

GUIDANCE

# Your Rights to Equality at Work: Training, Development, Promotion and Transfer

Equality Act 2010 Guidance  
for Employees

Volume 4 of 6

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# Introduction

This guide is one of a series written by the Equality and Human Rights Commission to explain your rights under equality law. These guides 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 You should check with the Equality and Human Rights Commission if it has been replaced by a more recent version.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:

- improving your skills, or
- promoting or transferring you to another job or role in your organisation, equality law applies to what they are doing.

Equality law applies:

- whatever the size of the organisation
- whatever sector you work in
- whether your employer has one worker or ten or hundreds or thousands
- whether or not your employer uses any formal processes or forms to help them make decisions
- whether any training you get is carried out by your employer or by someone else.

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):

- When your employer is offering training and development opportunities
- When your employer is making decisions relating to promotion and transfer

- If you are a disabled person, how your employer can make sure you are not discriminated against when they are offering training, development, promotion or transfer opportunities
- How your employer can use voluntary positive action to train, promote or develop a wider range of people

## What else is in this guide

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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 training, development, promotion and transfer:

- 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**
- **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 does not consider someone to be suitable for a promotion just because they are a disabled person.

- If you are a woman who is **pregnant** or on **maternity leave**, the test is not whether you are treated worse than someone else, but whether you are treated **unfavourably** from the time you tell your employer you are pregnant to the end of your maternity leave (which equality law calls the **protected period**) because of your pregnancy or a related illness or because of maternity leave.
- Your employer must not do something 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 only allows workers who work full-time to apply for promotion. This has a worse impact on women workers, who are more likely to work part-time. Unless the employer can **objectively justify** the requirement to work full-time, this is very likely to be indirect discrimination because of sex.

- 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 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 is called **discrimination arising from disability**.

**Example** — An employer who runs a fashion store turns down a worker who is a disabled person for a promotion to a customer-facing role, even though she is well-qualified for the job. The worker is a person of restricted growth and very few of the clothes the store sells fit her, which means she could not meet the requirement the employer has that shop staff should wear the clothes the store sells. The worker has been treated unfavourably (not getting the promotion) because of something arising from her disability (that she cannot wear standard sized clothing). This is almost certainly discrimination arising from disability unless the employer can objectively justify the requirement to wear particular clothes. This 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** — An employer does not ask a worker if they would like to go on a training course because they know the worker has a disabled partner who they assist in day-to-day tasks like washing and dressing. The employer assumes the worker would not want to be away from home for a longer than usual working day, which is what the training would involve. However, the worker should still be asked if they want to go on the course. Instead, they have been excluded from this opportunity. This is very likely to be direct discrimination because they are associated with someone with a disability.

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

**Example** — An employer does not offer a worker a chance of a promotion because they think the worker is gay, even though they are not, and they do not think other workers would like to be managed by them. This is likely to be direct discrimination because of sexual orientation.

- 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** — An employer does not offer a worker training. This is because last year the worker supported a colleague in a complaint that she had been harassed at work. If the previous complaint is the reason for the failure to give the worker the training, this is likely to be victimisation.

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

**Example** — An employer makes someone who is being interviewed for promotion feel humiliated by telling jokes about their religion or belief during the interview.

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

**Example** — A suitably qualified and experienced disabled worker who has an impairment which affects their hand and arm mobility is promoted to a position where they need to word process documents. Their employer provides them with assistive technology to help with this part of the role. While they are waiting for the technology to be installed, the employer arranges for a temporary audio typist to assist them instead.

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

Your employer must not discriminate against you or harass or victimise you in the ways described above even after your employment relationship with them 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 several exceptions which relate to training, promotion and transfer which apply to all employers.

There are others that only apply to particular types of employer.

This guide lists the exceptions that apply to the situations it covers. There are more exceptions which apply in other situations, for example, when your employer is selecting someone for redundancy. These are explained in the relevant guide in the series.

In addition to these exceptions, equality law allows your employer to:

- Treat disabled people better than non-disabled people.
- Use voluntary **positive action**. You can read more about positive action in relation to training, promotion and transfer later in this chapter.

### Age

**Age** is different from other protected characteristics. If your employer can show that it is **objectively justified**, they can make a decision based on someone's age, even if this would otherwise be direct discrimination.

However, there are only limited situations in which direct age discrimination will be objectively justified.

Employers should be careful not to use stereotypes about a person's age to make a judgement about their fitness or ability to do a job.

