

GUIDANCE

# Your Rights to Equality at Work: Dismissal, Redundancy, Retirement and After You Have Left a Job

Equality Act 2010 Guidance for  
Employees

Volume 6 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 will 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. In other words, if a person or an organisation who has duties under the Equality Act 2010's provisions on employment and other work situations does what this guidance says they must do, it may help them 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 your employer is making decisions about:

- dismissing you, or
- making you redundant, or
- your retirement (if this is on the grounds of age your retirement must be objectively justified)
- what they do after you have stopped working for them, such as when they give you a reference,

equality law applies to what they are doing.

Equality law applies:

- whatever the size of the organisation
- whatever sector you work in
- whether your employer has one worker or ten or hundreds or thousands
- whether or not your employer uses any formal processes or forms to help them make decisions (although sometimes the law says your employer must follow a formal process and that some things have to be done in writing).

This guide tells you what your employer must do to avoid all the different types of unlawful discrimination. It recognises that smaller and larger employers may operate with different levels of formality, but makes it clear how equality law applies to

everyone, and what this means for the way every employer (and anyone who works for them) must do things.

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

- Dismissal, whether that is for misconduct or because your employer believes you can no longer do the job
- Redundancy when your job is no longer needed
- Retirement
- After you have stopped working for an employer, for example, if you ask for a reference.

## 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 dismissal, redundancy, retirement or after you've stopped working for someone:

- Information about when an employer is responsible for what other people do, such as their employees.
- 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 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. Exceptions to this are where we think it may be particularly useful for you to check a word or phrase.
- Information on where to find more advice and support.

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

## Are you a worker?

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This guide calls you a **worker** if you are working for someone else (who this guide calls your **employer**) in a **work situation**. Most situations are covered, even if you don't have a written **contract of employment** or if you are a **contract worker** rather than an **employee**. Other types of worker such as **trainees**, **apprentices** and **business partners** are also covered. If you are not sure, check under 'work situation' in the list of words and key ideas. Sometimes, equality law only applies to particular types of worker, such as employees, and we make it clear if this is the case.

## Protected characteristics

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Make sure you know what is meant by:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation.

These are known as protected characteristics.

## What is unlawful discrimination?

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Unlawful discrimination can take a number of different forms:

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

### Examples —

- An employer selects a woman for redundancy because she is pregnant.
  - An employer uses the excuse of persistent lateness to dismiss a gay man because he is gay; a straight man who has the same pattern of lateness is not dismissed.
- If you are a woman who is **pregnant** or on **maternity leave**, the test is not whether you are treated worse than someone else, but whether you are treated **unfavourably** from the time you tell your employer you are pregnant to the end of your maternity leave (which equality law calls the **protected period**) because of your pregnancy or a related illness or because of maternity leave.
- Your employer must not do something to you in a way that has a worse impact on you and other people who share a particular protected characteristic than on people who do not have that protected characteristic. Unless your employer can show that what they have done, or intend to do, is **objectively justified**, this will be **indirect discrimination**. ‘Doing something’ can include making a decision, or applying a rule or way of doing things.

**Example** — An employer has a policy of providing references for former employees which simply state length of service and the number of days they were absent from work regardless of the reason. If the employer cannot objectively justify this approach, it is likely to be indirect discrimination against former employees who were absent because of protected characteristics, as it has a worse impact on them and others who share the same characteristics.

- If you are a disabled person, your employer must not treat you **unfavourably** because of something connected to your disability where they cannot show that

what they are doing is **objectively justified**. This only applies if 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** — A small beauty products company employs a receptionist who is in an accident, as a result of which when she returns to work she has a severe facial disfigurement. Clients of the company make remarks about this and suggest she is unsuitable for this outward-facing role. The company considers dismissing her because of the amount of time other staff spend explaining her situation and how this makes them feel. However, when considering the decision, they realise that the dismissal would be for a reason connected to her disability (the attitude of clients and the impact on the other staff). Instead, the company keeps her in post and trains other staff to challenge the negative attitudes displayed by visitors.

Whilst the company may have considered whether they could objectively justify dismissing her, instead it decides to retain a valued employee and avoid the prospect of a claim for discrimination arising from disability.

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

**Example** — An employer selects a person for redundancy not because they meet the selection criteria, but simply because they have a disabled child and the employer believes they may need time off to care for their child.

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

**Example** — An employer makes a member of staff redundant because they incorrectly think they have a progressive condition which is likely to be considered to be a disability. This is almost certainly direct discrimination because of disability based on perception.

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

**Example** — An employee complains of discrimination and a colleague goes to their Employment Tribunal to give them support, although they do not give evidence. The colleague is subsequently selected for redundancy because the employer resents their support for the original employee. This is almost certainly victimisation. This would also apply if the colleague had given evidence in the case.

- This also includes if your employer dismisses you or selects you for redundancy or discriminates against you after you've stopped working for them because you have discussed whether you are paid differently because of a protected characteristic.

