can use to obtain information from the employer. It includes a set form called 'the questionnaire' or 'questions procedure' available at:

<https://www.gov.uk/government/publications/discrimination-and-other-prohibited-conduct-complaints-questionnaire>

The form does not need to be used, provided the specified questions are adopted.

If you send questions to an employer under this procedure, they are not legally required to reply or to answer the questions, but it may harm their case if they do not.

If the employer doesn't respond to the questionnaire within eight weeks of it being sent, the Employment Tribunal can take that into account when making its judgment. It 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 an employer states that to give an answer could prejudice criminal proceedings and if it is reasonable to claim that it would. Most of the time, breaking equality law only leads to a claim in a civil court. Occasionally, breaking equality law can be punished by the criminal courts. In that situation, the employer may be able to refuse to answer the questions if in answering they might incriminate themselves and if it is reasonable for them not to answer.

### **Claims about events which happened on or after 6 April 2014**

The questions procedure and the questionnaire form were abolished on 6 April 2014. For claims about events which took place on or after that date it will remain good practice for anyone who thinks that they may have experienced unlawful discrimination, harassment or victimisation under equality law to seek relevant information before issuing a formal claim.

Acas has produced non-statutory guidance for employers and employees asking and answering questions after 6 April 2014. It is available at

<http://www.acas.org.uk/media/pdf/m/p/Asking-and-responding-to-questions-of-discrimination-in-the-workplace.pdf>

That guidance makes it clear that an employer should treat any such questions seriously and promptly and not ignore them. The questions and answers can form part of the evidence in a case brought under the Equality Act 2010.

Whether the claim is about events that happened before 6 April 2014 or on or after that date the employer must not treat you badly, because you have sent them questions about a claim. If your employer did, it would almost certainly be **victimisation**.

### **Key points about discrimination cases in a work situation**

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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
- Settling a dispute.

## 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.

Claims about equal pay between men and women can also be decided by the County Court or High Court (in England and Wales) and the Sherriff Court or Court of Session (in Scotland). This is explained in the Equality and Human Rights Commission guide: *What equality law means for you as an employer: pay and benefits*.

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

Anyone making a claim to an Employment Tribunal on or after 29 July 2013 has to pay a fee to make a claim and another fee to have their case heard. Remission arrangements are in place, which mean that if your income is below a certain level (and this varies depending upon, for example, family size), the fees will be reduced or waived entirely.

The Government has published online guidance on fees: [www.gov.uk/employment-tribunals/apply-to-the-tribunal](http://www.gov.uk/employment-tribunals/apply-to-the-tribunal)

The Tribunal is likely to order your employer to pay the fees back to you if your case succeeds.

If your complaint is against a public authority, you may also be able to bring a claim for judicial review. Different procedures and time limits apply to these proceedings.

## Time limits for bringing a claim

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

**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 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 the employer, to allow your claim to be brought later than this. You will need to explain why you were not able to bring the claim within the time limit.

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.

**Example** — An employer has a policy of only providing company cars to employees aged 35 years or over. Unless the policy can be objectively justified, someone aged under 35 would be able to make a claim to the tribunal for age discrimination at any time while the policy continues to operate in favour of those aged 35. If the policy ceased to operate in favour of this age group, claims would have to be made within three months of this happening.

If you are complaining about a failure to do something, for example, a failure to make **reasonable adjustments**, then the three months begins when the 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.

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

Where you have to contact Acas before making a claim because the early conciliation procedure applies, there are special rules about time limits. The normal three month time limit is extended to allow conciliation to take place. There is more information on the early conciliation procedure in the section of this guidance called ‘Settling a dispute’.

For more information see the Acas guidance on the early conciliation procedure: [www.acas.org.uk/media/pdf/h/o/Early-Conciliation-explained.pdf](http://www.acas.org.uk/media/pdf/h/o/Early-Conciliation-explained.pdf)

The rules are not straightforward and you should seek advice where there is any doubt about how the rules apply.

You may be able to get advice on this from 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*.

### **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 the employer, then the burden of proof begins with you. There are two situations in which the burden of proof will shift onto the employer:

- If you prove enough facts from which the tribunal can decide, without any other explanation, that the discrimination, harassment or victimisation has taken place, or
- If your complaint is that you have not been offered a job because the employer found out about your disability having asked questions which they were not

allowed to ask under the rules against **pre-employment health or disability enquiries**.

In either of these situations, the burden then shifts onto the 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 the employer to do**

If you win your case, the tribunal can order what 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.

**Example** — Providing a reference or reinstating you to your job, if the tribunal thinks this would work despite the previous history.

