

DERBYSHIRE LEA

Supporting Disabled Employees

Guidance for Schools

March 2017

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Equality Act 2010

The Equality Act replaced the previous anti-discrimination laws with a single Act. It places an Equality Duty on public bodies to consider how different people will be affected by their activities, including employment and the delivery of services.

The Equality Duty replaces the 3 previous public sector duties – for race, disability and gender.

This guidance focuses on meeting the requirement in relation to disability.

1. Purpose

This document provides guidance to Governing Bodies in respect of their employment responsibilities to disabled people. It has been discussed and agreed with the recognised unions and professional associations representing school employees.

2. Introduction

The Act protects disabled people, and people who have been disabled, from discrimination in the field of employment. It is also unlawful to discriminate against a person by association (eg a relative of the disabled person), or to discriminate owing to a perception that a person is disabled.

The Act requires public bodies to have due regard to the need for:-

- a) Elimination of unlawful discrimination, harassment and victimisation.
 - Employers to make 'reasonable adjustments' to the workplace or working conditions which cause disadvantage to a disabled employee.
 - Employers to consider practice in relation to recruitment, promotion, training, working conditions and dismissal.
 - Employers to avoid indirect discrimination where a policy may apply to everyone but disadvantages disabled employees (unless it can be shown to be a proportionate means of achieving a legitimate aim, which may be independently defined, if necessary).
 - Employers to take account of disabled people's impairments when making decisions about policies
 - Consideration of treating disabled people better than non-disabled in order to meet their needs

Employment tribunals have jurisdiction to hear complaints of discrimination against disabled employees and may award **unlimited compensation**.

- b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
- c) Foster good relations between people who share a protected characteristic and those who do not.

3. Definition of a Disabled Person

The Act defines a disabled person as someone with “a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities”.

The Social Model of Disability promotes the valuing of disabled people as individuals and support for them to fulfil their potential, as defined by themselves. ‘Disability is a condition imposed on disabled people by society and is created by prejudice, fear, myths and ignorance. It limits opportunities for education, employment, financial independence and full social interaction.’ (See further references to the Social Model in publications included in the Appendix)

An impairment is to be taken to affect normal day-to-day activities, for example the following (*this is not an exhaustive list*):-

- Mobility
- Manual dexterity
- Physical co-ordination
- Continence
- Ability to lift, carry or move everyday objects
- Speech
- Hearing or eyesight
- Memory or ability to concentrate, learn or understand
- Perception of risk of physical danger,
- Autism.

This is a complex area and expert advice should be sought by the school on a case by case basis.

For example the act applies from the point of diagnosis in cases of HIV and cancer, while for mental health impairment the act continues to apply beyond the period of illness.

‘Long Term’ means that the adverse effect of the impairment has lasted, is likely to last or re-occur, for at least 12 months, or for the rest of the affected person’s life.

‘Substantial’ means more than minor or trivial.

4. Employment Provisions

The following are ways in which an employer might unlawfully discriminate against a disabled employee or job applicant by:-

- Treating him or her less favourably (without justification) than other employees or job applicants because of his or her disability compared to someone whose circumstances excluding the disability are otherwise comparable,
- Or, because of something arising in consequence of the person’s disability. That is, treating someone less favourably because of something arising in consequence of a person’s disability. Such discrimination is capable of legal justification by the employer if the treatment is a proportionate means of achieving a legitimate aim.
- Or, by Indirect discrimination: this type of discrimination happens when an employer applies a provision criterion or practice which puts, or would put, people with a different disability at a particular disadvantage compared to people who share the disabled person’s disability. It is aimed at tackling group disadvantage, and can be used to tackle policies and practices that are inadvertently detrimental.
- Not making reasonable adjustments (without justification).

The Act also protects people from being discriminated against because of a disability they do not personally have. For example, it protects people who are mistakenly perceived to be disabled. It also protects a person from being treated less favourably because they are linked to, or associated with, a disabled person.