**Example** — A woman thinks she is underpaid compared with a male colleague because of her sex. She asks him what he is paid, and he tells her, even though his contract forbids him from disclosing his pay to other staff. The employer takes disciplinary action against the man as a result and dismisses him. This would be treated

If this applies to you, you can read more about this in the Equality and Human Rights Commission guide: *Your rights to equality at work: pay and benefits*.

- Your employer must not **harass** you. For example:

**Example** — A shopkeeper propositions one of his shop assistants, she rejects his advances and is then selected for redundancy which she believes would not have happened if she had accepted her boss's advances. This is likely to be harassment.

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

**Examples** —

- An employer is considering dismissing an employee who happens to be a disabled person with a visual impairment. It is likely to be a reasonable adjustment for the employer to make sure that the information the person needs about the disciplinary procedure is available to them by checking what format they need the documents to be in.
- A disabled person has a learning disability and their employer agrees, as a reasonable adjustment, that they can be accompanied to a disciplinary hearing by a support worker as well as by their union representative.

Your employer must make reasonable adjustments to what they do as well as the way that they do it.

**Example** — A disabled person has a spinal condition that causes them severe pain. One day, the person shouts at their employer. This is completely out of character, and is because of the pain they are experiencing. Usually, this would lead to an employee being considered for disciplinary action. However, their employer knows about the person's disability and, as a reasonable adjustment, operates a higher threshold before considering their behaviour to be unacceptable. (They have also encouraged the disabled person to be open with colleagues about their condition so that other staff understand the reason for the difference in treatment.) This does not mean that the disabled person can behave as they like; the employer only has to make reasonable adjustments, so if their behaviour is unacceptably bad, the employer still has the option of disciplinary action. If this was the case, although the disciplinary action might amount to treating the disabled person unfavourably for something arising from their disability (their short temper), the employer would probably be able to **objectively justify** their approach.

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

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

**Example** — A worker is selected for redundancy and they believe that they were selected because of their race. They bring a claim for race discrimination at the

Employment Tribunal. Their employer receives a request for a reference from a new employer and provides a bad reference because the worker has made a claim of race discrimination. This will be unlawful victimisation.

## 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 dismissal, redundancy or retirement and which apply to any employer:

- Age criteria (only if your employer is able to objectively justify this)
- Occupational requirements
- Obeying another law, and
- National security

There are two exceptions which relate to dismissal, redundancy or retirement and which apply only to some employers or jobs:

- Having or not having a particular religion or belief, which applies only to **religion or belief organisations**, or
- Having or not having a particular protected characteristic, which applies only to **organised religions** or jobs for the purpose of an organised religion

This guide only lists the exceptions that apply to dismissal, redundancy or retirement. There are other exceptions, which apply in other situations, for example, when you are applying for a job.

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

### Age limits

Age is different from other protected characteristics. If your employer can show that it is **objectively justified**, they can make a decision based on someone's age.

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

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

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

When 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. Employers must be careful not to use stereotypes about a person's age to make judgements about their ability or fitness to do a job. Even if your employer has a good reason, their actions must still be **proportionate**.

This guide explains when your employer can make redundancy payments based on someone's age, and the limited circumstances where it may be objectively justifiable to require an employee to retire because they have reached a particular age.

### **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 is known as an 'occupational requirement'. There are specific provisions in relation to religious organisations that are considered below. If an employer has appointed a person using an occupational requirement and the worker no longer has that particular protected characteristic, equality law allows their employer to dismiss them without this being unlawful discrimination.

### **Obeying another law**

An employer can usually take into account a protected characteristic where not doing this would mean they broke another law. For example, if the law said that a person had to be a particular age to do something and their employer discovered that they were not that age, their employer could dismiss the worker without this being unlawful discrimination.

### **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**.

## Having or not having a particular religion or belief if an employer is a religion or belief organisation

If an employer is a **religion or belief organisation**, they may be able to say that a job requires a person doing the job 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**. The employer could, for example, dismiss the person if they no longer held that religion or belief without this being unlawful discrimination.

**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 chief executive stopped being a Humanist, the organisation could dismiss them without this being unlawful discrimination.

Having or not having a particular protected characteristic if an employer is an organised religion or if a job is for the purposes of an organised religion 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 dismiss a person because:

- they are male or female (if the requirements of the post change bringing it within the exception)
- they are a **transsexual person**
- they marry or enter into a civil partnership, including taking into account who they are married to or in a civil partnership with (such as someone who marries a divorced person whose former spouse is still alive)
- they **manifest** a particular sexual orientation, for example, a gay or lesbian person who enters into a relationship with a same-sex partner.

The requirement must be crucial to the job or role, and not merely one of several important factors. The job or role must be closely related to the purposes of the religion, and the application of the requirement must be **proportionate**.