- At present, the Employment Tribunal (ET) can 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). The ET can make this kind of recommendation even if the person who has won their case no longer works for the employer. The Government has said it will abolish the Employment Tribunals' power to make these kind of wider recommendations. If it may be relevant to a case in which you are involved, you will need to check whether this power still exists.

### **Examples** —

- 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. However, the Tribunal is now likely to order your employer to reimburse any fees you had to pay the tribunal after 29 July 2013 to bring your claim, if that claim is successful.

From 6 April 2014, the Tribunal may also impose financial penalties of between £100 – £5,000 (payable to the Government) on an employer if they are unsuccessful in defending a claim and the case has ‘aggravating features’. These awards are only likely to be imposed sparingly in cases where the employer’s conduct has been particularly reprehensible.

The Government also intends to introduce legislation in October 2014 which will require an Employment Tribunal to order, subject to certain exceptions, an employer to undertake an equal pay audit where the Tribunal finds that the employer has breached an equality clause and/or discriminated because of sex in relation to pay.

### **Settling a dispute**

Taking legal proceedings can be a stressful and time consuming experience. It may be in your best interest to try to settle your dispute; specifically, to reach an agreement with your employer where possible to avoid going to an Employment Tribunal or court hearing.

There are three ways in which you can settle a dispute:

- Agreement between you and the employer
- Acas conciliation service
- Qualifying settlement agreement.

### **Agreement between you and the employer**

Before you issue a claim in the employment tribunal, you can agree to settle a dispute directly with your employer. An agreement to settle a dispute can include any terms that you agree with the employer and can cover compensation, future actions by the employer and other lawful matters.

**Example** — A worker raises a grievance with her employers alleging a failure to make reasonable adjustments. The employer investigates the worker's complaint and upholds her grievance. The employer agrees with the worker to put the reasonable adjustments in place and offers her a written apology, which she accepts.

## Acas

You may also seek assistance from Acas which offers a conciliation service for parties in dispute, whether or not you have made a claim to an Employment Tribunal.

From 6 May 2014, all claimants (with very limited exceptions) will have to comply with the Early Conciliation Procedure before they can make a claim to the Employment Tribunal. Under the procedure, a person wanting to bring a claim has to present a completed early conciliation form to Acas or telephone Acas giving their details and those of their employer. Acas will then offer a free conciliation service to try and help the parties resolve their dispute.

The time limit for bringing a claim will usually be extended to allow the conciliation to take place.

You can get the prescribed notification form and guidance on how the early conciliation procedure works from the Acas website: [www.acas.org.uk/index.aspx?articleid=4028](http://www.acas.org.uk/index.aspx?articleid=4028)

**Example** — A worker raises a grievance with her employer alleging sex discrimination. The employer dismisses her grievance. She decides to make a claim to the tribunal but before she does so she contacts ACAS in order to comply with the early conciliation procedure. ACAS helps her and her employer to conciliate the dispute. As a result of the conciliation, the worker and her employer agree to settle the claim on terms which are agreeable to both of them.

## Qualifying settlement agreement

A worker can also settle a claim or potential claim to the employment tribunal by way of a 'qualifying settlement agreement'. There are specific conditions which you must satisfy if you choose to settle your claim in this way:

- the agreement must be in writing
- the conditions in the agreement must be tailored to the circumstances of the claim

- you must have received legal advice about the terms of the agreement from an independent advisor who is insured against the risk of a claim arising from that advice
- the person who provides you with independent legal advice on the settlement agreement must be a lawyer; a trade union representative with written authority from the trade union or an advice centre worker with written authority from the centre to give this advice.

If you are represented by a legal advisor in relation to a claim and you subsequently settle it through a settlement agreement, the same advisor can also advise you on the settlement agreement.

### **Where to find out more about making a tribunal claim**

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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

### General advice and information

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#### **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. If you need expert information, advice and support on discrimination and human rights issues and the applicable law, especially if you need more help than advice agencies and other local organisations can provide, please contact the Equality Advisory and Support Service (EASS), below. EASS was commissioned by Government in 2012 to replace the EHRC Helpline, which is now closed. EASS is completely independent of the Commission.

#### **[Equality Advisory Support Service \(EASS\)](#)**

The Helpline advises and assists individuals on issues relating to equality and human rights, across England, Scotland and Wales. They can also accept referrals from organisations which, due to capacity or funding issues, are unable to provide face to face advice to local users of their services.

- Telephone: 0808 800 0082 (Mon–Fri 9am–8pm; Sat 10am–2pm)
- Textphone: 0808 800 0084 (Mon–Fri 9am–8pm; Sat 10am–2pm)

#### **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](http://www.acas.org.uk)
- Telephone: 08457 47 47 47 (Mon–Fri: 08:00–20:00; Sat: 09:00–13:00)

## **GOV.UK (Employing people)**

Guidance from the government's website for employers.