The Act requires employers to take positive steps to ensure disabled people can access and progress in employment. This goes beyond simply avoiding treating disabled people unfavourably and means taking additional steps to which non-disabled workers are not entitled. Governing Bodies **have a duty to make reasonable adjustments** where existing arrangements place the disabled person at a substantial disadvantage. What is reasonable may vary according to the size and circumstances of the employer.

The duty comprises 3 requirements:-

- To avoid substantial disadvantage- where a provision of the employer puts a disabled worker at a substantial disadvantage compared to those who are not disabled.

- Remove or alter a physical feature, or provide a reasonable means of avoiding the feature, where it puts a disabled person at a substantial disadvantage, compared to those who are not disabled.
- Provide an auxiliary aid (or service) where a person, but for the aid, would be put at a substantial disadvantage, compared to those who are not disabled.

Schools also need to remember that it is necessary to avoid direct associative discrimination, when a person is treated less favourably because of their association with a disabled person and direct discrimination through perception, when someone who is not disabled is discriminated against because someone perceives that they are disabled. (See example of potential direct discrimination by association in Appendix 1)

5. Guidance to Avoid Discrimination

Consider the social model of disability versus the medical model. In brief summary, the social model requires employers to seek to remove barriers that may prevent those with impairment(s) taking part in the organisation on an equal level with other employees.

Schools may not always know that an employee is disabled. There is no legal requirement to disclose a disability but it is a reasonable expectation that an employee will declare a disability on appointment. An employer only has a duty to make reasonable adjustments for disabled employees if they know, or could reasonably be expected to know, that an employee has a disability. Schools should keep in mind that this is a difficult and complex issue and not everyone feels able to disclose a disability, particularly mental ill health, to their employer or line manager. Good relationships and a school culture that actively promotes a positive approach to equality and diversity will support employees to disclose.

There are many ways to avoid discrimination:-

- **Do not make assumptions.** Conduct a proper assessment, it will probably be helpful to talk to the disabled person about what the real effects of the disability might be or what might help. Consult disabled people at all stages of planning. Such discussions should not, however, be conducted in a way which would itself give the disabled person any reason to believe that he/she was being discriminated against.
- Think about the language used in the school. It is important to use language that communicates a positive image of disability. Avoid terms like 'the disabled' or 'the blind' which tend to emphasise a

person's impairment. Wheelchairs provide people with independence so users are not 'confined to a wheelchair'. Words like 'victim of' or 'suffering from' are disempowering and it is better to simply say a person 'has' an impairment, where necessary.

- **Promote equal opportunities.** All schools should have an Equalities Policy that should cover disability issues. Governing Bodies who have, and follow, a good policy – including monitoring its effectiveness – are likely to have that counted in their favour by a tribunal if a complaint is made. It is important to review how policies are working in practice involving staff and union representatives. This would include the annual publication of relevant statistics. (*eg see LA model Teacher Appraisal Policy section on Monitoring and Reporting*) Governing Bodies should remember, however, that treating people equally will not always avoid a breach of the Act.
- **Consider obtaining expert advice.** The Local Authority can provide this advice through the Occupational Health Unit as part of its traded services to schools. This includes arranging workplace risk assessments with an Occupational Nurse and a Health and Safety Officer and providing advice regarding whether an impairment is covered by the Act. Where it has been identified that a person has a particular disability schools can obtain specific information and advice concerning potential adjustments.

Reasonable Adjustments

It is most important to listen carefully to what the employee themselves, and to their union representative, with the aim of trying to reach agreement on what reasonable adjustments should be implemented. The question of what is 'reasonable' is clearly key and schools are advised to call on expert assessments (as above) and consult with their HR Advisory service.

Reasonable adjustments that a school may be required or expected to make:-

- **Consideration during all stages of employment,** from recruitment through to dismissal/leaving.
- **Adjustments to premises.** There might have to be structural or other physical changes such as widening a doorway, providing a ramp or moving furniture for a wheelchair user. Also when planning building improvements or new construction, consider the impact of the design on people with a disability and take their needs into account.