## What's next in this guide

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

- Dismissing you, whether that is for misconduct or because your employer says you can no longer do the job
- Making you redundant when your job is no longer needed
- Retiring you providing it can be objectively justified
- Dealing with you after you have stopped working for them, for example, if you or your new employer ask for a reference

If your employer tells you that you are facing dismissal or redundancy or asks you to retire because you have reached a particular age, it is worth getting advice as soon as possible. There are a number of different organisations who may be able to help you, and you can find contact details for some of them in Chapter 5: *Further sources of information and advice*. You should also consider talking to your trade union if you have one.

## Dismissal

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First, use the information earlier in this guide to make sure you know what equality law says your employer must do.

This section looks at three issues:

- Reasons and procedures
- If you are a disabled person and your employer wants to dismiss you
- If you are a disabled person and your employer wants to dismiss you because they say you can no longer do the job

### **Fair and unfair dismissal**

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

## Reasons and procedures

Your employer must avoid unlawful discrimination in why they do something and the way that they do it.

They must make sure that their reasons for dismissing you do not amount to unlawful discrimination.

They must make sure that the disciplinary procedures they follow do not unlawfully discriminate either.

**Example** — An employer tells a worker they are going to hold a disciplinary hearing with a view to dismissing them for misconduct. The date and time are set for a day which happens to be a religious holiday for the religion the worker holds. Unless the employer can **objectively justify** insisting on the hearing on that day (which the worker may well be unable to attend), this is likely to be **indirect discrimination** because of religion or belief.

There is more information about avoiding unlawful discrimination in disciplinary procedures in the Equality and Human Rights Commission guide: *Your rights to equality at work: when you are being managed*.

## If you are a disabled person and your employer wants to dismiss you

If you are a disabled person, there are extra steps your employer must take before they dismiss you. This is because they must consider not only whether they are **discriminating directly** or **indirectly** because of your disability, but also:

- They 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 is known as discrimination arising from disability. This only applies if they know or could **reasonably** be expected to know that you are a disabled person. Remember, they do not have to **know** that your impairment meets the legal definition of disability, just that you have an impairment which is likely to meet the definition.
- If you are a disabled person, your employer must also make **reasonable adjustments** if these are needed to remove barriers you face in doing your job. What this means is that they must first consider what adjustments would remove the barriers for you and second, if they are reasonable adjustments, they must make them. Would a reasonable adjustment remove the reason you are being considered for dismissal?

**Example** — A disabled person is being considered for disciplinary action which might lead to dismissal because of their persistent lateness. Their employer should find out whether their lateness is connected to their disability. There may be a poor frequency of accessible buses. Or it could be because the person's condition is very painful in the morning so that getting to work on time is difficult for them. If the employer dismisses the worker and cannot **objectively justify** what they have done, this could be discrimination arising from disability. The answer to this may well be for the employer to consider if there are any changes they could make which would be reasonable adjustments. The employer could look at varying their starting time rather than dismissing them. If they continued to be late even with an adjusted start time the employer may of course still wish to consider disciplinary action.

## If you are a disabled person and your employer wants to dismiss you because they say you can no longer do the job

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If you are a disabled person, your employer must be particularly careful to avoid unlawful discrimination if the reason why they believe they need to dismiss you is because you can no longer do the job, for example, because you have been absent from work.

Although in this situation, the term 'medical retirement' may be used, or 'retirement on ill-health grounds', what this means in reality is that a person is leaving work because they are considered incapable of doing their job for a reason related to their health, and there are benefits for them in retiring, such as a pension.

If you and your employer genuinely agree that you should leave, then it is unlikely you will have a claim for unlawful discrimination.

If there is no agreement, for example, because you do not want to leave, or you see a prospect of returning to work, then your employer must make sure that they:

- consider if there are reasonable adjustments which would mean you could return to work and continue to work for them (even if not in exactly the same job), and
- make sure they are not treating you unfavourably because of something connected to your disability, such as a need for regular breaks, if they cannot **objectively justify** their approach.

## What this means in practice

Before your employer considers making you leave because of disability they should have thoroughly explored all other options to make reasonable adjustments to keep you at work.

This includes looking at any changes they could make to your working arrangements, or the physical features of the workplace, or whether they can provide additional equipment.

**Example** — A worker is finding working full-time difficult because of increasing fatigue. The employer considers whether it is reasonable to let them work part-time rather than automatically considering them for early medical retirement.

If the impact of your impairment is becoming more severe for you but this is not impacting on your ability to do the job then this should not be part of a decision about whether you continue to work.

However, if an impairment is making it harder for you to do your job, then the first step your employer must take is to consider what reasonable adjustments could be put in place to keep you at work.

If your employer does not look at reasonable adjustments, then requiring you to stop working may be unlawful disability discrimination.