### Examples —

- An employer rejects an application for a promotion by a 25-year-old worker because they are younger than the people they would be managing.
- An employer refuses to provide training to workers over 50 because the employer believes they are likely to be too set in their ways.

Both of these employers would have unlawfully directly discriminated against their workers because of age unless they can objectively justify what they have done, which is highly unlikely.

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 can 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 you are subject to **direct** age discrimination your employer can only 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**.

Since the abolition of the default retirement age of 65 in 2011, employers seeking to impose a retirement age for their employees must now objectively justify their decision to do so. You can find more information about this in our guidance, *Your rights to equality at work: dismissal, redundancy, retirement and after you have left a job*.

Provided access to training or another opportunity counts as a benefit (so that it is treated like pay), your employer is allowed to offer you different access to training, based on how long you have worked for them, even though this would otherwise be indirect discrimination (because younger workers are likely to find it harder to get the better benefits as they will have been at work for a shorter time).

For length of service up to five years, your employer does not have to justify differences at all.

**Example** — An employer runs an extra course to help workers with three to five years' service think about promotion opportunities. Workers with only one or two years' service do not get the opportunity to attend this.

Length of service can be worked out in one of two ways:

- by the length of time you have been working for your employer at or above a particular level, or

- by the length of time you have been working for your employer in total.

If your employer uses length of service of more than five years to award or increase a benefit, this falls outside the exception.

But there is a further difference: your employer may still be able to use length of service to set benefits (including training) after workers have been with them for more than five years if they reasonably believe that using length of service in this way fulfils a business need.

They may believe it rewards higher levels of experience, encourages loyalty, or increases or maintains workers' motivation.

This is a less difficult test than the general test for **objective justification** for indirect discrimination. However, your employer must still have evidence on which to base their belief.

### **Occupational requirements**

If your employer can show that a particular protected characteristic is central to a particular job, they can insist that only someone who has that particular protected characteristic is suitable for the job, including for promotion or transfer. This would be an '**occupational requirement**'.

**Example** — An organisation promoting the interests of transsexual people may want to say that its chief executive, who represents it to the outside world, should be a transsexual person. This would probably be a genuine occupational requirement because only someone from the group whose interests are being promoted can explain the issues first-hand.

### **Obeying another law**

Your employer can usually take a protected characteristic into account where not doing this would mean they broke another law.

**Example** — A driving school cannot promote a 19-year-old administrator to a job as a driving instructor even after suitable training because a driving instructor must be aged at least 21.

## National security

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

### Exceptions that only apply to some employers

There are also exceptions that only apply to some employers:

- If your employer is a **religion or belief organisation**, they may be able to say that a job requires you to hold a particular religion or belief if, having regard to the nature or context of the job, this is an occupational requirement and it is **objectively justified**. This includes promotion or transfer.

**Example** — A Humanist organisation wants to promote an internal candidate as its chief executive. It may well be able to say that the chief executive must be a Humanist and exclude applicants who are not.

- If a job is for the purposes of an organised religion, an employer may be able to say that a job or role requires you to have or not have a particular protected characteristic or to behave or not behave in a particular way. This includes on promotion or transfer, and can also apply to training opportunities.
- If a job or role exists for the purposes of an organised religion, such as being a Minister or otherwise promoting or representing the religion, and because of the nature or context of the employment, it is necessary to avoid conflict with the strongly held religious convictions of a significant number of the religion's followers or to conform to the doctrines of the religion by applying a requirement to the job or role, your employer may be able to refuse to train, promote or transfer you because:
  - you are male or female
  - you are a transsexual person
  - you are married or in a civil partnership, including taking into account who you are married to or in a civil partnership with (such as being married to a divorced person whose former spouse is still alive)
  - you manifest a particular sexual orientation, for example, you are a gay or lesbian or bisexual person who is in a relationship with a same-sex partner.
- The requirement must be crucial to the job or role, and not merely one of several important factors. The job or role must be closely related to the purposes of the religion, and the application of the requirement must be **proportionate**.

- If an organisation is an **employment service provider**, they may be able to say that you must have a particular protected characteristic to do **vocational training**, if the training leads to work for which having that characteristic is an occupational requirement
- Some **educational establishments** like particular schools or colleges may be able to say that you have to be of a particular religion or belief, or must be a woman, to hold a particular post, including on promotion or transfer
- If a promotion or transfer is within the civil, diplomatic, armed or security and intelligence services and some other public bodies, the employer can specify what nationality you have to be

If an employer is promoting or transferring people who are serving in the armed forces, they may be able to exclude women and transsexual people if this is a proportionate way to ensure the combat effectiveness of the **armed forces**. In addition, age and disability are, in effect, not protected characteristics for service in the armed forces.