- **Allocating some of the disabled person's duties to another person.** Minor or subsidiary duties might be reallocated/swapped/re-arranged with another employee if the disabled person has difficulty in doing them because of the disability.
- **Transferring the person to fill an existing vacancy.** If an employee becomes disabled, or has a disability which worsens so they cannot undertake their current post, then the employee should be considered for any suitable alternative vacancies in the school including reasonable training to do so.
- **Altering the person's working hours.** This may include allowing by joint agreement the disabled person to work more flexible hours or to enable additional breaks to overcome fatigue arising from the disability or changing the disabled person's hours to fit with the availability of a carer. It is important that the school does not attempt to impose any reduction in hours/pay, any proposal should arise from positive dialogue with the employee and their representative to seek a mutually suitable and amicable agreement.
- **Allowing the person to be absent during working hours for rehabilitation, assessment or treatment.** The employee may need time off to receive physiotherapy or psychoanalysis or undertake employment rehabilitation. A similar adjustment might be appropriate if a disability worsens or if a disabled person needs occasional treatment.
- **Giving the person, or arranging for them to be given, training.** This could be training in the use of particular pieces of equipment unique to the disabled person, or training appropriate for all employees but which needs altering for the disabled person because of the disability.
- **Equipment.** A school might have to provide special equipment. Examples are an adapted keyboard for a visually impaired person or someone with arthritis, or an adapted telephone for someone with a hearing impairment.
- **Modifying instructions or reference manuals.** The way instruction is normally given to employees might need to be revised when telling a disabled person how to do a task. The format of instructions or manuals may need to be modified, for example, produced in Braille or on audiotape.
- **Providing a reader or a signer.** For example for reading information to a visually impaired person at particular times during the working day.

- **Seeking support/provision/funding from agencies/charities** to provide a support worker or equipment.
- **Modifying procedures in recruitment and selection for testing or assessment.** This could involve ensuring that particular tests do not adversely affect people with particular types of disability. For example, a person with restricted manual dexterity might be disadvantaged by a written test, so a school should consider whether the act of writing is a necessary skill for the post or whether an alternative method could be used to assess the relevant knowledge or other attribute needed for the role.
- **Considering modification of the implementation of employment** policies, for example disciplinary, redundancy, appraisal where relevant

In addition to the above, Governors may need to consider the following adjustment:-

- **Changing the location the person is required to work within school.** This could include ensuring that a teacher with mobility difficulties that prevents them from using stairs can hold all their lessons in a classroom on the ground floor.

6. Policies and Procedures Where the Equality Act, with respect to Disability, will have a Direct Impact

- **Recruitment and Selection**

It is important to offer and make applicant information available on request in other formats, for example, large print, tape, Braille, computer disk. If an applicant has declared on their application form that they are a disabled person they must be asked whether they require any alternative arrangements to be made to take account of any impairment or disability they have.

It is important to consider if the selection process will put the candidate at a disadvantage. If so, any reasonable adjustments must be made.

At the interview the selection panel should discuss with the candidate what reasonable adjustments, if any, would be required for them to undertake the duties of the post, should they be successful. They must be reassured that the issue will not affect the decision making process.

It is not permissible, when requesting references to seek absence and sickness information from an existing employer. This should only be sought once a preferred candidate has been identified.

- **Training**

Schools must not discriminate in the provision of training and development and must make any necessary reasonable adjustments to enable the individual to participate fully in all training opportunities and events.

- **Management of Sickness Absence**

All schools should have a management of sickness absence procedure to deal with intermittent and long term absence. Governing Bodies should be aware that an employee interviewed in accordance with these procedures may have an impairment.