## Reasonable adjustments

Reasonable adjustments will vary according to the situation and your particular needs. However, things to consider could include:

- A phased return to work if you have been off for a long while.
- Part-time or flexible hours if you are finding full-time working difficult.
- Changes to premises, such as installing a ramp, improving signs, or moving your desk nearer essential office equipment.
- Provision of additional equipment, such as specific computer software or hardware if this is relevant to your job.
- Additional support (for example, a part-time reader if you have a visual impairment to help manage the volume of written information which you have to get through).
- Reassigning some elements of your job to another member of staff or transferring you to another role in the organisation.

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 3, including how to work out what is reasonable and how the government-run Access to Work scheme may be able to help.

### **Taking advice**

In appropriate cases, as well as discussing it with you themselves, your employer may wish to consider seeking expert advice on the extent of your capabilities and on what might be done to change premises or working arrangements. There are organisations that specialise in working with employers and their staff to help retain disabled workers through working out what adjustments could be made and whether they are reasonable. Further details about these organisations are given in Part 5 of this Guide.

However, your employer should be cautious about relying on medical advice alone to assess your situation. A health professional may not be aware that employers have a duty to make reasonable adjustments, what these adjustments might be, or of the relevant working arrangements.

### **When it may be appropriate for you to leave**

If after consideration of:

- the impact of your disability on the job
- any reasonable adjustments
- discussions between you and your employer, and
- (where appropriate) expert advice

it is not possible for you to continue at work, then it may be appropriate for you to leave.

## **Redundancy decisions**

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First, use the information earlier in this guide to make sure you know what equality law says your employer must do.

This section looks at how your employer must make sure they are not discriminating unlawfully in selecting people for redundancy, and in particular:

- Redundancy procedures and criteria
- Which jobs are in the selection pool?

- The matrix factors and how your employer scores workers against them
  - Length of service
  - Absence record and working hours
  - Training and qualifications
- Avoiding discrimination against disabled people
- Maternity leave and suitable alternative employment
- Age and redundancy payments

## Redundancy procedures and criteria

### Making sure a redundancy dismissal is fair

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

Your employer must make sure that the redundancy procedures they follow and the criteria they use do not unlawfully discriminate. If you are a disabled person, failing to make reasonable adjustments, including adjustments to redundancy criteria and procedures, is a form of unlawful discrimination.

This applies whether your employer is seeking volunteers for redundancy or making compulsory redundancies.

### Which jobs are in the selection pool?

Which jobs is your employer selecting from? In other words, what is the pool from which they will be making their selection?

Are they, for instance, stopping a particular service or production line or closing a geographical location?

If your employer is not selecting everyone in a particular category of workers, such as everyone in a particular place or doing a particular job which will no longer be needed, they must make sure that their pool selection does not discriminate unlawfully.

**Example** — An organisation is facing budget cuts and decides to reduce the size

of its marketing team. There are four people in the team (one man and three women) and the employer decides to put just the two people who work part-time, who are both women, into the pool for redundancy, believing that their earnings are less important to them than to those people who work full-time, who are more likely to be 'breadwinners'. Because women are more likely to work part-time, this criterion will be indirectly discriminatory (having a worse impact on the two part-timers who are women and on other women than it does on men) unless the employer can **objectively justify** what they have done. An approach which would be less likely to discriminate unlawfully would be to put everyone in the marketing department into the pool.

### **The matrix factors and how your employer scores workers against them**

Once an employer has decided on a pool, they still need to make sure that they think through the consequences of using particular criteria for selection for redundancy from the chosen pool. If they don't do this, they might still end up discriminating unlawfully.

We look at the following criteria in more detail, because they are criteria where an employer may be more likely to discriminate unlawfully. In each case, whether there is unlawful discrimination will depend on there being a link between the impact of the criterion and the protected characteristic of the person being made redundant:

- Length of service
- Absence record and working hours
- Training and qualifications

### **Length of service**

It is possible to use a length of service criterion for selecting people for redundancy but only in certain circumstances:

- A criterion like this needs to be used cautiously because it could indirectly discriminate. For example:
  - If there are people in the pool who would end up being selected in greater numbers because a length of service criterion has been applied, such as:
    - younger people who will not have built up as long an employment record
    - women, who often have more interrupted careers, or
    - disabled people, whose disability may have interrupted their career then using this criterion might be discriminatory.

- Length of service should only be one of the factors your employer considers when selecting people for redundancy.
- As one of several selection criteria, it will probably be lawful (in the sense that it is likely to be objectively justified direct age discrimination) if an employer is using it with the aim of, for example:
  - respecting loyalty and protecting older workers who may find it more difficult to re-enter employment, or
  - retaining experience

and they can show:

- that length of service is a **proportionate** way of achieving their aim
- why their aim could not be achieved in another way that doesn't disadvantage the selected workers to the same extent.

Depending on the size and nature of the pool for redundancy selection, they should use additional criteria based on other factors to make sure that they are selecting in a way that does not discriminate.

### **Absence records and working hours**

If your employer uses workers' absence records or working hours to select people for redundancy, they must be careful to avoid direct or indirect discrimination.