There are more details of these exceptions in the Glossary.

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

As well as these exceptions, 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.

**Example** — An employer has a policy of shortlisting and interviewing all disabled applicants who meet the minimum requirements for a job or promotion. The law would allow this. It would not be unlawful discrimination against a non-disabled applicant who also meets the minimum requirements but is not shortlisted because there are better-qualified candidates.

## 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:

- When your employer is offering training and development opportunities
- When your employer is making decisions relating to promotion and transfer
- If you are a disabled person, how your employer can make sure you are not discriminated against when they are offering training, development, promotion or transfer opportunities
- How your employer can use voluntary positive action to train, promote or develop a wider range of people

## When your employer is offering training and development opportunities

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Training is usually aimed at improving someone's skills or knowledge or raising awareness of an issue, for example, of what equality law means for how workers behave towards one another.

Your employer can generally decide whether to offer training and, if they do offer it, who needs it. But if they do offer opportunities for training or development, they must do this without unlawful discrimination.

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

Training and development opportunities can be delivered in-house or by external providers. They can happen face-to-face, online, in groups or one-to-one. They can include the following:

- learning 'on the job'
- coaching
- e-learning
- workshops
- induction programmes
- job shadowing
- mentoring
- networking and seminars

- formal classes on day release or out of working hours
- project work
- ‘buddying’
- secondments and sabbaticals.

If your employer makes assumptions on the basis of your protected characteristics about your ability to take part in training or the benefits you will gain, this may lead to unlawful discrimination.

### **Examples —**

- An employer must not assume that women are not interested in training or development because they have children and domestic responsibilities. If an employer acted on this assumption, it would probably be direct discrimination because of sex.
- If a worker is older, an employer must not assume that they will not want to continue to learn and develop. Or that younger workers will quickly move on and any investment in their training will be wasted.
- An employer must not make assumptions about disabled people’s ability to take part in training or the benefits they will gain. They should discuss training with a disabled worker and find out whether they need reasonable adjustments to participate fully.

Your employer may need to offer training flexibly or to make changes to the timing, style and location of training to avoid unlawful discrimination, particularly indirect discrimination (if they cannot objectively justify what they are doing) or a failure to make reasonable adjustments.

### **Examples —**

- An employer only offers one chance to do a training course which is on a Friday in winter starting at 8.30am and finishing at 5.00pm, by which time it is dark. Unless the employer can objectively justify only offering this one chance on that particular day, this may be indirect discrimination against women (who are more likely to work flexibly) and Jewish people (who may need to have finished work before dark to observe the Sabbath).
- An employer uses computer-based training. They should not assume everyone will be able to use a computer without checking this first. Some disabled workers may not be able to use a computer without reasonable adjustments.

- An employer does not check that an external training venue is accessible to a worker who has a mobility impairment. When the worker, who uses two sticks to walk with, arrives, they cannot access the training room, which is up two flights of stairs with no lift. It is likely that offering the training at an accessible location would have been a reasonable adjustment.

Access to some opportunities, including training, may count as a benefit. This means they are treated in the same way as pay. You can read more about what this means in the Equality and Human Rights Commission guide: *Your rights to equality at work: pay and benefits*.

### **Training and development for women who are pregnant or on maternity leave**

Your employer must not stop you doing training because you are pregnant, on maternity leave or due to take maternity leave, or on pregnancy- or maternity-related sickness absence.

It would almost certainly be unlawful sex discrimination to deny you training for a reason related to your pregnancy (or impending maternity leave).

Your employer cannot try to justify this by saying they are protecting you from a health and safety risk, unless a specific risk has been identified.

### **When your employer is making decisions relating to promotion or transfer**

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Your employer must offer opportunities for promotion, transfer or other career development without unlawful discrimination. This includes development opportunities that could lead to permanent promotion – for example, ‘acting up’ on temporary promotion, deputising or secondment.

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

Promoting or transferring a worker is very similar to recruiting them in the first place. If you want to know more about this, read the Equality and Human Rights Commission guide: *Your rights to equality at work: when you apply for a job*.

There are steps your employer can take to help them make sure they are not taking your protected characteristics into account in a way that equality law does not allow.

## **Does an employer have to advertise a promotion or transfer opportunity?**

Although equality law does not require an employer to advertise vacancies or opportunities for promotion either inside or outside their organisation, doing this may help your employer avoid unlawful discrimination.