- Website: [www.gov.uk/browse/employing-people](http://www.gov.uk/browse/employing-people)

## **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.gov.uk/access-to-work](http://www.gov.uk/access-to-work)

London, East England and South East England

- Telephone: 020 8426 3110
- Textphone: 020 8426 3133
- Email: [atwosu.london@jobcentreplus.gsi.gov.uk](mailto:atwosu.london@jobcentreplus.gsi.gov.uk)

Wales, South West England, West Midlands and East Midlands

- Telephone: 02920 423 291
- Textphone: 0845 602 5850
- Email: [atwosu.cardiff@dpw.gsi.gov.uk](mailto:atwosu.cardiff@dpw.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](mailto: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: [www.advicenow.org.uk](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](http://www.adviceuk.org.uk)
- Telephone: 0300 777 0107 or 0300 777 0108
- Email: [mail@adviceuk.org.uk](mailto:mail@adviceuk.org.uk)

## **Age UK**

Age UK aims to improve later life for everyone by providing information and advice, campaigns, products, training and research.

- Website: [www.ageuk.org.uk](http://www.ageuk.org.uk)
- Telephone: 0800 169 6565
- Email: [contact@ageuk.org.uk](mailto:contact@ageuk.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](http://www.adp.org.uk)
- Telephone: 01204 431638 (answerphone only service)
- Fax: 01204 431638
- Email: [info@adp.org.uk](mailto:info@adp.org.uk)

## **British Chambers of Commerce (BCC)**

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

- Website: [www.britishchambers.org.uk](http://www.britishchambers.org.uk)
- Telephone: 020 7654 5800
- Fax: 020 7654 5819
- Email: [info@britishchambers.org.uk](mailto:info@britishchambers.org.uk)

## **British Retail Consortium (BRC)**

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

- Website: [www.brc.org.uk](http://www.brc.org.uk)
- Telephone: 020 7854 8900
- Fax: 020 7854 8901

## **Citizens Advice Bureau**

Citizens Advice Bureaux offer free, confidential, impartial and independent advice from over 3,500 locations. These include high streets, community centres, doctors' surgeries, courts and prisons. It is available to everyone.

Advice may be given face-to-face or by phone. Most bureaux can arrange home visits and some also provide email advice. A growing number are piloting the use of text, online chat and webcams.

- Website: [www.citizensadvice.org.uk/getadvice.ihtml](http://www.citizensadvice.org.uk/getadvice.ihtml)
- Telephone (England): 08444 111 444
- Telephone (Wales): 08444 77 20 20

### **Citizens Advice Scotland**

- Website: [www.cas.org.uk/](http://www.cas.org.uk/)
- Telephone: 0808 800 9060.

### **Department for Business, Innovation and Skills (BIS)**

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

- Website: [www.gov.uk/government/organisations/department-for-business-innovation-skills](http://www.gov.uk/government/organisations/department-for-business-innovation-skills)
- Telephone: 020 7215 5000

### **Chartered Institute of Personnel and Development (CIPD)**

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

- Website: [www.cipd.co.uk](http://www.cipd.co.uk)
- Telephone: 020 8612 6208

### **ChildcareLink**

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

- Website: [www.childcare.co.uk](http://www.childcare.co.uk)
- Telephone: 0800 2346 346

### **Close the Gap Scotland**

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

- Website: [www.closethegap.org.uk](http://www.closethegap.org.uk)
- Telephone: 0141 337 8131

### **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](http://www.dls.org.uk)
- Telephone: 020 7791 9800
- Minicom: 020 7791 9801

### **Equality Britain**

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

- Website: [www.equalityuk.org](http://www.equalityuk.org)

### **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](http://www.gires.org.uk)
- Telephone: 01372 801 554
- Fax: 01372 272 297
- Email: [info@gires.org.uk](mailto:info@gires.org.uk)

### **The Gender Trust**

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

- Website: [www.gendertrust.org.uk](http://www.gendertrust.org.uk)
- Telephone: 01273 234024



## **GOV.UK**

GOV.UK 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.gov.uk](http://www.gov.uk)

## **Government Equalities Office (GEO)**

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

- Website: [www.gov.uk/government/organisations/government-equalities-office](http://www.gov.uk/government/organisations/government-equalities-office)
- Telephone: 02072116000

## **Health and Safety Executive (HSE)**

The HSE provides information and guidance on health and safety.

