

GUIDANCE

# Your Rights to Equality at Work: When You Apply for a Job

Equality Act 2010 Guidance for  
Employees

Volume 1 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 to 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 You should check with the Equality and Human Rights Commission if it has been replaced by a more recent version.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 you are applying for a job, equality law applies to what the employer you are applying to does at every stage of the recruitment process.

Equality law applies:

- whatever the size of the organisation
- whatever sector a job is in
- whether an employer is taking on their first worker or their hundred and first
- whether or not the employer uses any formal processes like application forms, shortlisting or interviewing.

This guide tells you what employers 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 already works for them) must do things.

It covers the following situations and subjects (we tell you what any unusual words mean as we go along):

- Job adverts
- Information about what the job involves and what skills, qualities and experience a person will need to do it
- Application forms and CVs

*Continued...*

- The shortlisting process
- Interviews, meetings and tests
- Your rights if you are a woman who is pregnant or on maternity leave when you apply for a job
- What you need to know about monitoring forms during recruitment
- Positive action in recruitment

## 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 recruitment:

- 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 an employer must behave towards you

## Are you a worker or a job applicant?

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This guide calls you a **worker** or a **job applicant** if you are working for someone else (who this guide calls your **employer**) or applying to work for them 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 the employer. Recruiting people to other positions like **trainees**, **apprentices** and **business partners** is also covered. 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:

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

### Examples —

- An employer does not interview a job applicant because of the applicant's ethnic background.
- An employer says in a job advert 'this job is unsuitable for disabled people'.
- 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.

- An employer must not do something which has (or would have) a worse impact on you and on other people who share your particular protected characteristic than on people who do not have that characteristic. Unless the 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** — A job involves travelling to lots of different places to see clients. An employer says that, to get the job, the successful applicant has to be able to drive. This may stop some disabled people applying if they cannot drive. But there may be other perfectly good ways of getting from one appointment to another, which disabled people who cannot themselves drive could use. So the employer needs to show that a requirement to be able to drive is objectively justified, or they may be discriminating unlawfully against the people who cannot drive because of their disability.



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

**Example** — An employer tells a visually impaired person who uses an assistance dog that they are unsuitable for a job because the employer is nervous of dogs and would not allow it in the office. Unless the employer can objectively justify what they have done, this is likely to be discrimination arising from disability. The refusal to consider the visually impaired person for the job is unfavourable treatment which is because of something connected to their disability (their use of an assistance dog). It may also be a failure to make a reasonable adjustment.

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

**Example** — An employer does not give someone the job, even though they are the best-qualified person, just because the applicant tells the employer they have a disabled partner. This is probably direct discrimination because of disability. Direct discrimination cannot be justified, whatever the employer's motive.

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

**Example** — An employer does not give an applicant the job, even though they are the best-qualified person, because the employer incorrectly thinks the applicant is gay. This is still direct discrimination because of sexual orientation.

- An 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 shortlist a person for interview, even though they are well-qualified for the job, because last year the job applicant said they thought the employer had discriminated against them in not shortlisting them for another job.

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

**Example** — An employer makes a job applicant feel humiliated by telling jokes about their religion or belief during the interview. This may amount to harassment.

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

If you ask for information about the job and the application form (if there is one) in an **alternative format** which you require because you are a disabled person then an employer must provide this, so long as it is a reasonable adjustment – and it is likely to be.

If you need reasonable adjustments to participate in any interview or assessment process, then an employer must make them.

When an employer assesses your suitability for the job, they must take account of any reasonable adjustments which are needed to enable you to do the job.

If, after taking reasonable adjustments into account, you would not be the best person for the job, an employer does not have to offer it to you.

Obviously, if you are the best person, the employer should offer you the job. Not offering you the job because you require adjustments would be unlawful discrimination, if those adjustments are reasonable for the employer to make.

You can read more about reasonable adjustments to remove barriers for disabled people in Chapter 3. We also highlight particular issues in each section of this guide that are especially relevant to you if you are a disabled person.

- You must not be discriminated against 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** — You apply for a job and feel that you were treated worse than other

applicants in the interview because of your ethnic background. You complain about this to the employer that interviewed you. In response they tell another employer with whom they do business that it would not be a good idea to offer you a job and when you apply to that employer, you are refused an interview because of what they have said. This will be unlawful victimisation.

## Questions about health or disability

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Except in very restricted circumstances or for very restricted purposes, employers are not allowed to ask any job applicant about their health or any disability until the person has been:

- offered a job either outright or on a conditional basis, or
- included in a group of successful candidates to be offered a job when a position becomes available, where more than one post is being recruited to (for example, if an employer is opening a new workplace or expects to have multiple vacancies for the same role).

This includes asking such a question as part of the application process or during an interview. It also includes sending you a questionnaire about your health for you to fill in before you have been offered a job. Questions relating to previous sickness absence are questions that relate to health or disability.

This applies whether or not you are a disabled person.

No-one else can ask these questions on the employer's behalf either. So an employer cannot refer you to an **occupational health practitioner** or ask you to fill in a questionnaire provided by an occupational health practitioner before the offer of a job is made (or before you have been included in a pool of successful applicants) except in very limited circumstances, which are explained next.

The point of stopping employers asking questions about health or disability is to make sure that all job applicants are looked at properly to see if they can do the job in question, and not ruled out just because of issues related to or arising from their health or disability, such as sickness absence, which may well say nothing about whether they can do the job now.

The employer can ask questions once they have made a job offer or included you in a group of successful candidates. At that stage, the employer could make sure that your health or disability would not prevent you from doing the job. But the employer

must also consider whether there are reasonable adjustments that would enable you to do the job.

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

### **What happens if an employer asks questions about health or disability?**

The Equality and Human Rights Commission can take legal action against the employer if they ask job applicants any health- or disability-related questions that are not allowed by equality law. Contact details for the Equality and Human Rights Commission are at the end of this guide.

Also, you can bring a claim against an employer if:

- the employer asked health or disability-related questions of a kind that are not allowed, and
- you believe there has been unlawful discrimination as a result of the information that you gave (or failed to give) when answering the questions.

In such a claim, the fact that the employer asked these questions will shift the **burden of proof**, so that it will be for the employer to prove that they did not discriminate against you when, for example, the employer did not offer you the job.

### **When an employer is allowed to ask questions about health or disability**

An employer can ask questions about health or disability when:

- They are asking the questions to find out if you need reasonable adjustments for the recruitment process, such as for an assessment or an interview.

**Example** — An application form states: ‘Please contact us if you need the application form in an alternative format or if you need any adjustments for the interview’. This is allowed.