**Example** — An employer promotes a male worker to a post without advertising the vacancy internally. There are female workers who are qualified for the role and would have applied if they had known about it. They have missed out on an opportunity and if they can show either that the employer ignored them just because they were female (which would be direct discrimination) or applied a requirement to the role which had a worse impact on the female workers and which the employer could not objectively justify and this was why the employer did not consider them (which would be indirect discrimination), then the employer may find themselves facing a tribunal claim.

## **Promotion and other opportunities during pregnancy and maternity leave**

Your employer must not deny you promotion opportunities because you are a woman who is pregnant or on maternity leave. If you are on maternity leave, you must be considered for promotion in the same way as any other worker who is not on leave.

To avoid unlawful discrimination, your employer should tell you about promotion opportunities when you are on maternity leave, and give you the opportunity to apply for any promotion you would have been told about had you been at work.

Your employer should avoid making assumptions about women when promoting people. Acting on an assumption that a woman with children will be unreliable, inflexible or not interested in a demanding role, and therefore unsuitable for promotion, would almost certainly be unlawful direct discrimination because of sex.

## **If you are a disabled person how your employer can make sure you are not discriminated against when they are offering training, development, promotion and transfer opportunities**

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To make sure that they are not excluding disabled people from training, development, promotion or transfer opportunities, your employer needs to look at how they describe the role and the person they are looking for.

Your employer must consider not only whether they are **discriminating directly or indirectly** because of your disability, but also:

- Whether they are treating you in a particular way which, because of something connected with your disability, puts you at a disadvantage and they cannot justify this way of doing what they are doing ('**discrimination arising from disability**').
- Whether **reasonable adjustments** are required to enable you to take up a training, development, promotion or transfer opportunity.

## Training

Your employer must make sure they are not discriminating against or causing substantial disadvantage to you if you are a disabled person. Anything which is more than minor or trivial is considered to be **substantial** disadvantage.

This may require them to make **reasonable adjustments** to selection procedures for training or the training arrangements themselves. This could involve changing the way they do things, or changes to the premises that they use or providing extra aids, services or equipment.

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

This includes your employer looking at how they give you access to secondment opportunities, work shadowing, having access to a mentor or attending an event that may help you to develop your career.

## Specialist training

Your employer may need to provide you with specialist training so that you can make effective use of reasonable adjustments. This could include training on equipment which you have as an adjustment, for example, specialist computer software.

Or the training may in itself be an adjustment, for example, orientation training in a new workplace if someone has a learning disability or visual impairment.

## Training for other staff

It may also be helpful for your employer to consider the training needs of other staff who are working with you as a reasonable adjustment (provided you have given permission for other staff to know about your situation). This could range from specialist training for managers who are making decisions about reasonable adjustments through to things like Deaf awareness training for people with a Deaf colleague.

## Promotion or transfer

If you might be eligible for a promotion or transfer or other development opportunity and you are a disabled person:

- Your employer must not make assumptions about your abilities or willingness to take on a new role.
- It is also important for your employer to consider whether particular qualifications are actually required or whether what they really need is a particular skill level.
- Any information about the role should not say or imply that it is unsuitable for a disabled person unless there is a clear role-related reason for this.
- Your employer should tell everyone, including workers who have a disability, about any promotion or transfer or other development opportunity. This includes giving you the information in the format you usually use at work, for example, large print or electronically. This is likely to be a reasonable adjustment.
- If your employer decides to interview you for a promotion or other opportunity and knows that you are a disabled person they must make any reasonable adjustments you need to attend and participate in the interview.
- When assessing your suitability for the new role your employer needs to take account of how reasonable adjustments could enable you to meet the new requirements.
- If after working out how reasonable adjustments could enable you to meet the new requirements of a role to which they are considering promoting you, your employer decides you are not the best person for the promotion, they do not have to offer it to you. Obviously if you are the best person they will want to offer it to you and make the reasonable adjustments.

## How your employer can use voluntary positive action to train, promote or develop a wider range of people

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In this section, we look at the following issues:

- What is 'positive action'?
- Does an employer have to take positive action?
- When can employer use positive action?
- Treating disabled people better than non-disabled people

- Other exceptions where a particular protected characteristic can be looked at during training, development, promotion or transfer but which are not positive action

### What is 'positive action'?

'**Positive action**' means the steps that an employer can take to encourage people from groups with different needs or with a past track record of disadvantage or low participation to take up training, development, promotion or transfer opportunities.