- Website: [www.hse.gov.uk](http://www.hse.gov.uk)
- Telephone: 08701 545 500
- Email: [hseinformationservices@natbrit.com](mailto:hseinformationservices@natbrit.com)

## **Healthy Minds at Work**

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

- Website: [www.healthymindsatwork.org.uk](http://www.healthymindsatwork.org.uk)
- Email: [info@healthymindsatwork.org.uk](mailto:info@healthymindsatwork.org.uk)

## **Law Centres Network**

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](http://www.lawcentres.org.uk)
- Telephone: 0203 637 1330

## **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](http://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](mailto:wales@lawsociety.org.uk)

## **Scottish Association of Law Centres (SALC)**

SALC represents law centres across Scotland.

- Website: [www.scotlawcentres.blogspot.com](http://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](http://www.mindfulemployer.net)
- Telephone: 01392 208 833
- Email: [info@mindfulemployer.net](mailto:info@mindfulemployer.net)

## **Opportunity Now**

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

- Website: [www.opportunity.bitc.org.uk](http://www.opportunity.bitc.org.uk)
- Telephone: 0207 566 8650

## **Press for Change (PfC)**

PfC is a political lobbying and educational organisation. It campaigns to achieve equality and human rights for all trans people in the UK through legislation and social

change. It provides legal advice, training and consultancy for employers and organisations as well as undertaking commissioned research.

- Website: [www.pfc.org.uk](http://www.pfc.org.uk)
- Telephone: 08448 708165
- Email: [office@pfc.org.uk](mailto:office@pfc.org.uk)

### **Race for Opportunity (RfO)**

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

- Website: [www.raceforopportunity.org.uk](http://www.raceforopportunity.org.uk)
- Telephone: 0207 566 8716

### **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](http://www.stonewall.org.uk)
- Telephone: 08000 50 20 20
- Email: [info@stonewall.org.uk](mailto:info@stonewall.org.uk)

### **The Age and Employment Network (TAEN)**

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

- Website: [www.taen.org.uk](http://www.taen.org.uk)
- Telephone: 020 7843 1590

### **TUC – the Trades Union Congress (England and Wales)**

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

- Website: [www.tuc.org.uk](http://www.tuc.org.uk)
- Telephone: 020 7636 4030

### **Scottish Trades Union Congress (STUC)**

- Website: [www.stuc.org.uk](http://www.stuc.org.uk)

- Telephone: 0141 337 8100
- Email: [info@stuc.org.uk](mailto:info@stuc.org.uk)

### **Train to Gain**

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

- Website: [www.traintogain.gov.uk](http://www.traintogain.gov.uk)
- Telephone: 0845 600 9006

### **Working Families**

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

- Website: [www.workingfamilies.org.uk](http://www.workingfamilies.org.uk)
- Telephone: 0800 013 0313
- Email: [office@workingfamilies.org.uk](mailto:office@workingfamilies.org.uk)

### **Workwise**

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

- Website: [www.workwiseuk.org](http://www.workwiseuk.org)
- Telephone: 01252 311 557
- Email: [enquiries@workwiseuk.org](mailto:enquiries@workwiseuk.org)

# Glossary

<b>accessible venue</b>	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.
<b>Act</b>	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> ).
<b>affirmative action</b>	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.
<b>age</b>	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, ‘middle-aged people’ or people over 50).
<b>agent</b>	A person who has authority to act on behalf of another ('the principal') but who is not an employee or worker employed by the employer.
<b>all reasonable steps</b>	In relation to discriminatory actions by an employee, all the things that the employer could reasonably have done to have stopped the discriminatory acts if they are not responsible; in relation to reasonable adjustments, ‘reasonable steps’ is another term for the things that the employer could reasonably have done to remove the disadvantage.
<b>alternative format</b>	Media formats which are accessible to disabled people with specific impairments, for example Braille, audio description, subtitles and Easy Read.
<b>armed forces</b>	Refers to military service personnel.
<b>associated with</b>	This is used in a situation where the reason a job applicant

or worker is discriminated against is not because they have a particular protected characteristic, but because they are 'associated with' another person who has that protected characteristic, eg the other person is their friend or relative. For example, an employer decides not to recruit a non-disabled worker because they have a disabled child. This is sometimes referred to as discrimination 'by association'.

**association, by**

As in 'discrimination by association'. 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.

**barriers**

In this guide, this term refers to obstacles which get in the way of equality for disabled workers and other workers put at a disadvantage because of their protected characteristics. Unless explicitly stated, 'barriers' does not exclusively mean physical barriers. For more on barriers in relation to disabled workers, see **duty to make reasonable adjustments**.

**Bill**

A draft Act, not passed by Parliament.

**burden of proof**

This refers to whether, in an Employment Tribunal, it is for the worker to prove that discrimination occurred or it is for the employer to disprove it. Broadly speaking, a worker must prove facts which, if unexplained, indicate discrimination. The burden of proof then shifts to the employer to prove there was no discrimination. If the employer cannot then prove that no discrimination was involved, the worker will win their case.