- They are asking the questions to find out if you (whether you are a disabled person or not) can take part in an assessment as part of the recruitment process, including questions about reasonable adjustments for this purpose.

**Example** — An employer is recruiting play workers for an outdoor activity centre and wants to hold a practical test for applicants as part of the recruitment process. It asks a question about health in order to ensure that applicants who

are not able to undertake the test (for example, because they are pregnant or have an injury) are not required to take the test. This is allowed.

- They are asking the questions for **monitoring** purposes. You can read more about monitoring below.
- They want to make sure that any applicant who is a disabled person can benefit from any measures aimed at improving disabled people's employment rates. For example, the **guaranteed interview scheme**. They should make it clear to job applicants that this is why they are asking the question.
- They are asking the question because having a specific impairment is an **occupational requirement** for a particular job.

**Example** — An employer wants to recruit a Deafblind project worker who has personal experience of Deafblindness. This is an occupational requirement of the job and the job advert states that this is an occupational requirement. The employer can ask on the application form or at interview about the applicant's disability.

- Where the questions relate to a requirement to vet applicants for the purposes of **national security**.
- Where the question relates to a person's ability to carry out a function that is intrinsic (or absolutely fundamental) to that job. Where a health or disability-related question would mean that the employer would know whether you could carry out that function with reasonable adjustments in place, then the employer can ask the question.

**Example** — A construction company is recruiting scaffolders. The company can ask about health or disability on the application form or at interview if the questions relate specifically to an applicant's ability to climb ladders to a significant height. The ability to climb ladders to access scaffolding is a function that is intrinsic or fundamental to the job.

In practice, even if a function is intrinsic to the job, the employer should be asking you (if you are a disabled person) about your ability to do the job with reasonable adjustments in place. There will be very few situations where a question about a person's health or disability needs to be asked.

Most of the time, whether on an application form or during an interview, an employer should ask you a question about whether you have the relevant skills, qualities or experience to do the job, not about your health or about any disability you may have.

**Example** — An employer is recruiting a person as a cycle courier. They ask applicants to send in a CV setting out their relevant experience and a covering letter saying why they would be suitable for the job. The employer will score candidates on their experience of and enthusiasm for cycling. It is not necessary to ask applicants questions about health or disability. If the employer considers a health check is necessary, for example, for insurance purposes, this can be carried out once an applicant has been offered the job, and the job offer can be made conditional on the health check.

If you voluntarily disclose information about your health or disability before the employer has made any job offer, the employer should still not get involved in a conversation with you which is outside the exceptions set out above.

## 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 recruitment and which apply to all employers. There are others that only apply to particular types of employer.

We only list the exceptions which apply to the situations covered in this guide. There are more exceptions which apply in other situations, for example, when an employer is selecting someone for redundancy. These are explained in the relevant guide in the series.

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

- treat disabled people better than non-disabled people
- use voluntary **positive action**. You can read more about positive action during recruitment at page 36.

### Age

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

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 applicant for a management job just because they are 25-years-old and much younger than the people they would be managing.
- An employer only makes people over 50 do an aptitude test, because the employer believes that people over 50 do not have the mental agility to learn to do a job.

These are both examples of age discrimination which an employer would find it very difficult to objectively justify.

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

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

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

#### **Occupational requirements**

If an 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. This would be an '**occupational requirement**'.

**Example —** A women's refuge may want to say that it should be able to employ only women as counsellors. Its client base is only women who are experiencing domestic violence committed by men. This would probably be a genuine occupational requirement.

A requirement to have a particular protected characteristic in the case of gender reassignment means a requirement not to be a transsexual person, and, in the case of marriage and civil partnerships means a requirement not to be married or a civil partner. This means that it can be a requirement to be of a particular sex, race, disability, religion or belief, sexual orientation, or age, or not to be a transsexual person, married or a civil partner where having, or not having, one of those protected characteristics is central to the job.

### **Obeying another law**

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

**Example** — A driving school must reject a 19-year-old who applies for a job as a driving instructor *because* to offer them a job – even if they are otherwise the best candidate – would involve breaking the law because a driving instructor must be aged at least 21.

### **National security**

An employer can take a person's 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 an 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** (i.e. a proportionate means of achieving a legitimate aim).

**Example** — A Humanist organisation which promotes Humanist philosophy and principles would probably be able to apply an occupational requirement for its chief executive to be a Humanist.

- If the job is for the purposes of an **organised religion**, the 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.



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,

an employer may be able to refuse to employ 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.

This exception should only be used for a limited number of posts, eg ministers of religion, and a small number of posts outside the clergy, eg those which exist to promote or represent the religion. The requirement must be a **proportionate** way of meeting the aims stated above.

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.

- If an organisation is an **educational establishment** like a school or college, they may be able to say that you have to be of a particular religion or belief, or must be a woman.
- If an employer is recruiting to the civil, diplomatic, armed or security and intelligence services and some other public bodies, they can specify what nationality a person has to be.
- If an employer is recruiting to service 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. Disability can also be a reason to refuse someone work experience in the armed forces.

There are more details of these exceptions in the Glossary.

## 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:

- Job adverts
- Information about what the job involves and what skills, qualities and experience a person will need to do it
- Application forms and CVs
- The shortlisting process
- Interviews, meetings and tests
- Your rights if you are pregnant or on maternity leave
- Monitoring forms
- Positive action and recruitment

## Job adverts

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Employers do not have to advertise job vacancies in a particular way or at all.

But if an employer doesn't advertise at all or advertises in a way that won't reach people with a particular protected characteristic, this might in some situations lead to **indirect discrimination**, unless the employer can **objectively justify** their approach. This is because not advertising or only advertising in a very limited way may stop people with a particular protected characteristic finding out about a job, which could count as worse treatment.

**Example** — A large employer recruits workers to driving jobs through word of mouth. This results in everyone who has a driving job being a member of the same few families or a friend of these families. All the family members and their friends are white, despite the workplace being in an area with a high ethnic minority population. Unless the employer can objectively justify the way drivers are recruited, this is likely to be indirect discrimination because of race.

If an employer does advertise, whether that's on a notice board, in a shop window, in a newspaper or on a website, or by using a recruitment agency, an employer must not give the impression that they intend to discriminate.

**Example** — An employer advertises for a ‘waitress’. To avoid direct discrimination because of sex, they should advertise for ‘waiting staff’ or ‘waiter or waitress’.

This does not apply if any of the exceptions listed at pages 16–19 apply. Then the employer could mention a particular protected characteristic in the job advertisement.