#### **Examples —**

- If a woman is selected because of her absence on maternity leave or because of pregnancy-related illness, this will almost always be direct discrimination because of pregnancy or maternity.
- If a disabled person is selected because they have needed time off or because they work flexibly for a reason connected to their disability, this risks being **discrimination arising from disability** unless the employer can **objectively justify** using this criterion.

This means your employer needs to consider which absences they will include if they are using attendance record as one of their criteria. They should use only those which could apply to everyone regardless of their protected characteristics. This has implications for how absence is recorded, which is explained in the Equality and Human Rights Commission guide: *Your rights to equality at work: working hours, flexible working and time off*.

## Training and qualifications

The appropriateness of using qualifications to select people for redundancy will vary according to the situation. If your employer has two individuals working in similar roles, but one has an additional relevant qualification which adds to their ability to do the job, deciding to make the less well-qualified person redundant is unlikely to discriminate unlawfully.

They can also say that a person must have a particular qualification if that qualification is an essential requirement for the job that cannot be met by experience or further training.

However, if your employer uses qualifications which are not especially relevant or define the qualifications too narrowly without thinking through the consequences, they may find they are unlawfully discriminating if those qualifications would have a worse impact on people who share a protected characteristics and cannot be objectively justified; for example, choosing to make redundant just those employees with a qualification from a non-British university.

## Avoiding discrimination against disabled people

When your employer is considering a redundancy situation and you are a disabled person, there are particular requirements to make sure that you are not being placed at a disadvantage for reasons relating to your disability. Where necessary, your employer must make **reasonable adjustments** to the criteria and process.

If you are in the pool from which people will be selected for redundancy, you are a disabled person, and your employer knew or could reasonably be expected to know this, they must not treat you unfavourably because of something connected to your disability unless they can show that what they are doing is **objectively justified**.

**Example** — An employer knows that one of their employees is a disabled person. They select employees from the pool on the basis of absence over the past two years. The disabled person has taken a lot of time off work in relation to their disability (the time off being ‘something connected with the disability’). If the employer cannot objectively justify this decision, it is likely to be discrimination arising from disability. A better approach would be for the employer to exclude disability-related absence from the absence which is used to score employees against that criterion (this would probably also be a reasonable adjustment, which we look at next).

In addition, your employer must make reasonable adjustments if these are needed to remove barriers you face which a non-disabled person would not face. What this means is that an employer must first consider what adjustments would remove the barriers for you and second, if they are reasonable adjustments, your employer must make them.

**Example** — A manufacturer is making some employees redundant. One of the criteria for redundancy is whether someone can operate every machine on the employer's production line. A disabled person cannot operate one of the machines because of the nature of their impairment. The employer decides it is a reasonable adjustment to the criterion to adjust the employee's mark so as to ignore the absence of that machine, so they score the same as a worker who has operated that machine to a satisfactory standard.

Your employer only needs to make changes to the criteria if you need these to overcome a **substantial disadvantage**. Your employer should look at each of the criteria in turn and how you are scored against them, making adjustments to each of them where necessary. But your employer is only required to do what is reasonable.

Your employer also needs to make sure that, if you are a disabled person being considered for redundancy or you wish to apply for voluntary redundancy, you do not face a disadvantage in obtaining information, being made aware of the procedure or receiving communications about the redundancy.

**Example** — A worker has a learning disability and the employer is offering voluntary redundancy. The employer provides the worker with the information in Easy Read formats and makes sure that someone suitable spends time explaining the options to the worker.

You can read more about reasonable adjustments to remove barriers for disabled people in Chapter 3, including how to work out what is reasonable.

## Maternity leave and suitable alternative employment

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Where during a redundancy exercise alternative jobs are available in the same organisation or with an associated employer, an employer should make sure these

are offered to potentially redundant employees using criteria which do not unlawfully discriminate.

The situation is different if you are on maternity leave at the time you are being considered for redundancy.

In this situation, you do not have to go through selection against the criteria for filling a vacant post.

Instead, your employer must offer you any suitable available job with them, their successor (if the organisation is being taken over or passed onto another organisation), or any associated employer.

The offer must be of a new contract to come into effect as soon as the previous contract ends and must be such that:

- the work is suitable and appropriate for you to do, and
- the capacity, place of employment and other terms and conditions are not substantially less favourable than under the previous contract.

**Example** — A company decides to combine its head office and regional teams and create a 'centre of excellence' in the location where the head office already is. A new organisation structure is drawn up which involves some head count reductions. The company intends that all employees should have the opportunity to apply for posts in the new structure. Those unsuccessful at interview will be made redundant. At the time this is implemented, one of the existing members of the head office team is on ordinary maternity leave. As such, she has a prior right to be offered a suitable available vacancy in the new organisation without having to go through the competitive interview process.

## Age and redundancy payments

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Even though they are on the face of it indirect discrimination because of age (since younger employees are likely to lose out as they will find it harder to build up the longer service), your employer is allowed to make enhanced redundancy payments based on length of service without having to objectively justify this, so long as they are calculated in the same way as statutory redundancy payments.