**charity**

A body (whether corporate or not) which is for a statutory charitable purpose that provides a benefit to the public.

**Code of Practice**

A statutory guidance document which must be taken into account by courts and tribunals when applying the law and which may assist people to understand and comply with

the law.

**comparator**

A person with whom a claimant compares themselves to establish less favourable treatment or a disadvantage in a discrimination case. If a comparator does not exist it is often possible to rely on how a person would have been treated if they did not have the relevant protected characteristic (known as a 'hypothetical' comparator).

**contract worker**

Under the Equality Act, this has a special meaning. It means a person who is sent by their employer to do work for someone else (the 'principal'), under a contract between the employer and the principal. For example, a person employed by an agency to work for someone else ('an end-user') or a person employed by a privatised company to work on contracted out services for a public authority, may be a contract worker. The Equality Act makes it unlawful for the principal to discriminate against the contract worker.

**data protection**

Safeguards concerning personal data are provided for by statute, mainly the Data Protection Act 1998.

**direct discrimination**

Less favourable treatment of a person compared with another person because of a protected characteristic. This may be their own protected characteristic, or a protected characteristic of someone else, eg someone with whom they are **associated**. It is also direct discrimination to treat someone less favourably because the employer wrongly perceives them to have a protected characteristic.

**disability**

A person has a disability if they have 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. Sometimes people are treated as having a disability where they do not meet these criteria (e.g. asymptomatic cancer and HIV).

**disabled person**

Someone who has a physical or mental impairment that has a **substantial** and long-term adverse effect on their ability to carry out normal day-to-day activities. Sometimes people are treated as having a disability where they do not

	meet these criteria (e.g. asymptomatic cancer and HIV).
<b>disadvantage</b>	A detriment or impediment – something that the individual affected might reasonably consider changes their position for the worse.
<b>discrimination arising from disability</b>	When a person is treated unfavourably because of something arising in consequence of their disability, eg an employer dismisses a worker because of the length of time they have been on sick leave. The reason the worker has been off sick is because of their disability. If it is <b>objectively justifiable</b> to treat a person unfavourably because of something arising from their disability, then the treatment will not be unlawful. It is unlikely to be justifiable if the employer has not first made any <b>reasonable adjustments</b> . The required knowledge is of the facts of the worker's disability but an employer does not also need to realise that those particular facts are likely to meet the legal definition of disability.
<b>disproportionately low</b>	Refers to situations where people with a protected characteristic are under-represented compared to their numbers in the population or in the relevant workplace.
<b>diversity</b>	This tends to be used to refer to a group of people with many different types of protected characteristic; for example, people of all ages, religions, ethnic background, etc.
<b>duty to make reasonable adjustments</b>	This duty arises where (1) a physical feature of the workplace or (2) a provision, criterion or practice applied by an employer puts a disabled worker or job applicant at a <b>substantial</b> disadvantage in comparison with people who are not disabled. It also applies where a worker or job applicant would be put at a substantial disadvantage but for the provision of an auxiliary aid. The employer has a duty to take reasonable steps to avoid 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. In many situations, an employer must treat the disabled worker or job applicant more favourably than



others as part of the reasonable adjustment. More detail of the law and examples of reasonable adjustments are set out in Chapter 3 of this guide.

**educational establishments**

Schools, colleges and higher educational institutions.

**employee**

In this guide, the word ‘employee’ is used only to refer to the definition in the Employment Rights Act 1996, ie a person who works under a contract of employment. This definition is fairly limited. It is only employees in this sense who have certain rights, eg to have a written statement of employment particulars; to use the formal procedure to request flexible working; and to claim unfair dismissal.

The Equality Act uses the term ‘employee’ more widely, to include a person working on a contract of employment or 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. To avoid confusion with the narrower definition of ‘employee’ applicable under the Employment Rights Act, this guide refers to someone in this wider category of workers covered by equality law as a ‘worker’. See **worker**.

**employer**

A person who makes work available under a contract of employment, 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.

**Employment Tribunal**

Cases of discrimination in work situations (as well as unfair dismissal and most other employment law claims) are heard by Employment Tribunals. A full Hearing is usually handled by a three person panel – a Judge and two non-legal members.