### **If you are a disabled person**

If an employer does advertise a job, they must not state or imply that a job is unsuitable for disabled people generally or for a disabled person with a particular type of impairment, unless there is a very clear job-related reason for this.

**Example** — An employer is advertising for somebody to deliver parcels on their own; the advertisement states that the successful applicant will have to drive and be able to lift the parcels. The need to drive is clearly required for the job. Although it may exclude some disabled people (for example, those with a sight impairment) it would not exclude all disabled people. It would therefore be wrong – and discriminatory – to put ‘unsuitable for disabled people’ in the job advert.

The employer must not state or imply that changes will not be made for a disabled person unless there is a very clear job-related reason for this.

**Example** — When a school is advertising for a teacher to work in a building on two floors which does not have a lift, they must not state that because of this the job would not be suitable ‘for a disabled person’. Instead, if they wish to address this issue in the advert, they could point out that the school is on two floors but that they would welcome applications from disabled people whatever their impairment and would make reasonable adjustments both at interview and on appointment for applicants with a mobility impairment. If the school interviews an applicant with a mobility impairment, it would be a reasonable adjustment to hold the interview somewhere with level access. If the successful applicant has a mobility impairment, a reasonable adjustment could be made to allow them to do their teaching on the ground floor and, if necessary, level access to the ground floor could be provided through the installation of a ramp if this did not already exist, provided these are reasonable adjustments.

If an employer wants to, they can advertise a job as being open to disabled applicants only or say in an advert that they are encouraging disabled people to apply for a job. This is not unlawful discrimination against a non-disabled person. An employer is allowed to treat a disabled person better (or as equality law puts it ‘**more favourably**’) than a non-disabled person. This can be done even if the disabled person 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.

### **Equality good practice: what to look for if equality is important to you**

- An employer can use an advertisement to encourage applications from people with a particular characteristic, if they are using **positive action**.
- An employer could use a logo to show that they encourage applications from people with a particular protected characteristic. For example, if an employer is authorised to use the ‘**Two Ticks**’ **symbol**, this shows that they want to encourage applications from disabled people.
- An employer could use a statement to show that they want to encourage anyone who has the necessary skills and experience to apply whatever their protected characteristics, such as:
  - ‘We welcome enquiries from everyone and value diversity in our workforce.’
  - ‘We are willing to consider flexible working arrangements.’
- If an employer has an **equality policy**, an employer could mention this, which would tell you that their organisation wants to operate in a particular way.

## **Information about what the job involves and what skills, qualities and experience a person will need to do it**

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When you apply for a job, you may be told to send for more information about it. Or you may just telephone the employer to talk about what the job involves.

This is the employer’s chance to make sure that they are matching what they say about the job to what they actually need. This will help them to get a person with the right skills, qualities and experience needed to do it.

It also helps you to decide if you have the right skills, qualities and experience for the job and to find out more about the employer.

## Avoiding direct discrimination

An employer must avoid direct discrimination against job applicants because of a protected characteristic in what they say or write about the job.

**Example** — An employer tells a female applicant on the phone that they are unsuitable for a driving job because the job has always been done by a man before and that is what they are looking for this time.

Direct discrimination cannot be **objectively justified** for any protected characteristic except age. But this does not mean that equality law generally allows age discrimination or stereotyping.

**Example** — An employer says in a person specification that the successful candidate 'must have youthful enthusiasm'. This would probably be direct discrimination because of age which the employer could not show to be **objectively justified**. What is actually needed is enthusiasm, which can be just as present in someone who the employer does not see as young, so the employer should not include the stereotype in the person specification.

## Avoiding requirements the employer cannot objectively justify

Of course, an employer will need the successful applicant to have particular skills, qualities, experience and, sometimes, qualifications to do the job.

If requirements like these are **objectively justified**, an employer can include them in what they say or write about the job and the person they are looking for, even if they exclude some people (for example, because people with a particular protected characteristic are less likely to be able to meet the requirements).

But if the requirements are not **objectively justified** having regard to the job, then using them might be unlawful indirect discrimination.

**Example** — An employer specifies that a job must be done on a full-time basis without having looked at whether it might be suitable for part-time work or jobsharing. The requirement to work full-time would put women at a disadvantage compared to men because more women work flexibly because of childcare responsibilities. Unless the employer can objectively justify the requirement to work full-time, this is likely to be indirect discrimination because of sex.

## If you are a disabled person

Any requirements that an employer gives you about what the job involves, or about the person who they want to recruit, should be related to and needed as part of the job. The inclusion of unnecessary or minor requirements could discriminate against you as a disabled person, for example, by stopping you applying.

**Example** — An employer states that they want to recruit someone who is ‘active and energetic’ but in fact the job needs someone to work at a desk. This might stop some disabled people from applying if, for example, they have a mobility impairment (although, of course, many people with a mobility impairment are very active and energetic). This would be the wrong approach for an employer to take.

An employer should also think about whether specific qualifications are actually required or whether what is really needed is a particular skill level or task.

**Example** — An employer specifies that a driving licence is required for a job which involves limited travel. An applicant for the job has no driving licence because of the effects of cerebral palsy. They are otherwise the best applicant for that job, they could easily and cheaply do the travelling involved other than by driving and it is likely to be a reasonable adjustment for the employer to let them do so. It would probably be discriminatory to insist on the specification and reject their application only because they have no driving licence.

An employer must make reasonable adjustments for you during the recruitment process if you need them because you are a disabled person. This includes providing and accepting information in **alternative formats**, where this would be a reasonable adjustment.

## Application forms and CVs

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An employer doesn't have to ask you and other job applicants to fill in an application form or even to give them your CV or job history. But they're likely to want to find out what skills, qualities and experience you have which would make you the best person to do the job.

Regardless of how an employer gets the information, they must not use what you say about yourself to discriminate unlawfully against you. For example, an employer must not reject applications because of people's sex, race or another protected characteristic, which they have found out from the information given. This would be direct discrimination.

If an employer rejects an application because of someone's age, they must be able to **objectively justify** this.

If an employer rejects your application because they apply a requirement which has a worse impact on you and other people with a particular protected characteristic, then unless an employer can **objectively justify** the requirement, this may be **indirect discrimination**.

**Example** — An employer decides to reject applications from anyone who has had a career break. This would have a worse impact on some people who share a particular protected characteristic, such as women, who are more likely to have taken a break to have a family, and transsexual people, who have taken a break to undergo gender reassignment. Unless the employer can objectively justify the requirement for the successful applicant not to have had a career break, this is likely to be unlawful indirect discrimination.