An employer can use positive action where they reasonably think (in other words, on the basis of some evidence) that:

- people who share a **protected characteristic** suffer a **disadvantage** connected to that characteristic
- people who share a protected characteristic have **needs that are different** from the needs of people who do not share it, or
- participation in an activity by people who share a protected characteristic is **disproportionately low**.

Sometimes the reasons for taking action will overlap. For example, people sharing a protected characteristic may be at a disadvantage and that disadvantage may also give rise to a different need or may be reflected in their low level of participation in particular activities.

To deal with the three situations, an employer can take proportionate action to:

- enable or encourage people to overcome or minimise disadvantage
- meet different needs, or
- enable or encourage participation.

When an employer is considering promoting someone, equality law allows positive action before or at the application stage, when the steps could include encouraging particular groups to apply, or helping people with particular protected characteristics to perform to the best of their ability (for example, by giving them training or support not available to other applicants).

In relation to training and development, equality law allows an employer to target training at particular groups.

An example of when an employer might decide to take positive action is if they have evidence that the make-up of a particular level in their workforce is different from the make-up of their local population, so they decide to encourage people who share particular under-represented protected characteristics to undertake training.

Or there is evidence that people with a particular protected characteristic are less likely to have a particular qualification which is relevant to a job or might increase their chances of getting promoted. The employer gives particular attention to training people from that group.

This 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 and you cannot make an employer use positive action in relation to training, development, promotion or transfer. However:

- Meeting the different needs of a workforce (for example, in relation to training) can help make staff more productive.
- Recruiting from or promoting or developing a wider range of people, in terms of their protected characteristics, can help an organisation to understand its customers, clients or service users better.
- If an employer is a **public authority**, positive action may 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 **proportionate** to these aims which means they 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 disadvantage or under-representation in the workforce.

**Example** — An education employer could not use positive action to attract male candidates on promotion for a head teacher's job where men already hold 80 per cent of senior roles, even though women make up 70 per cent of the teaching workforce as a whole. Since the steps would not be being taken to overcome a disadvantage for or under-representation of men this would be unlawful direct discrimination. However, the employer could use positive action to promote more women as they are under-represented at this level, for example, they could offer a

training programme targeted at women to encourage them to apply for senior jobs and help make sure they can demonstrate the necessary skills to be the best candidate for a particular position.

An employer must not have a blanket policy or practice of automatically treating people who share a protected characteristic better than those who do not have it for promotion or transfer. An employer must still appoint the best person for the job, even if they do not have the particular protected characteristic being targeted by the positive action. However, there are special tie-break rules set out in the next section.

### **Tie-break situations**

The other positive action step an employer can take is to decide to promote a worker from a group sharing a protected characteristic if the employer reasonably believes this group to be disadvantaged or under-represented in the workforce or if their participation in an activity is disproportionately low.

The employer can only use these ‘tie-break’ provisions when faced with a choice between two candidates who are as qualified as each other. It is also possible, though it would be unusual, that a tie-break situation could arise where more than two candidates were equally qualified for the post.

Although it is most likely that the employer would use the tie-break provisions at the end of the promotion process, the employer can also treat an applicant more favourably at any earlier stage of the process, eg shortlisting. But the employer can only use these provisions if it is a proportionate way of enabling or encouraging people from the disadvantaged or under-represented group to overcome or minimise the disadvantage of that group.

**Example** — A large company has no African Caribbean staff at manager level, even though it has many African Caribbean employees at more junior levels. When a vacancy at manager level arises, there are two candidates of equal merit. One candidate is African Caribbean and the other is not. The company could choose to offer the promotion to the African Caribbean candidate under the positive action provisions, so that the non-African-Caribbean candidate could not claim race discrimination.

The employer must not have a general policy of treating people with the relevant protected characteristic more **favourably** in connection with promotion.

## Treating disabled people better than non-disabled people

Equality law allows an employer to treat a disabled person better – or **more favourably** – than a non-disabled person. This recognises that disabled people face a lot of **barriers** to participating in work and other activities.

**Example** — An employer has a policy of shortlisting and interviewing all disabled applicants who meet the minimum requirements for jobs on promotion. The law would allow this. It would not be unlawful discrimination against a non-disabled applicant who also meets the minimum requirements but is not shortlisted.

## Other situations where a particular protected characteristic can be looked at during training, development, promotion or transfer but which are not positive action

There are a few exceptions where employers can target applicants with a particular protected characteristic without this being unlawful discrimination. These are not the same as positive action.