**Examples** —

- An employer operates a redundancy scheme which provides enhanced redundancy payments based on employees' actual weekly pay, instead of the (lower) maximum set out in the statutory redundancy scheme. Equality law allows this.
- Using the statutory redundancy scheme formula and the scheme's maximum weekly wage, another employer calculates every employee's redundancy entitlement, then applies a multiple of two to the total. Equality law allows this too.

If an employer has their own contractual redundancy scheme that uses age or length of service in a different way, this may be unlawful discrimination unless they can **objectively justify** what they are doing.

If you think this may apply to you, then you need to take further advice. You can find more about where to get further information and advice in Chapter 5.

## Managing retirement

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There is now no default retirement age. This means that in most cases, you can now retire when you are ready rather than when your employer decides. It is direct age discrimination to require or persuade a worker to retire because of their age unless the employer can **objectively justify** doing so.

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

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

When what you are doing is **direct** age discrimination you are 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 your business. Even if you have such a reason, your actions must still be **proportionate**.

Retirement age is not necessarily the same as pension age – the age when you become entitled to your pension. Equality law does not affect the age at which you

get your state retirement pension. Neither does equality law affect the age at which you can receive any **occupational pension**, which is decided by the rules of the pension scheme. Some workers may continue working beyond the age when they become entitled to a pension.

This part of the guidance considers the following:

- What is a legitimate aim?
- Is setting a retirement age proportionate?
- Discriminatory retirement because of other protected characteristics

## Retirement and age discrimination

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It is direct age discrimination to require or persuade you to retire because of your age unless your employer can **objectively justify** doing so. It is important that your employer avoids making general assumptions about your capability and job performance at any particular age. This applies whether they are setting a general retirement age for all workers in a particular job (often known as a 'Normal Retirement Age') or choosing to retire an individual at a particular age.

In removing the general default retirement age in 2011, the government said that no one should be deprived of the opportunity to work simply because they have reached a particular age. In most circumstances, it will not be objectively justifiable for employers to set their own retirement age. To objectively justify doing so, they would need to be able to produce convincing evidence to show, in relation to the particular job:

1. that they are trying to achieve a clearly identified **legitimate aim**
2. that the policy of setting a retirement age is a **proportionate** way of achieving that aim, and the actual age chosen for retirement is also proportionate.

There will only be a very limited number of circumstances in which an employer will be able to show that a decision to retire a person because of their age is a proportionate way of achieving a legitimate aim.

### What is a legitimate aim?

This depends on the nature of your employer's business and the jobs involved.

Legitimate aims for having a retirement age are generally those that are in the wider public interest, rather than reasons specific to an employer's business such as cost-reduction or improving competitiveness. Legitimate aims might include:

- maintaining health and safety standards. For this to be a legitimate aim, there needs to be a real health and safety concern, based on a proper assessment of risk, and not an imagined one. The risk must relate to a specific activity and must also be at a higher level than the level of risk which normally exists in everyday life.
- in limited circumstances, providing sufficient opportunities for promotion, thereby encouraging staff to stay. This is sometimes known as 'intergenerational fairness'. This will only be a legitimate aim if there is evidence of a genuine problem caused by promotion opportunities for workers (of any age group) being blocked by older workers not retiring – for example, in small organisations genuinely operating on a fixed budget. If sufficient promotion opportunities for a specific type of post already arise from normal staff turnover, this would not be a legitimate aim.
- facilitating workforce planning (that is, ensuring your employer has the personnel in place to meet their future business objectives), so that there are realistic expectations as to when certain vacancies will arise. This is only likely to be a legitimate aim in a small minority of organisations. They would have to be able to demonstrate that, given the nature of their organisation, they cannot properly achieve their business aims without advance information about future vacancies.
- maintaining the dignity of older workers. For example, limiting the need to dismiss older workers for competence related reasons and thereby preserving a culture of collegiate support and respect.

It will be for your employer to demonstrate, with evidence, that the aim is legitimate.

### **Is setting a retirement age proportionate?**

Even if your employer can establish a legitimate aim, they would need to show that it is proportionate

- to set a retirement age at all
- to set it at the particular age they have chosen.

This applies whether they have set a 'Normal Retirement Age' or are seeking to dismiss a particular worker because of their age. In the case of a Normal Retirement Age, this is the age at which workers in the same kind of job within an organisation are usually made to retire. It might not be the same as the retirement age set out in the workers' contract of employment, if in practice the employer requires workers to retire at a different age.

Remember, there is no longer a default retirement age. Employers cannot simply rely on the fact that the default retirement age used to be 65 but consider what age, if any, would be proportionate in the particular context of their workforce.