If the applicant who is rejected for this reason is a disabled person, it may be discrimination arising from disability. The required knowledge is of the facts of the applicant's disability but an employer does not also need to realise that those particular facts are likely to meet the legal definition of disability.

### **If you are a disabled person**

If an employer does use an application form, and you ask for it in an **alternative format** such as large print, computer disc and audio, it is likely to be a reasonable adjustment for the employer to provide the information in that format. If it is a reasonable adjustment, an employer must be prepared to accept your application in an alternative format. However, it is a good idea to try to submit your application in a format which suits both you and the employer. For example, you may usually use Braille to read and type but could send your application to an employer as a word processed document electronically.

Having a standard application form is a good way for an employer to reduce the risk of discrimination in the job application process. However, requiring completion of an application form could put some disabled applicants at a substantial disadvantage

and therefore providing job applicants with different ways of providing information to support their application could be a reasonable adjustment to meet the needs of some disabled applicants.

### **Can an employer ask me about health or disability?**

In general, an employer must not ask job applicants any questions relating to health or disability. So they should not ask you about this on the application form or ask you to say in a covering letter with a CV or in a letter of application or on a separate questionnaire (unless this is a **monitoring form**) about your health or disability.

Instead, the employer should ask whether you have the relevant skills, qualities and experience to do the job, not about your health or about any disability you may have.

However, one of the exceptions to this rule means an employer can ask a question to find out if, as a disabled person, you need a **reasonable adjustment** during the recruitment process itself.

But they should not ask for this information on the application form. You should be asked to give this information on a separate document or using a covering letter that does not contain any information relevant to deciding whether to take your application further. This will help prevent the employer using the information in the wrong way, including deciding whose applications to take further.

An employer only has to make adjustments if they know, or could be reasonably expected to know, that a disabled person has applied or may apply for the job. But an employer must do all that can reasonably be expected to find out whether this is the case and what, if any, adjustments you require.

**Example** — When inviting job applicants for interview, an employer asks applicants to say if they have any disability-related requirements for interview and states that the employer will make reasonable adjustments. This is the right approach, so long as the employer does not then use any information the applicants give to discriminate against them.

They should not ask you about this in a way that might be intrusive or that violates your privacy or dignity.

They should not ask anything that is not about making reasonable adjustments to the application process, unless one of the exceptions listed at pages 16–19 applies.

They should not use what you say about reasonable adjustments to make any other decisions that are part of the application process. This would take them outside the



exception. If you believed you had not got the job because of the answers you had given, you may have a claim for direct discrimination because of disability and/or discrimination arising from disability, depending on what happened.

**Example** — An employer asks a specific question when they invite job applicants for interview: ‘Do you require any adjustments because of a disability?’ and offers to answer any questions applicants have about the interview process to help them work out if they need to ask the employer for anything. The employer is also clear whether or not the interview will take place in a building with level access (i.e. if there are stairs, there are ramps or a lift) and if a hearing loop is available. This is the right sort of approach.

However, you do not have to tell an employer what adjustments you need. But if you do not, unless they could otherwise reasonably be expected to know that you are a disabled person, they will not be under a duty to make adjustments. However, if you tell them at a later stage that you are a disabled person, or they could reasonably be expected to know that you are, they must then consider whether you need reasonable adjustments. The required knowledge is of the facts of your disability - an employer does not also need to realise that those particular facts are likely to meet the legal definition of disability.

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

## The shortlisting process

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Shortlisting is when an employer decides who to meet or interview to discuss their job application. The meeting or interview could be face to face or by phone.

Equality law does not say that an employer has to meet someone or interview them before offering them a job.

But if an employer does decide to have a meeting or interview with one or more job applicants, then they must not unlawfully discriminate against you when they decide who to meet or interview.

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

## If you are a disabled person

An employer may have a **guaranteed interview scheme** for disabled people. In this case, if you meet the minimum criteria for the job then the employer should shortlist you for interview.

Equality law does not say an employer has to have a guaranteed interview scheme. If an employer does not, they must still take account of how reasonable adjustments could enable you to do the job, if they know or could reasonably be expected to know that you are a disabled person.

## Interviews, meetings and tests

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An interview, meeting or test can help an employer work out if someone is the best person for the job.

Equality law does not say that an employer has to meet someone or interview them before offering them a job.

If an employer does decide to interview you and other job applicants, whether that is face to face or over the phone, or to give you and other applicants a test, then they must not unlawfully discriminate against you in the way they carry out the meeting, interview or test.

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

Examples of what an employer should avoid doing include:

- asking you questions which make assumptions about you based on your protected characteristics
- harassing you.

**Example** — An employer makes a series of unpleasant ‘jokes’ about an applicant’s race, which create an offensive atmosphere for them.

## If you are a disabled person

If you are a disabled person and have said that you need adjustments for the interview, meeting or test, and those adjustments are **reasonable adjustments**, then the employer must make them.

**Example** — An applicant for a job with an employer has a hearing impairment which means that they use a textphone. The employer has asked applicants to take part in a telephone interview. The applicant tells the employer in advance that they will be using a textphone and the UK Text Relay Service, and the employer interviews them in this way. The employer has made a **reasonable adjustment**.

An employer only needs to make adjustments once they know, or could reasonably be expected to know, that a disabled person is or may be applying for the job.

Once an employer knows that or should have known it, they must take steps to find out whether you need any adjustments and what those adjustments are. This means an employer will need to make sure that all of the interview arrangements allow you to attend and participate effectively, provided these are reasonable adjustments.

**Example** — An applicant with a hearing impairment informs the employer that they use a combination of hearing aids and lip reading but will need to be able to see the interviewer's face clearly. The interviewer makes sure that their face is well lit, that they face the applicant when speaking, they speak clearly and are prepared to repeat questions if the applicant does not understand them. These are likely to be reasonable adjustments for the employer to have to make.

If an employer has not asked whether you need adjustments or if you have not told the employer in advance, the employer must still make the adjustments that you need when you arrive, if it is reasonable to do so.

However, if you did not tell the employer, even though they asked, what is reasonable for an employer to do may be different from what would have been reasonable for them to do with more notice.

**Example** — An applicant does not tell an employer they need level access because of a mobility impairment. When they arrive, there are steps to the interview room and no lift. The employer is unable to move rooms at short notice but asks them to attend another day when a room with level access will be available. This is likely to be a reasonable adjustment.

An employer must not change the decision to interview you because when you arrive they discover you are a disabled person. Nor should they change the way they interview you, for example, by cutting the interview short or not testing you in the

same way as other applicants (unless the change to the interview is a reasonable adjustment).