<b>equal pay audit</b>	An exercise to compare the pay of women and men who are doing equal work in an organisation, and investigate the causes of any pay gaps identified; also known as an 'equal pay review'. The provisions in the Equality 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.
<b>equal work</b>	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.
<b>equality clause</b>	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.
<b>equality policy</b>	A statement of an organisation's commitment to the principle of equality of opportunity in the workplace.
<b>equality training</b>	Training on equality law and effective equality practice.
<b>ET</b>	Abbreviation for <b>Employment Tribunal</b> .
<b>exceptions</b>	Where, in specified circumstances, a provision of the Act does not apply.
<b>flexible working</b>	Alternative work patterns, such as working different hours or at home, including to accommodate disability or childcare commitments. See also <b>right to request flexible working</b> .
<b>gender reassignment</b>	The process of changing or transitioning from one gender to another. The Equality Act prohibits discrimination against a person who is proposing to undergo, is undergoing or has undergone a process, or part of a process, for the purpose of reassigning their sex. See also <b>transsexual</b> person.
<b>gender recognition</b>	A certificate issued under the Gender Recognition Act to a

<b>certificate</b>	transsexual person who seeks such a certificate and 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.
<b>guaranteed interview scheme</b>	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.
<b>harass</b>	To behave towards someone in a way that violates their dignity, or creates a degrading, humiliating, hostile, intimidating or offensive environment for them.
<b>harassment</b>	Unwanted behaviour that has the purpose or effect of violating a person's dignity or creates a degrading, humiliating, hostile, intimidating or offensive environment for them. <i>See also</i> <b>sexual harassment</b> .
<b>impairment</b>	A functional limitation which may lead to a person being defined as disabled according to the definition under the Act. <i>See also</i> <b>disability</b> .
<b>indirect discrimination</b>	Where an employer applies (or would apply) 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, unless applying the practice, provision or criterion can be <b>objectively justified</b> by the employer.
<b>instruction to discriminate</b>	When someone who is in a position to do so instructs another to discriminate against a third party. For example, if a GP instructed their receptionist not to register anyone who might need help from an interpreter, this would amount to an instruction to discriminate.
<b>job evaluation scheme</b>	<i>See</i> <b>job evaluation study</b> .
<b>job evaluation study</b>	This is a study undertaken to assess the relative value of different jobs in an organisation, 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. <i>See also</i> <b>equal work</b> .

<b>judicial review</b>	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.
<b>knowledge</b>	This refers to knowledge of a person's disability which, in some circumstances, is needed for discrimination to occur. The required knowledge is of the facts of the worker's disability but an employer does not also need to realise that those particular facts are likely to meet the legal definition of disability.
<b>less favourably</b>	Worse – so 'less favourable treatment' means the same as 'worse treatment'.
<b>liability</b>	Legal responsibility. An employer is legally responsible for discrimination carried out by workers employed by you or by your agents, unless you have taken all reasonable preventative steps.
<b>like work</b>	See <b>equal work</b> .
<b>marriage and civil partnership</b>	<p>In England and Wales marriage is no longer restricted to a union between a man and a woman but now includes a marriage between two people of the same sex.<sup>1</sup> This will also be true in Scotland when the relevant legislation is brought into force.<sup>2</sup></p> <p>Same-sex couples can also have their relationships legally recognised as 'civil partnerships'. Civil partners must not be treated less favourably than married couples (except where permitted by the Equality Act).</p>
<b>maternity</b>	See <b>pregnancy and maternity</b> .
<b>maternity leave</b>	Leave which a woman can take whilst she is pregnant and after the birth of her child. Statutory maternity leave is divided into compulsory, ordinary and additional maternity leave. How much leave a woman is entitled to, and how much of it is paid, will vary, but all women employees are entitled to 52 weeks.
<b>monitoring</b>	Monitoring for equality data to check if people with

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<sup>1</sup> Section 1, Marriage (Same Sex Couples) Act 2013.

<sup>2</sup> Marriage and Civil Partnership (Scotland) Act 2014.

protected characteristics are participating and being treated equally. For example, monitoring the representation of women, or disabled people, in the workforce or at senior levels within organisations.

**monitoring form**

A form which organisations use to collect equality monitoring data – from, for example, job applicants or employees. It records information about a person’s protected characteristics. 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. The law requires an employer to make reasonable adjustments for a disabled person to remove any disadvantage caused by their disability, and this often *requires* treating them more favourably. An employer can also *chose* to treat a disabled worker more favourably in other ways, eg by automatically shortlisting them for a job, even if they are not at a particular disadvantage on the relevant occasion. The law can also 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.

**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. Regardless of age, it must be objectively justified.

**objective justification**

See **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. See also **proportionate**.