Once you are aware that the employee may have an impairment, in accordance with the Act, you should consider whether a reasonable adjustment can be made in order to assist the employee to return to or remain at work at any stage. This may include consideration of whether the 'triggers' for action in relation to levels of absence should be extended. However, this should not automatically be the case. Employment Tribunal and Appeal have upheld the principle of employing the usual triggers, identified in the organisation's procedure for the management of sickness absence, for dealing with a disabled employee's absence. Using a longer period of absence before triggering a meeting could mean that the opportunity to explore potential adjustments and strategies to improve attendance, identified through formal discussion and reference to Occupational Health advice, is delayed.

The triggered meetings also provide an opportunity to consider the effectiveness of any approaches implemented. The focus for both employer and employee should be on seeking to enable the employee to maintain attendance. Extending the period before considering dismissal on the grounds of poor attendance may still be appropriate for an employee with a disability, but taking account of the specific factors in each individual case.

- **Redundancy Procedure**

When considering redundancy schools must follow their agreed redundancy procedure. Governing Bodies need to be aware that there are employees who have an impairment, in accordance with Equality Act. *They must ensure that a disabled person is not disadvantaged in any redundancy selection procedure.*

- **Professional Competence**

All schools must have a procedure to address issues of professional competence. An employee who has impairment, in accordance with the Act, has a right to their employer making reasonable adjustments to the workplace in order that they may undertake fully the duties of their post. School leaders therefore need to consider whether specific problems with an employee's performance are a consequence of a disability and whether the employee has received appropriate reasonable adjustments/support in order to address the issue, under the Act.

Useful Contacts

In 1994 a scheme entitled "Access to Work" was introduced by the government. The aim of this scheme is to help people make the most of their opportunities in working and to tackle some of the practical obstacles that may occur, either in the event of an employee becoming disabled or the recruitment of an employee with disabilities. It offers practical advice and help in a flexible way so that it will be tailored to suit the needs of the person's particular job. In certain situations funding can be provided to meet the needs of the disabled person. Governing Bodies are reminded of this initiative. A leaflet produced by the scheme is attached. For Maintained Schools the threshold of payments is £1000, as the schools are assessed to be part of Derbyshire County Council which has more than 250 employees.

Your Health and Safety adviser may also be able to give advice and guidance. Schools may also wish to consult Children's Services HR Advice and Guidance Service (where purchased) in specific circumstances and Derbyshire County Council's Equality Officer.

Appendix 1

Glossary of Terms

What is mental health?

People's mental health, can be affected by a variety of factors, such as genetic inheritance, reaction to traumatic life events, pressures like workload or caring responsibilities, bereavement, domestic violence and abuse, personal circumstances like the break-up of relationships and socio-economic factors. A mental health problem can emanate from one aspect of a person's life and be heightened by circumstances in another. Some mental health conditions function along a spectrum, from feeling low, to being depressed to becoming diagnosed as clinically depressed. People deal with these issues in many different ways, but one of the most essential, yet difficult issues, is to recognise that there is a problem in the first place and then to seek help.

Mental health conditions can include stress, depression, anxiety, phobias, memory problems, psychosis, bi-polar disorder and schizophrenia. Often there are physical signs of stress and anxiety which may include eczema, lethargy, sleeplessness and a lack of interest in activities or people. These are often the first indications of a mental health issue.

Discrimination By Association

Discrimination owing to a person's association with someone who is disabled or because the person is perceived to be disabled.

Example of potential discrimination by association.

'At a job interview, an applicant mentions she has a disabled child. Although she is the most qualified candidate, the employer decides not to offer her the job. This decision treats her less favourably than the successful candidate who has not mentioned having a disabled child. If the less favourable treatment of the unsuccessful applicant is because of her having a disabled child, which the responsible body may think will interfere with her ability to carry out the job, this would amount to direct discrimination by association with her disabled child.'