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

### **Being flexible about dates and times**

An employer may need to be flexible or to make changes to the dates or times of interviews to avoid unlawful discrimination, particularly indirect discrimination if they cannot **objectively justify** what you are doing, or a failure to make reasonable adjustments.

#### **Examples —**

- An employer only offers applicants for a job one time for interviews. A disabled person with a mobility impairment is told to attend at 9am, even though they have asked for a time which allows them to travel on public transport outside the rush hour and explained why. This is likely to be a failure by the employer to make a reasonable adjustment.
- An employer only offers applicants for a job one time for interview. One applicant is an observant Muslim who cannot attend at midday on Friday. Unfortunately, this is the only time they are offered for their interview. Unless the employer can **objectively justify** the lack of flexibility, this may be indirect discrimination because of religion or belief.

If you are only offered one day and time for an interview or test and you cannot attend then, ask for a different one. But you don't have to tell the employer why you need a different time.

### **What mustn't an employer ask you?**

An employer must not ask questions about your protected characteristics unless these are very clearly related to the job (for example, because one of the exceptions applies).

If an employer decides not to employ you just because of a protected characteristic, unless it comes within the exceptions, this would be direct discrimination.

In particular, an employer must not ask you questions about health or disability, including about your sickness absence record. The only exception to this is if the answer to the question would mean an employer would know whether or not you can

carry out an intrinsic or absolutely fundamental function of the job with reasonable adjustments in place. An employer has a duty to consider reasonable adjustments if your answer reveals that these are necessary.

A better approach is for the employer to ask you whether you have the relevant skills, qualities and experience to do the job, not about your health or about any disability you may have.

If an employer does ask you questions you think they should not be asking, it may be difficult for you to refuse to answer, although you could do so. Answer as best you can, and then make a note of the questions once the interview has finished. This means that if you believe you have been discriminated against and want to do something about it, you will have a record of what happened which you have made soon afterwards.

It is a myth that equality law says an employer must ask you and everyone else exactly the same questions. There is no reason why an employer cannot ask you about things that are different about your application or follow up your answers with questions that relate to what you have just said. However, they should be focusing on the same broad subject areas with each applicant. This is because otherwise the employer may be applying different standards to different applicants based on their protected characteristics, and this might lead to unlawful discrimination.

## Tests

If an employer asks you to do a test of some sort to help them decide who the best person for the job is, they should not use a test to discriminate unlawfully against you.

**Example** — An employer decides to make applicants for jobs take a test of their written English, even though the job does not require a person to have good written English. This test is harder for some people to pass because of their protected characteristics, for example, some people for whom English is not their first language. An applicant was born outside the UK and is fluent in spoken English but less confident in written English. Unless the employer can **objectively justify** making them take this test (which is unlikely if it does not relate to the job), it may be indirect discrimination because of race; it disadvantages that applicant and other people who share their protected characteristic, in this case, having a different national origin.

If an employer does set a test and it is only available for applicants to carry out at a set time on a set day, the employer should avoid religious festivals or holy days or times of religious observance so far as they can. Unless an employer can **objectively justify** the requirement for all applicants to take the test at that particular time, this may be indirect discrimination because of religion or belief. This is because it has a worse impact on applicants who are followers of the affected religion or belief than on those who are not. Those applicants may not be able to take the test at all, ruling them out from consideration for the job.

### **If you are a disabled person**

An employer should tell you in advance if you will be expected to take a test and give you an outline of what will be involved. This is because, if you are a disabled person and are not told in advance about a test, this may disadvantage you because it does not give you a chance to ask for reasonable adjustments. This may stop you being able to compete on the same terms as other applicants.

You should not be disadvantaged because of your disability by the content and timing of a test.

**Example** — An employer allows an applicant extra time for a written test because they have severe dyslexia. They also provide them with a computer, having checked with them what adjustments they need and accepted that they are reasonable adjustments.

However, an employer does not have to adapt a test to the point where it no longer tests whether you would be able to do the job or not (taking into account any reasonable adjustments that would enable you to do the job).

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

### **Social gatherings as part of the assessment**

If the interview process or assessment includes a social gathering where only alcohol is available, this may disadvantage an applicant whose religion forbids association with alcohol, for example, members of some Christian denominations and Muslims, or people who for a reason related to their disability cannot drink alcohol.

If an employer is providing food, the same is true of applicants with specific dietary needs based on religion or belief or disability.

An employer should ask in advance if you have any specific dietary requirements because of religion or belief or disability and make sure that soft drinks or an alternative meal can be provided. If the employer does not do this, it puts you at a disadvantage – because you cannot join in in the same way as other applicants and this may lead to your being regarded as unfriendly or not willing to mix. This may be indirect discrimination because of religion or belief or disability unless the employer can **objectively justify** it.

## Your rights if you are pregnant or on maternity leave

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An employer must not refuse to employ you if, when you apply for a job, you are **pregnant**, on **maternity leave** or you have (or have had) an illness related to your pregnancy.

Equality law does not say that you have to tell an employer that you are pregnant when you apply for a job. The employer should not base their decision about whether or not to employ you on whether you are pregnant but on whether you have the skills to do the job.

If you do not tell the employer that you are pregnant and the employer gives you the job, they must not dismiss you when you tell them about your pregnancy.

**Example** — A woman applies for a job as a training instructor. On the basis of her application form and her interview, the employer decides she is the best person for the job and offers the job to her. She has just discovered she is pregnant and tells the employer this when she accepts the job offer. If the employer changes their mind and withdraws the job offer, this would be **direct discrimination** and cannot be justified.

If you are a woman, an employer should not ask you whether you intend to have children, whatever your age or marital status or even if they think you might be pregnant. This is not something that the employer should be taking into account in deciding whether you have the skills needed for a particular job. You do not have to answer a question like this, although obviously this puts you in a difficult position if you want to get the job and are worried the employer will hold your refusal to answer against you.

If an employer asks you these questions, it may lead you to think the only reason they want to know is so that they can discriminate against you. There is more information about what to do if you believe you've been discriminated against in Chapter 4.

## Monitoring forms

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An employer may give or send you a **monitoring form** and ask you to tell them about your protected characteristics.

After the recruitment has finished, they may use this information to help them to see who has applied for the job and who has been selected, in terms of their protected characteristics.

If they find that people with a particular protected characteristic are not applying for jobs with them or are not getting jobs even though they apply, they may use this to try to find out why this is. They could then decide if they should be changing their recruitment processes at all to make sure they are not excluding good applicants unnecessarily.

Equality law does not say that an employer has to use a monitoring form to find out individual personal information about job applicants and their protected characteristics as part of the recruitment process.