**occupational health**

Occupational health has no legal meaning in the context of the Equality Act, but it can be used to refer to the ongoing

	<p>maintenance and promotion of physical, mental and social wellbeing for all workers. The phrase is often used as a shorthand way of referring to <b>occupational health services</b> provided by the employer.</p>
<b>occupational health practitioner</b>	<p>A health professional providing occupational health services.</p>
<b>occupational health service</b>	<p>This usually refers to doctors or nurses employed in-house by an employer or through an external provider who the employer may ask to see workers and give medical advice on their health when workplace issues arise.</p>
<b>occupational pension</b>	<p>A pension which an employee may receive after retirement as a contractual benefit.</p>
<b>occupational requirement</b>	<p>An employer can discriminate against a worker in very limited circumstances where it is an 'occupational requirement' to have a particular protected characteristic and the application of the requirement is <b>objectively justified</b>. There are two particular occupational requirement exceptions where employment is for the purposes of an organised religion or the employer has an ethos based on religion or belief, but very specific requirements need to be fulfilled.</p>
<b>office-holders</b>	<p>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 person is appointed to a public office 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.</p>
<b>palantypist</b>	<p>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.</p>
<b>past disability</b>	<p>A person who has had a disability as defined by the Equality Act.</p>

- perception** This refers to a belief that someone has a protected characteristic, whether or not they do have it.  
Discrimination because of a perceived protected characteristic is unlawful. The idea of discrimination because of perception is not explicitly referred to in the Equality Act, but it is incorporated because of the way the definition of **direct discrimination** is worded.
- 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. *See also 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.
- positive action** If an employer reasonably thinks that people sharing a certain protected characteristic suffer a disadvantage connected to that characteristic or have different needs, or if their participation in work or other activity is disproportionately low, an employer can take any action (which would otherwise be discrimination against other people) which is a proportionate means of enabling or encouraging those people to overcome or minimise their disadvantage or to participate in work or other activities or meeting their needs. For example, an employer can put on training courses exclusively for workers with a particular protected characteristic. An employer is not allowed to give preference to a worker in recruitment or promotion because they have a protected characteristic.
- positive discrimination** Treating someone with a protected characteristic more favourably to counteract the effects of past discrimination. It is generally not lawful, although more favourable treatment of workers because of their disability is permitted if the employer so wishes.  
Moreover, the duty to make reasonable adjustments may require an employer to treat a worker more favourably if that is needed to avoid a disadvantage.

**pre-employment disability and health enquiries**

Generally, an employer must not ask about disabilities or the health of a job applicant before they have been offered the job. If the employer does ask such questions and then fails to offer the applicant the job, the fact that the employer made such enquiries will shift the **burden of proof** if the applicant brings a claim for disability discrimination. The Equality and Human Rights Commission can also take legal action against the employer if such enquiries are wrongly made. More detail is set out in the guide, 'What equality law means for you as an employer: when you recruit someone to work for you'.

**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 where special protections apply.

**principal**

In the context of a **contract worker**, this is someone who makes work available for a worker who is employed by someone else and supplied by that employer under a contract between the employer and the principal. See **contract worker**.

**procurement**

The term used in relation to the range of goods and services a public body or authority commissions and delivers. It includes sourcing and appointment of a service provider and the subsequent management of the goods and services being provided.

**proportionate**

This refers to measures or actions that are appropriate and necessary. Whether something is proportionate in the circumstances will be a question of fact and will involve weighing up the discriminatory impact of the action against the reasons for it, and asking if there is any other way of achieving the aim.

**protected characteristics**

These are the grounds upon which discrimination is unlawful. The characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual



orientation.

**protected period**

This refers to the time in a work context when the specific prohibition against unfavourable treatment of expectant and new mothers applies. The period begins at the start of a woman's pregnancy and continues until the end of her maternity leave.

**provision, criterion or practice**

Identifying a provision, criterion or practice is key to establishing **indirect discrimination**. It can include, for example, any formal or informal policies, decisions, rules, practices, arrangements, criteria, conditions, prerequisites or qualifications.

**public authority**

For the purposes of this Guidance a 'public authority' means: government departments, local authorities, courts and tribunals, health authorities and hospitals, schools, prisons, and police.

**public bodies**

For the purpose of this Guidance 'public bodies' includes public authorities (as above) as well as organisations which have a role in the processes of national governments but are not a government department or part of one. They operate to a greater or lesser extent at arm's length from Ministers, departmental government body or an inspectorate. This is not an exhaustive list.

**public functions**

A 'public function' for the purposes of this Guidance is any act or activities of a public nature carried out by a public authority or public body or by the private or voluntary sectors which is not already covered by the other sections of the Act dealing with services, housing, education and employment. Specifically, in relation to the private and voluntary sectors it will cover certain acts or activities carried out on behalf of the state.

Examples of public functions include: determining frameworks for entitlement to benefits or services; law enforcement; receiving someone into prison or immigration detention facility; planning control; licensing; parking controls; trading standards; environmental health; regulatory functions; investigation of complaints; child

protection. This is not an exhaustive list.

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, including, 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.