**Example** — An organisation exists to advance the interests of fathers. It may be possible for them to specify that their chief executive should be a father, since this post has a significant representative role. The applicant's sex would be what is called an '**occupational requirement**' for the job and this would apply to internal as well as external candidates.

The difference between an occupational requirement and positive action is that:

- An employer using an occupational requirement says that only people with a particular protected characteristic can do the job.
- An employer who wants to use positive action says that anyone who has the right skills, qualities and experience is able to do the job, but they want to look especially hard for someone with a particular protected characteristic.

You can read more about occupational requirements at page 13.

## Public sector 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 that 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.

## 2 | When your employer is responsible for what other people do

It is not just how your employer personally behaves that matters. If another person who is:

- employed by your employer, or
- carrying out your employer's instructions to do something (who the law calls your employer's agent does something that is unlawful discrimination, **harassment** or **victimisation**, your employer can be held legally responsible for what they have done.

This part of the guide explains:

- When your employer can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation
- How your employer can reduce the risk that they will be held legally responsible
- When 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 your employer's worker or 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, 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.

### **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. So, for example, where the duty arises, your employer must make reasonable adjustments to disciplinary or dismissal procedures and decisions. It does not matter if you were a disabled person when you began working for them, or if you have become a disabled person while working for them. The duty may also apply after you have stopped working for an employer.

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

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

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

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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 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 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.

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

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

- in a paid job, or
- unemployed and about to start a job, or
- unemployed and about to start a Work Trial, or
- self-employed, and
- your disability or health condition stops you from being able to do parts of your job.

You should make sure your employer knows about Access to Work. Although the advice and support are given to you, your employer will obviously benefit too.

Information about Access to Work is in Chapter 5: *Further sources of information and advice*.

## What is meant by 'reasonable'

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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.

**For 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, such as providing a wheelchair if you need one in any event but do not have one. This is because in this situation the disadvantages you are facing do not flow from things your employer has control over.

- **Modifying instructions or reference manuals.**

**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 WORKCHOICE.**

**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 an 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 57.

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 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

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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:

[www.gov.uk/government/publications/discrimination-and-other-prohibited-conduct-complaints-questionnaire](http://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 [www.acas.org.uk/media/pdf/m/p/Asking-and-responding-to-questions-of-discrimination-in-the-workplace.pdf](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

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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

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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

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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

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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 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 Employment Tribunal 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

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Taking legal proceedings can be a stressful and time consuming experience. It may be in your best interest to try to settle your dispute; i.e. 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'.

<b>association, by</b>	As in 'discrimination by association'. See <b>associated with</b> .
<b>auxiliary aid</b>	Usually a special piece of equipment to improve accessibility.
<b>auxiliary service</b>	A service to improve access to something often involving the provision of a helper/assistant.
<b>barriers</b>	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 <b>duty to make reasonable adjustments</b> .
<b>Bill</b>	A draft Act, not passed by Parliament.
<b>burden of proof</b>	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.
<b>charity</b>	A body (whether corporate or not) which is for a statutory charitable purpose that provides a benefit to the public.
<b>Code of Practice</b>	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.

**tribunal**

See **Employment Tribunal**

**two ticks symbol**

A sign awarded by Jobcentre Plus to employers who are positive about employing disabled people and are committed to employing, keeping and developing disabled staff.

**UK Text Relay Service**

Text Relay is a national telephone relay service for deaf, deafened, hard of hearing, deafblind and speech-impaired people. It lets them use a textphone to access any services that are available on standard telephone systems.

**unfavourably**

The term is used (instead of less favourable) where a comparator is not required to show that someone has been subjected to a detriment or disadvantage because of a protected characteristic – for example in relation to pregnancy and maternity discrimination, or discrimination arising from disability.

**vicarious liability**

This term is sometimes used to describe the fact that an employer is legally responsible for discrimination carried out by its employees. See also **liability**.

**victimisation**

Subjecting a person to a detriment because they have done a protected act or there is a belief that they have done a protected act i.e. bringing proceedings under the Equality Act; giving evidence or information in connection with proceedings under the Act; doing any other thing for the purposes or in connection with the Act; making an allegation that a person has contravened the Act; or making a relevant pay disclosure.

**victimise**

The act of **victimisation**.

**vocational service**

A range of services to enable people to retain and gain paid employment and mainstream education.

**vocational training**

Training to do a particular job or task.

**Work Choice**

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.

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