But if an employer does use a monitoring form and this tells them about your protected characteristics, then they must not use this information to discriminate against you. For example, they must not base decisions about who to take further into the application process on the information you and other people give on the monitoring form.

### **Can an employer ask me about health or disability on the monitoring form?**

In general, an employer must not ask a job applicant questions relating to health or disability. One of the exceptions to this rule applies to monitoring. An employer is allowed to ask questions about health or disability if the point of this is to find out how many job applicants are disabled people and whether they are shortlisted or appointed.

The answers you give to monitoring questions about health or disability should be dealt with by the employer in the same way as the answers to other monitoring questions, in other words, they should be kept separately from the main application



form. The person or people shortlisting and appointing should not see the information before deciding who to interview or appoint.

### **What happens if my protected characteristics are relevant to the recruitment?**

If, exceptionally, your protected characteristics are playing a part in the decision-making, for example;

- if you are a disabled person and the employer is signed up to the **guaranteed interview scheme**, or
- if **positive action** is being used in recruitment for a particular job, or
- if the employer has applied an **occupational requirement**, or
- if it is either a legal requirement or otherwise **objectively justifiable** that you have to be a particular age to do a job, or
- if an employer is a **religion or belief organisation** and the job is one where you have to be of a particular religion or belief, or an employer is an **organised religion** or the job is for the purposes of an organised religion, and the job is one where it is necessary for you to have or not have a particular characteristic or behave in a particular way

then the employer should make this clear in the information about the job and should ask you separately from the monitoring form if you have the relevant protected characteristic.

This makes sure that the person or people making the decision about who to interview or employ only see the information about protected characteristics that is relevant and do not need to see the monitoring form itself.

If an employer does use a monitoring form, then the information that is on it is likely to be personal and they should make sure that it is kept safely so that people's confidentiality or **data protection** rights are not broken. This may be particularly important for some protected characteristics, such as gender reassignment, and some disabilities, such as HIV status and mental health conditions.

**Remember** —The employer should tell you:

- why they are collecting the information
- who will see the information
- what will be done with the information, including how they will make sure that the information will be treated confidentially
- how long they will keep your information

- how they will make sure it is not used for shortlisting or appointing to the job, for example, by separating it from the application form.

The employer should give you the choice to opt out of the process by including the option to tick 'prefer not to say' within each category.

You do not have to give the information or fill in the form or answer a particular question at all.

If you refuse to give the employer the information they ask for, they should not hold this against you.

However, it may help them to improve equality in their workplace if you do give them the information. But only do this if you are comfortable with what they have said about how it will be used and the safeguards they have put in place.

## Positive action and recruitment

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### 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 apply for jobs.

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.

In recruitment, equality law allows positive action before or at the application stage. At this stage, 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).

An example of when an employer might decide to take positive action is if they find that the make up of 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 apply for vacancies.

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 recruitment. However:

- Meeting the different needs of an employer's workforce can help make staff more productive.
- Recruiting from 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 allowed.

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

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

**Example** — An education employer could not use positive action to attract women applicants for an entry level primary teaching post where women already made up

70 per cent of the teaching workforce. Since the steps would not be being taken to overcome a disadvantage or under-representation this would be unlawful direct discrimination. However, the employer could use positive action to recruit more men as they are under-represented in this workplace.

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 recruitment. 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.

**Example** — A local fire service identifies from its monitoring data that women are under-represented as firefighters. The service makes clear in its next recruitment exercise that applications from women are welcome and holds an open day for potential women applicants at which they can meet women firefighters. However, the fire service must not guarantee that all women will get through the initial stages of the application process, regardless of their suitability.

### **Tie-break situations**

The other positive action step an employer can take is to decide to appoint an applicant from a group sharing a protected characteristic if they reasonably believe 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 an employer would use the tie-break provisions at the end of the recruitment process, they can also treat an applicant more favourably at any earlier stage of the process. But they can only choose to 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 housing advice service has no Muslim employees, even though it is located in an area where there is a high Muslim population. When a vacancy

arises, there are two candidates of equal merit. One candidate is Muslim and the other is not. The advice service could choose to offer the job to the Muslim candidate under the positive action provisions, so that the non-Muslim candidate could not claim religious discrimination.

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

### **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 in general face a lot of barriers to participating in work and other activities. You can choose to treat a disabled job applicant more favourably even if they are not at a disadvantage due to their disability in the particular situation.

**Example** — An employer has a policy of shortlisting and interviewing all disabled applicants who meet the minimum requirements for a job. 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 recruitment 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.

#### **Examples** —

- In some situations, it may be possible to specify that someone must be over or under a certain age, if this can be **objectively justified**.
- If an '**occupational requirement**' exists for the job. For example, when a personal assistant is being recruited to support a disabled person in bathing, toileting and dressing, it is possible to recruit someone of the same sex as the person being supported, and the applicant's sex would be an occupational requirement.

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

- An employer using 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 exceptions at pages 16–19.

## Public sector equality duty and human rights

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

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

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. The 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 the employer can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation
- How the employer can reduce the risk that they will be held legally responsible
- When workers employed by the employer or the employer's agents may be personally liable
- 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 the employer can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation**

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The employer is legally responsible for acts of discrimination, harassment and victimisation carried out by workers employed by them in the course of their employment.

The employer is also legally responsible as the 'principal' for the acts of their agents done with their authority. Their agent is anyone the employer has instructed to do something on their behalf, even if the 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 the employer's instructions

it does not matter whether or not the employer:

- knew about, or
- approved of

what the worker or agent did.

#### **Examples —**

- An employer tells their receptionist to send out application forms to anyone telephoning in to ask about a recently advertised job. The receptionist hears that a caller has a strong African accent and, instead of sending out a form, tells them the job has gone. The employer will be responsible for the receptionist's actions.
- An employer engages a head-hunter to work in-house to recruit a team of senior management. The head-hunter weeds out applications from women of child bearing age. This is almost certainly unlawful sex discrimination. Both the employer and the head-hunter (who is the employer's agent) would be legally responsible for the discrimination unless the employer can show that they told the head-hunter to comply with equality law. This means that the authority given to the head-hunter as agent did not extend to acting in a discriminatory way, the agent acted outside the scope of the employer's authority and only the agent is liable for the discrimination.

However, the 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 the employer asked them to do that they could no longer be thought of as acting on the employer's behalf).

## How the employer can reduce the risk that they will be held legally responsible

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The employer can reduce the risk that they will be held legally responsible for the behaviour of their employees or 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 the employer and their other staff are dealing face-to-face with you, but also to how the employer and the people who work for them plan what happens in your workplace.