Related Publications

ATL Equalities 'Equality for Disabled Education Staff: ATL Guidelines'
Social Model of Disability on Scope Website, www.scope.org.uk

Access to Work factsheet for employers

Overview

Access to Work (AtW) is a publicly funded employment support programme that aims to help more disabled people start or stay in work. It can provide practical and financial support for people who have a disability or long term physical or mental health condition. Support can be provided where someone needs help or adaptations beyond reasonable adjustments.

An Access to Work grant can pay for practical support to help your employee stay in work, or to support you if you are self-employed. The Channel Islands and the Isle of Man are not covered by Access to Work and there is a different service in Northern Ireland.

How can it help me?

Access to Work can help you:

- hire disabled people with the skills you need
- retain an employee who develops a disability or long term condition (keeping their valuable skills and saving both time and money recruiting a replacement)
- show that you value and will support your employees by having good employment policies and practices.

Your employee can get help paying for support they may need because of their disability or long term health condition, for example:

- aid and equipment in the workplace
- adapting equipment to make it easier for them to use
- travel to work
- travel in work
- communication support at interviews
- a wide variety of support workers, and
- the Mental Health Support Service
- other practical help at work, such as a job coach or a sign-language interpreter.

If your staff member has a mental health condition, they will be offered assistance to develop a support plan. This may include steps to support them remaining in or returning to work and suggestions for reasonable adjustments in the workplace. Some examples are shown on the next page.

Examples of assistance to develop a support plan:

- flexible working patterns to accommodate changes in mood and impact of medication
- providing a mentor to give additional support at work
- arranging additional time to complete certain tasks
- providing additional training
- regular meetings between you and your employee to talk about their concerns
- a phased return to work, such as reduced hours or less days.

Access to Work does not provide the support itself, but provides a grant to reimburse the cost of the support that is needed.

Mental Health Support Service

Through the Mental Health Support Service, Access to Work:

- gives advice and guidance to help employers understand mental ill health and how they can support employees, and
- offers eligible people an assessment to find out their needs at work and help to develop a support plan.

Who can get Access to Work

To be eligible for help, a person must:

- have a disability or long term health condition that has a negative effect on their ability to do their job
- have a mental health condition and need support in work
- be over 16 years old
- be in, or about to start, paid employment (including self-employment)
- normally live and work in Great Britain
- not be claiming Incapacity Benefit or Employment Support Allowance once they are in work.

However, they may get it for a limited time if they are doing certain types of 'permitted work' to help them move off benefits completely.

Their condition

Their disability or health condition must affect their ability to do the job or means they have to pay work-related costs.

For example, special computer equipment or travel costs because they can't use public transport.

If they have a mental health condition it must affect their ability to do the job. It must also mean they need support to:

- reduce absence from work
- stay in work.

Universal Credit

Universal Credit is a single benefit paid to those in or out of employment. If your employee is claiming Universal Credit and has a disability or health condition, they will be able to apply for Access to Work for any paid work they do.

Changing jobs

If an individual changes employers, they may be able to transfer equipment to their new employer, but they cannot automatically transfer awards for support workers or travel – they would need to contact the Access to Work team to discuss their new arrangements.

Working out of the country

If you have a member of staff whose job is normally based in Great Britain, but you ask them to travel out of the country as part of their duties, Access to Work support would be provided but may be limited.

European Union (EU) and outside the European Union

When your company is based in a EU country and you send your employee to Great Britain to work, they can apply for Access to Work (AtW) support.

Supported internships/traineeships

From 1st September 2013, young people who start a work placement with an employer as part of the Department for Education supported internship programme or a BIS traineeship will be able to apply for Access to Work support for the time of their work placement only.

Access to Work will fund additional travel, job coach and other support, including costs of equipment if appropriate, and promote the smooth transition into paid employment.

No other types of unpaid internships/traineeships will qualify for Access to Work support.

Members of the clergy

Applications from members of the clergy, no matter what their religious denomination is, can be accepted. However, they must be in paid employment, for example, Church of England clergy receive a salary or stipend whereas some other religious denominations work in a different way.