**questions procedure**

A discrimination law procedure whereby written pre-action questions are issued to the respondent, i.e. the person or organisation against whom a discrimination claim may be made. The questions are usually put onto a standard written form which is often called a 'questionnaire'. This procedure will be abolished on 6 April 2014 (see, section in the Guidance on 'questions procedure' for details).

**race**

Refers to the protected characteristic of race. It refers to a group of people defined by their colour, nationality (including citizenship), ethnic or national origins.

**rated as equivalent**

An equal pay concept – see **equal work**

**reasonable adjustment**

See the **duty to make reasonable adjustments**.

**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 also **religion or belief**.

**religious organisation**

See **religion or belief organisations**.

<b>retirement age</b>	The age at which an employee retires or is expected to retire. This may be an age which is set in the employee's contract of employment or the <b>normal retirement age</b> in that employment. Employers must objectively justify any retirement age imposed, following the abolition of the default retirement age in 2011. The employer may also impose a retirement age on workers who are not employees, but this must also be objectively justified.
<b>right to request flexible working</b>	Employees with at least 26 weeks' service have the right to request flexible working under a formal procedure for any reason. This is simply an entitlement to go through a formal procedure to have the request considered in a meeting and to receive written reasons for any refusal. A right to be allowed to work flexibly for care reasons applies more widely to workers and is covered by indirect sex discrimination law under the Equality Act.
<b>same employment</b>	An equal pay concept (see <b>equal work</b> ). Generally, women and men can compare their pay and other conditions with those employed by the same or an associated employer.
<b>service complaint</b>	Where the discrimination occurred while the worker was serving as a member of the armed forces, an employment tribunal cannot decide the claim unless the worker has made a service complaint about the matter which has not been withdrawn.
<b>service provider</b>	Someone (including an organisation) who provides services, goods or facilities to the general public or a section of it.
<b>sex</b>	This is a protected characteristic. It refers to whether a person is a man or a woman (of any age).
<b>sexual harassment</b>	Any conduct of a sexual nature that is unwanted by the recipient, including verbal, non-verbal and physical behaviour, and which violates the victim's dignity or creates an intimidating, hostile, degrading or offensive environment for them.
<b>sexual orientation</b>	Whether a person's sexual attraction is towards their own

	sex, the opposite sex or to both sexes.
<b>single-sex facilities</b>	Facilities which are only available to men or to women, the provision of which may be lawful under the Equality Act.
<b>specific equality duties</b>	These are duties imposed on certain public authorities. They are designed to ensure that the better performance by a public authority of the public sector equality duty. See also <b>public sector equality duty</b> .
<b>stakeholders</b>	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.
<b>substantial</b>	This word tends to come up most in connection with the definition of disability and the duty to make reasonable adjustments for disabled workers. The Equality Act says only that 'substantial' means more than minor or trivial.
<b>terms of employment</b>	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.
<b>textphone</b>	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.
<b>trade unions</b>	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.
<b>transsexual person</b>	Refers to a person who has the protected characteristic of <b>gender reassignment</b> . 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. Once a transsexual person has acquired a <b>gender recognition certificate</b> , it is probably the case that they should be

	treated entirely as their acquired gender.
<b>tribunal</b>	See <b>Employment Tribunal</b>
<b>two ticks symbol</b>	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.
<b>UK Text Relay Service</b>	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.
<b>unfavourably</b>	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, or discrimination arising from disability.
<b>vicarious liability</b>	This term is sometimes used to describe the fact that an employer is legally responsible for discrimination carried out by its employees. See also <b>liability</b> .
<b>victimisation</b>	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; or making a relevant pay disclosure.
<b>victimise</b>	The act of <b>victimisation</b> .
<b>vocational service</b>	A range of services to enable people to retain and gain paid employment and mainstream education.
<b>vocational training</b>	Training to do a particular job or task.
<b>Work Choice</b>	Work Choice provides support to disabled people in helping them get and keep a job. The type of support varies according to the help needed but can include

training and developing skills; building confidence and interview coaching.

**work of equal value**

See **equal work**.

**worker**

In this guide, 'worker' is used to refer to any person working for an employer, whether they are employed on a contract of employment (ie an '**employee**') or on a contract personally to do work, or more generally as a **contract worker**. In employment law, the term 'worker' has a similar meaning to those people covered by the Equality Act. However, it is not quite identical to that and has its own definition; the term is used, for example, to people covered by the Working Time Regulations and the law on the minimum wage.

## Contacts

This publication and related equality and human rights resources are available from the Commission's website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

Website [www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

Telephone 0808 800 0082

Textphone 0808 800 0084

Hours 09:00 to 20:00 (Monday to Friday)  
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Questions and comments regarding this publication may be addressed to: [correspondence@equalityhumanrights.com](mailto:correspondence@equalityhumanrights.com). The Commission welcomes your feedback

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