When the employer or their workers or agents are planning what happens to you in a work situation, the 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 the employer to make sure that workers employed by them and their agents know how equality law applies to what they are doing.

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

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A worker or agent may be personally responsible for their own acts of discrimination, harassment or victimisation carried out during their employment or while acting with their employer's authority. This applies where either:

- the employer is also liable as their employer or principal, or
- the employer would be responsible but they show that:
  - they took **all reasonable steps** to prevent the worker discriminating against, harassing or victimising you, or

- that their agent acted outside the scope of their authority.

**Example** — A security guard employed by a bank makes offensive remarks to a Muslim job applicant when he arrives for a job interview with the bank. The employer would be liable for the security guard's actions, but is able to show that they took all reasonable steps to prevent any harassment of this kind. They had given extensive training to all their security guards about avoiding harassment and had warned them of disciplinary consequences if they did so. Even if the employer is able to avoid legal responsibility for the harassment because they took all reasonable preventative steps, the job applicant can still claim compensation against the security guard 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 a worker employed by them or their agent relies upon to carry out an unlawful act.

### **What happens if the discrimination is done by a person who is not a worker of your employer or their agent**

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

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

the harassment by the young men.

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

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An employer or principal must not instruct, cause or induce a worker employed by them or their agent to discriminate against, harass or victimise a job applicant, 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, an **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. It is not only a matter of making adjustments to the recruitment process, but of bearing in mind that adjustments may be necessary for the job itself.

Many of the adjustments an 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 the employer's organisation.

If, however,

- you are a disabled person, and
- you can show that there were **barriers** the employer should have identified and reasonable adjustments the employer could have made, and
- the employer does nothing,

you can bring a claim against your employer in the Employment Tribunal, and the 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 appoint you to a job or promote you if you are the best person for the job with the adjustments in place
- must be considered in relation to every aspect of your job

provided the adjustments are reasonable for the 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.

The employer only has to make adjustments where they are aware – or should reasonably be aware – that a job applicant has a disability. They do not have to know that an applicant's impairment meets the legal definition of a disability, just that they have an impairment which is likely to meet that definition.

It is advisable for the employer to discuss the adjustments with you, otherwise any changes they make may not be effective. However, except in specific circumstances, the employer cannot have this discussion before they have made a disabled job applicant a job offer, conditional if necessary. The rules on pre-employment health or disability enquiries are set out in more detail earlier in this guide.

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.

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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The employer only has to make these changes where they know or could **reasonably** be expected to know that a disabled person is or may be a job applicant. However, the employer must do everything they can reasonably be expected to do to find out whether you are disabled. The required knowledge is of the facts of the job applicant's disability but an employer does not also need to realise that those particular facts are likely to meet the legal definition of disability.

**Example** — A job applicant arrives for an interview on a dark wintry day wearing sunglasses. This should suggest to the employer that the applicant may have a disability; for example, a visual impairment or form of epilepsy. The employer should ask the applicant whether they need any adjustments to the location or interview arrangements.

This does not, however, mean 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.

Be aware that there are restrictions on when an employer can ask health- or disability- related questions before making a job offer or accepting a job applicant into a pool of applicants to be offered a job when one is available. This is to make sure that job applicants are not discriminated against because of issues related to health or disability. The exceptions to the restriction are set out earlier in this guide.

An employer can ask you questions to find out if you need reasonable adjustments for the recruitment process. But they must use your answers only for working out the adjustments you need and whether these are reasonable.

If the adjustments are reasonable, and the employer used the fact that you needed the adjustments as a reason not to take you further into the recruitment process, this would be unlawful discrimination.

If you are applying for a job and you do not ask for adjustments in advance but turn out to need them, the employer must still make them, although what is reasonable in these circumstances may be different from what would be reasonable with more notice. The employer must not hold the fact that they have to make last minute adjustments against you.

**Example** — A job applicant does not tell an employer in advance that they use a wheelchair and the employer does not know about this. On arriving for the interview the applicant discovers that the room is not accessible. Although the employer could not have been expected to make the necessary changes in advance, it would be a reasonable adjustment to hold the interview in an alternative, accessible room if one was available without too much disruption or cost. Alternatively, it might be a reasonable adjustment to reschedule the interview if this was practicable.

## 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 applicant 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 used only by existing workers. A job applicant who has a mobility impairment and needs to park very close to the interview location, is given a designated car parking space for their interview. 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 job applicant or 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** — A blind job applicant attends the workplace for an interview. The employer arranges for a member of staff to meet them and generally accompany them, so they can be shown to the toilets, the cloakroom and the interview room as and when necessary.

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 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 applicant 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 the 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 the 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 a worker to do their 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 the 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 the 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, the employer must still consider what adjustments may be needed.

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, the prospective employer or, once you have started work, the 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 an employer or prospective 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 the employer knows about Access to Work. Although the advice and support are given to you, the 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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The 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 the employer (or you) 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.

The employer’s overall aim should be, as far as possible, to remove or reduce any substantial disadvantage faced by you as a worker or job applicant which would not be faced by a non-disabled person.

Issues the 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.
- The employer's size and resources are another factor. If an adjustment costs a significant amount, it is more likely to be reasonable for the employer to make it if the employer has large financial resources. The 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, such as where you are already working for an employer and face losing your job without an adjustment, or where you are a job applicant. Where you are already working for an employer, or about to start a long-term job with them, they would probably be expected to make more permanent changes (and, if necessary, spend more money) than for someone who is attending a job interview for an hour.
- 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 just make assumptions about risks which may face certain disabled workers.

If, having taken all of the relevant issues into account, the employer decides that an adjustment is reasonable, then they 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 may include steps to make sure that the information is provided in an accessible format.

**Example** — A job applicant asks for information about the job to be read onto an audio CD and sent 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 employee as a disabled person 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 an employee 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 advertises a job with hours of 9am–5pm each day. When offered the job, a disabled worker explains that they find it difficult to travel in rush hour as, because of their disability, they need to be able to sit down on the train. As a reasonable adjustment, the employer agrees that they can work from 10am–6 pm to avoid the rush hour.

- **Assigning you to a different place of work or training.**

**Example** — An employer relocates the intended work station of a newly recruited disabled worker (who 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 employee'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 person 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 employee 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 employees 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 obtains special equipment (such as an adapted keyboard for a new recruit 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 makes sure they have the necessary equipment in place before the disabled worker starts. The employer makes the arrangements to get the equipment and does not ask the worker to obtain it.

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 people (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 job applicant with restricted manual dexterity would be disadvantaged by a written test, so the employer gives that person an oral test instead.