First, they should be able to demonstrate that there are no less discriminatory alternatives to having a compulsory retirement age. For instance, even where an employer can demonstrate a legitimate aim of workforce planning in relation to distribution of workers in different jobs and promotion paths, in organisations where there is a reasonably high turnover of staff imposing a retirement age will not be a proportionate means of achieving this aim. Workers come and go for all kinds of reasons and it is likely to be disproportionate to attribute workforce planning difficulties or promotion blockages to lack of a retirement age, except in limited circumstances. For example, in very small organisations with a majority of long-serving workers, there may occasionally be situations where promotion blockages genuinely need to be resolved in order to retain specialist staff for particular jobs. In considering whether a retirement policy is objectively justified, your employer cannot rely on assumptions and generalisations: they need to be able to produce evidence.

Remember that the means of achieving their aim will not be proportionate if the same aim can be achieved in a less discriminatory way.

**Example** — A bus company imposes a retirement age of 72 on their bus drivers. They have a legitimate aim, that of ensuring the health and safety of passengers. However, the retirement age may not be proportionate if regular medical and performance tests for individual drivers would provide a less discriminatory way of avoiding the risk of sudden incapacity. To show that it is proportionate to have a compulsory retirement age, the employer would need evidence that this approach is the least discriminatory way of dealing effectively with the health and safety risks they have identified.

Second, even if your employer is confident that having a retirement age for certain jobs in the organisation is a proportionate approach, they must then carefully select the age of retirement to make sure that it discriminates to the least degree possible.

**Example** — A sports authority decides that the referees it employs must retire at the age of 48 in order to ensure they are of high quality and maintain performance standards. Although this aim is legitimate, the imposition of a retirement age is unlikely to be proportionate. This is because quality can be tested on an individual basis by annual fitness tests and ongoing performance assessments which all

referees have to undergo in any event. The authority has no evidence that performance or fitness drops off at 48. Even if having a retirement age were an appropriate means of achieving the authority's aim, in these circumstances choosing the age of 48 is unlikely to be proportionate.

Acas has produced guidance for employers, 'Working without the default retirement age' (available at: [www.acas.org.uk/media/pdf/d/4/Working\\_without\\_the\\_DRA\\_Employer\\_guidance\\_-\\_MARCH\\_2011.pdf](http://www.acas.org.uk/media/pdf/d/4/Working_without_the_DRA_Employer_guidance_-_MARCH_2011.pdf)). It discusses issues surrounding planning ahead and performance management of older workers.

### **Discriminatory retirement because of other protected characteristics**

Even if your employer is able to justify setting a retirement age so that it does not amount to age discrimination, they must still avoid discriminating against people because of other protected characteristics. For example, they must not allow men to work longer than women or select someone for retirement because they have a disability.

The information elsewhere in this guide tells you more about unlawful discrimination and what to do if you believe you have been discriminated against.

## **For your employer: Good practice in managing an older workforce**

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### **Managing performance**

Your employer needs to be careful not to make assumptions that workers' performance will deteriorate as they get older. Research shows that older workers' productivity does not usually decline at least up to the age of 70 where the same level of training is provided as for younger workers.

If your employer does have evidence for concerns about your performance (as an older worker), they should treat you in the same way they would treat any younger worker whose performance was giving them concern. It is discriminatory to fail to address performance concerns because they are making assumptions that older workers will be leaving soon. It is also discriminatory to be harder on older workers than others, for example because your employer would like to encourage you to leave or because they are making assumptions about your capacity to improve. Any performance management system they have should be fair for all their workers.

With physically demanding jobs, it is especially important to have good health and safety procedures and safeguards in place to protect workers of all ages. If you are an older manual worker with a job that is physically demanding, your employer may decide it would be a good idea to have periodic medical checks to address any health and safety concerns about your ability to continue in that role. If you are having difficulties performing manual work, your employer may consider if it is possible to offer you a transfer to a less physically demanding role – possibly a non-manual job. Where there are no suitable alternative roles, your employer should use their normal procedures for addressing concerns about a worker's capability.

If you (at any age) develop health problems that amount to a **disability**, your employer should always consider whether **reasonable adjustments** are required to enable you to continue in employment.

### **Developmental and training needs and future plans**

Your employer should not make assumptions about your developmental or training needs based on your age. In particular, they should not assume that older workers would resist training in new areas. They should discuss older workers' needs and aspirations with them just as they would with other workers. As with workers of all ages, they should ask you what form of training you would prefer; for example, one-to-one on the job, in a group session or self-taught on computer.

It is also good practice to have a formal time; for example, in an annual appraisal, when you can discuss your future plans and aspirations. Older workers should not be excluded from this opportunity. Your employer can initiate a discussion about your future plans provided they raise this in a neutral way and do not treat you less favourably because of your reply.

These days, many workers of all ages would like the chance to work flexibly or reduce hours. Having a flexible working policy that applies to everyone is good practice and avoids the risk of discrimination.

