

The Disability Discrimination Act 1995: It's effect on Employers, their Employees & Clients

1. The Disability Discrimination Act

- 1.1 The Disability Discrimination Act 1995 ("the DDA") imposes a positive duty on employers and providers of services to the public, not to make arrangements that discriminate against disabled people, either in general terms, in employment or in the provision of access to services.
- 1.2 'Disability' is defined under the DDA as a physical or mental impairment that adversely affects a person's ability to carry out day-to-day activities. In order to fall within the terms of the DDA, the person's impairment must be 'substantial' (more than trivial) and 'long term' (at least a year in duration).
- 1.3 'Discrimination' will be deemed to have taken place in the following circumstances:
 - 1.3.1 if a disabled person is unjustifiably treated 'less favourably' than other comparable employees; or
 - 1.3.2 if an employer or public service provider fails to make 'reasonable adjustments' to accommodate a person's disabilities; or
 - 1.3.3 if a public service provider fails to make adjustments to the physical features of its premises in order to facilitate access for disabled people.
- 1.4 The term 'reasonable adjustments' is not defined under the DDA. However, the Act suggests various suitable adjustments, such as the provision of ramps, the giving of extra training and supervision and the provision of a lesser workload for disabled employees.
- 1.5 It is difficult to be precise about the nature of adjustments that need to be made, given the wide range of conditions that potentially fall within the definition of 'disability.' It should also be borne in mind that an adjustment that aids one disabled person, may hinder another, and may in itself be deemed to be discriminatory.
- 1.6 Whether an adjustment will be considered 'reasonable' is ultimately a decision that rests with the court or tribunal considering a particular case. However, consideration will be given to the following matters:
 - 1.6.1 the practicality of making the adjustments;
 - 1.6.2 the financial cost and disruption caused in the making of adjustments;
 - 1.6.3 the extent of the employer's finances and resources;
 - 1.6.4 the availability of help, financial or otherwise, in the making of adjustments; and
 - 1.6.5 the effectiveness of the adjustment in preventing the disadvantage suffered by disabled people.
- 1.7 The remedy for a person making a successful claim for disability discrimination is compensation for financial loss and for injury to feelings. This will often amount to several thousand pounds. It is also possible for a claimant to seek an injunction to prevent further discrimination.

2. Treatment of potential and existing employees

- 2.1 In terms of employment, it is unlawful for an employer or public service provider to discriminate against their potential or current disabled employees in the following circumstances:-
- 2.1.1 when offering or refusing them employment;
 - 2.1.2 in agreeing their terms of employment;
 - 2.1.3 in providing opportunities for promotion, transfers, training and other fringe benefits such as company cars; or
 - 2.1.4 in dismissing employees or subjecting them to other such measures.
- 2.2 It follows that employers should consult legal practitioners to ensure that they have adequate procedures and anti-discrimination policies in place to avoid discrimination claims.
- 2.3 The DDA recommends a number of “reasonable adjustments” that employers could make in order to prevent their disabled employees from being at a disadvantage. These include:-
- 2.3.1 making adjustments to premises better to accommodate disabled employees;
 - 2.3.2 being flexible with regard to working hours. For example, in making allowances for the attendance of medical appointments and treatment; or
 - 2.3.3 providing extra training, supervision or time for disabled employees.

3. Provision for Clients

- 3.1 Employers should make reasonable physical adjustments to their premises, in order to assist their clients with access to the premises and ability to make use of the facilities. This may include simple changes, such as moving furniture to make gangways and waiting areas more accessible to wheelchair users, and providing ramps at the entrance to the premises, to aid physically disabled clients.
- 3.2 Even where premises are leased, the DDA provides that physical changes to the premises can be made, with the Landlord’s consent, which cannot be unreasonably withheld.

4. What does this mean for Employers?

- 4.1 Employers who are service providers to the general public must be aware of the effects of the DDA on their business, employees and clients.
- 4.2 Action to ensure compliance with the DDA could avoid costly litigation and bad publicity.
- 4.4 In the case of small businesses with few employees, the adjustments necessitated by the DDA may well be minor. As such, it would be wise to take a ‘prevention rather than cure’ approach, in order to avoid potential claims.
- 4.5 In demonstrating:
- 4.5.1 an awareness of the issues surrounding the DDA;
 - 4.5.2 a willingness to be take preventative measures; and
 - 4.5.3 a welcoming and accommodating approach to clients with disabilities;

employers are likely to acquire clients for life amongst those with disabilities, their carers and their friends and family. They are also likely to avoid unnecessary litigation.

- 4.6 There are currently 8.6 million disabled people in the UK with an estimated annual spending power of £50 billion. As such, it makes good commercial sense to treat disabled people as fairly as possible in the provision of services to the public.