- **Providing a reader or interpreter. Providing supervision or other support.**

**Example** — An employer arranges for an interpreter to be present for the interview of a Deaf job applicant.

- **Providing supervision or other support.**

**Example** — An employer provides a support worker or arranges help from a colleague, in appropriate circumstances, for someone whose disability leads to uncertainty or lack of confidence.

- **Allowing you to take a period of disability leave.**

**Example** — A worker who has cancer needs to undergo treatment and rehabilitation. Their employer allows a period of disability leave and permits them to return to their job at the end of this period.

- **Participating in supported employment schemes, such as Work Choice.**

**Example** — A person applies for a job as an office assistant after several years of not working because of depression. They have been participating in a supported employment scheme where they saw the job advertised. As a reasonable adjustment the person asks the employer to let them make private phone calls during the working day to a support worker at the scheme.

- **Employing a support worker to assist a disabled worker.**

**Example** — An adviser with a visual impairment is sometimes required to make home visits to clients. The employer employs a support worker to assist them on these visits.

- **Modifying performance-related pay arrangements.**

**Example** — A disabled person 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. The employer's other staff may therefore have an important role in helping make sure that a reasonable adjustment is carried out in practice. The 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.

### **Questions about health or disability**

Except in very restricted circumstances or for very restricted purposes, employers are not allowed to ask any job applicant about their health or any disability until the person has been:

- offered a job either outright or on conditions, or
- included in a pool of successful candidates to be offered a job when a position becomes available, where more than one post is being recruited to (for example, if an employer is opening a new workplace or expects to have multiple vacancies for the same role).

This includes asking such a question as part of the application process or during an interview. Questions relating to previous sickness absence are questions that relate to health or disability.

This applies whether or not you are a disabled person.

## 4 | What to do if you believe you've been discriminated against

If you believe you have been **unlawfully discriminated** against by the **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:
  - Asking for feedback
  - Making a complaint
  - 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 recruitment 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:

- Ask for feedback
- Complain to the employer.
- 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 detail about when time limits start to run is given later on in this section.

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 if you are going to go ahead.

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 fee 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.

### Example —

- 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 68.

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 the way the recruitment process was handled 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*.



## Asking for feedback

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Your complaint may be about the way the recruitment process was handled or it may be about the decision not to offer you a job. Some employers explicitly offer feedback for rejected job applicants, especially after the interview stage. Whether or not such feedback was offered, as a first step you could write to the employer and ask for some written feedback about why your job application failed. If you do not get much information back from this informal approach, you can try asking questions more formally. If the events you are complaining about happened before 6 April 2014 you can use the questions procedure. This is explained at page 68 below. Make sure you do not miss the tribunal time-limit for bringing a claim while you are awaiting for a reply.

## Making a complaint

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You can write to the employer making a complaint about the way you were treated during the selection process or about the decision not to choose you for the job. Hopefully you will receive a written response which gives you some idea about what the employer will say about your treatment. If you do not get a reply or there is a long delay, make sure you do not miss the tribunal time-limits for bringing a claim if that is what you want to do.

## Monitoring the outcome

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Whether the employer decides that there has been unlawful discrimination or not, you must not be treated badly for having complained. For example, if the employer decided that you would not be shortlisted or offered a job if you ever applied for a post with that organisation again, this may be **victimisation**.

If you are not satisfied with what has happened 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)

The 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 want to complain about questions being asked about your health or disability when you were applying for a job, you can bring a claim in the Employment Tribunal if you believe you were discriminated against because of disability, or for a reason connected with your disability and it relates to the answers you gave to those questions.

**Example** — A job applicant who is a disabled person is asked questions about their health and disability during their interview. They do not get the job. They believe this is because of the answers they gave to the questions. They can bring a claim in the Employment Tribunal.

You cannot bring a case against the employer just for asking the questions if these had no impact on you personally, for example, if it is clear why you did not get the job and this does not relate to the answers you gave to those questions. Of course, if other unlawful discrimination happened, you can still bring a case.

Only the Equality and Human Rights Commission can take up the wider case (in the County Court in England or Wales, and the Sheriff Court in Scotland) to challenge the employer just for asking the questions if no individual was unlawfully discriminated against.

If you are a member of the armed services, 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.

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 visually impaired job applicant hears about a job and asks the employer to send the application pack recorded on an audio tape. The employer does not refuse to do this, but just doesn't get around to doing it. Once the closing date for applications has passed, the employer clearly does not intend to send the tape. The applicant should probably count the three months from the day before the closing date, which is the last day when the employer could have ensured the tape got to the applicant in time to apply.

A tribunal can hear a claim if it is brought outside the time limit if the tribunal 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 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*.

## 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:

1. 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

2. 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 the 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@dwp.gsi.gov.uk](mailto:atwosu.cardiff@dwp.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.closesthegap.org.uk](http://www.closesthegap.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.
<b>tribunal</b>	See <b>Employment Tribunal</b>
<b>two ticks symbol</b>	A sign awarded by Jobcentre Plus to employers who are positive about employing disabled people and are committed to employing, keeping and developing disabled staff.
<b>UK Text Relay Service</b>	Text Relay is a national telephone relay service for deaf, deafened, hard of hearing, deafblind and speech-impaired people. It lets them use a textphone to access any services that are available on standard telephone systems.
<b>unfavourably</b>	The term is used (instead of less favourable) where a comparator is not required to show that someone has been subjected to a detriment or disadvantage because of a protected characteristic – for example in relation to pregnancy and maternity discrimination, or discrimination arising from disability.
<b>vicarious liability</b>	This term is sometimes used to describe the fact that an employer is legally responsible for discrimination carried out by its employees. See also <b>liability</b> .
<b>victimisation</b>	Subjecting a person to a detriment because they have done a protected act or there is a belief that they have done a protected act i.e. bringing proceedings under the Equality Act; giving evidence or information in connection with proceedings under the Act; doing any other thing for the purposes or in connection with the Act; making an allegation that a person has contravened the Act; or making a relevant pay disclosure.
<b>victimise</b>	The act of <b>victimisation</b> .
<b>vocational service</b>	A range of services to enable people to retain and gain paid employment and mainstream education.
<b>vocational training</b>	Training to do a particular job or task.
<b>Work Choice</b>	Work Choice provides support to disabled people in helping them get and keep a job. The type of support varies according to the help needed but can include

training and developing skills; building confidence and interview coaching.

**work of equal value**

See **equal work**.

**worker**

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

# Contacts

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

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

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

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Textphone 0808 800 0084

Hours 09:00 to 20:00 (Monday to Friday)  
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