Company directors

Company Directors can apply to get Access to Work support. However, they must prove that the company is registered with Companies House in Cardiff.

How much will this cost me?

As an employer, you may have to share the cost with Access to Work if the person has been working for you for more than six weeks when they apply for Access to Work.

You will only have to share the cost for:

- special aids and equipment, and
- adaptations to premises or equipment.

Cost share does not apply to self-employed applicants or to the Mental Health Support Service.

How much will the grant be for?

Access to Work will consider paying grants of up to 100% for:

- self-employed people
- people who have been working for less than six weeks when they first apply for Access to Work.
- the Mental Health Support Service
- support workers
- additional travel to work and travel in work costs, or
- communication support at interviews.

The level of grant will depend on:

- whether the person is employed or self-employed
- how long they have been in their job, and
- the type of help required.

What will my share of the costs be?

When cost sharing applies, Access to Work will refund up to 80% of the approved costs between a threshold and £10,000. As the employer, you will contribute 100% of costs up to the threshold level and 20% of the costs between the threshold and £10,000.

The amount of the threshold is determined by the number of employees you have.

0 to 49 employees: nil

50 to 249 employees: £500

Over 250 employees: £1000

Any balance above £10,000 will normally be met by Access to Work.

If the support also provides a general business benefit, a contribution will be sought in addition to any compulsory cost share.

Maximum amount of grants

Access to Work grants awarded on or after 1 October 2015 are capped. The amount of the cap depends on when the grant was awarded or reviewed. **Grant awarded or reviewed**

	Amount of cap per year
1 October 2015 to 31 March 2016	£40,800
1 April 2016 to 31 March 2017	£41,400

Currently Access to Work grants awarded before 1 October 2015 are not capped. They will be capped from 1 April 2018.

How someone can claim

If your employee thinks they can get help from Access to Work, they should call or email the Access to Work team:

Access to Work: atwosu.london@dpw.gsi.gov.uk

Telephone: **0345 268 8489**

Textphone: **0345 608 8753**

Calls to 0345 numbers cost no more than a standard geographic call, and count towards any free or inclusive minutes in your landline or mobile phone contract.

An adviser will then call you and your employee back. Your employee needs to tell them about the help and support they need.

When your employee contacts Access to Work, they may need:

- their National Insurance number
- the workplace address, including your postcode
- the name, email address and work phone number of a workplace contact, for example their manager or yourself
- a unique tax reference number (if self-employed)
- the name of their New Enterprise Allowance mentor (if they have one).

If you are unable to contact Access to Work by telephone

If you need an alternative way of contacting Access to Work to discuss your needs, you can use the contact details below to write to us:

Access to Work

Operational Support Unit

Harrow Jobcentre Plus

Mail Handling Site A

Wolverhampton WV98 1JE 6

Reconsideration, Review and Complaints Procedure

What if your employee does not agree with the level of their award?

Access to Work is decided on a case to case level and the amount awarded is based on discussions with you and with your employee. This means that it is not possible to appeal against the level of an award.

However, the Access to Work scheme does have a reconsideration policy. Everybody is entitled to **one** reconsideration of an award by a different Access to Work Adviser. Please ask your employee to use the contact details at the top of their award letter if they want to arrange this.

What if things change?

If your employee's job role has changed, they can ask for their award to be reviewed. This can take place as many times as their situation changes, and they will still be able to get their award looked at again if they do not agree with the level of the reviewed award.

How do I or my employee complain?

Not agreeing with the level of the award and the results of reconsideration does not, on its own, give enough reason for a complaint. However, if you or your employee have had poor customer service or think the Access to Work claim has not been handled correctly, a complaint can be made using our complaints procedure. More information can be found on our website at www.gov.uk/government/organisations/department-for-work-pensions/about/complaints-procedure

This factsheet gives general information only and is not a complete and authoritative statement of the law.