But it would be discriminatory for your employer to assume that an older worker wants to reduce their hours, or for them to pressurise an older worker into working shorter hours. It is also important that you (as an older worker) are able to explore options with your employer in conversation without being pressurised subsequently to reduce hours just because you mentioned it as a possibility.

### **Sickness**

A worker aged 65 or over who is absent through short or long-term sickness should be treated in the same way as any younger worker. If a worker is on long-term

sickness absence, your employer should consult with them and obtain informed medical advice as to when they might be able to return, or any adjustments to the workplace which would enable them to return earlier.

### **Insured benefits**

Your employer is allowed to stop offering group insured benefits, eg private medical cover or life assurance, to workers who have reached the age of 65 (or any older state pension age) even if you carry on working for them – provided this does not breach your contract of employment.

## **After you have left a job**

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Sometimes your former employer's responsibilities continue after you have stopped working for them and they must still not discriminate unlawfully against you, harass or **victimise** you.

**Example** — When a worker is dismissed, they are told they can come in the next week to clear their desk and collect their belongings. That night, the worker sends an email to their employer saying they believe they were dismissed because they are black. The employer is upset about the allegation of race discrimination and tells the employee that they cannot after all come in to collect their belongings. This is likely to be victimisation.

This section looks at your rights after you have stopped working for an employer, and in particular how this applies to references.

Apart from when you ask a former employer for a reference, other situations where you might have a continuing relationship with them include if you receive any continuing benefits. These must not be withheld from you if this would be unlawful discrimination.

If you believe that you are being discriminated against after you have stopped working for an employer, you can take the same steps to have things put right as if you were still employed.

You can contact your former employer and ask them to put the situation right. If it cannot be sorted out informally, then you can ask your former employer to deal with your complaint using their usual grievance procedure.

You can also take a case to an Employment Tribunal.

If you are a disabled person, the duty to make reasonable adjustments also continues after you have stopped working for that employer.

**Example** — Former workers are sent an annual newsletter. A reasonable adjustment might be for it to be made available in a format that makes it accessible to a former worker who has a visual impairment.

The duty exists only if you were a disabled person when you worked for your former employer.

What is reasonable in this situation may be different from what would be reasonable for someone who is still working.

You can read more about reasonable adjustments to remove barriers for disabled people in Chapter 3, including how to work out what is reasonable.

### **Giving references more generally**

This guide only tells you about equality law. There are other laws which your employer must follow to make sure a reference does not break other laws, for example, laws relating to negligence or defamation. You can find out more about these from Acas, whose contact details are in Chapter 5: *Further sources of information and advice*.

The most likely area where you will have contact with someone you used to work for is if you (or your prospective new employer) ask them to give you a reference.

An employer must not:

- refuse to give a reference at all, or
- give a bad reference because of a protected characteristic

These would count as **victimisation**.

**Example** — A worker's former employer refuses to give them a reference because they supported someone else's claim for sexual harassment. This would almost certainly be victimisation.

It does not matter how long ago you worked for the employer, as long as you can show that any unlawful discrimination arises out of and is closely connected to the previous employment relationship.

If you are still working for the employer when you ask for a reference in order to change jobs, this is still part of your employment, and you must not be unlawfully discriminated against, just as in every other work situation.

### **Must my former employer give me a reference?**

In general, there is no legal requirement for an employer to provide you with a reference, provided their policy on providing references (or not providing them) is applied without unlawfully discriminating against anyone. However, if your employment contract says that references will be provided then they must be.

In sectors where workers are subject to special rules (such as finance) and cannot get a job without a reference, the courts have said that there is an implied term in the contract that employers will provide one.

If an employer does give references, they must not include comments about the person's characteristic (or in the case of disability, comments about something connected with the person's disability) that might be unlawfully discriminatory.

The same rules apply to telephone and other verbal references.

### **Can someone be given a bad reference if they have a poor work record?**

If, regardless of someone's protected characteristics, the reference would have been bad, then an employer is of course entitled to do this.

However, if an employer has given someone an undeserved bad reference in circumstances which make this unlawful discrimination, they are entitled to ask the employer to change what they have said. If they do not do this, the worker may be able to bring an Employment Tribunal case for unlawful discrimination.

### **Confidentiality**

You may be able to get hold of a copy of your employer's reference even if the reference was supplied 'in confidence':

- Your new employer may give you a copy if you ask for one. Even if your previous employer has provided a reference 'in confidence', your new employer may decide that they should give it to you to comply with **data protection** rules. Usually, your new employer will contact your previous employer to ask whether they object to the reference being disclosed, but even if they do object, the new

employer can still give the previous employer's reference to you if they believe your interest in seeing what has been written outweighs your previous employer's interest in having it treated confidentially.

- If you do not get a job, or you have a job offer withdrawn, and you believe that this is because your previous employer provided a discriminatory reference, you can currently ask to see a copy using the **questions procedure**. Although this procedure was abolished on 6 April 2014 you can still ask for information from your employer after that date. You can read more about what this means in Chapter 4.

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

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

- employed by your employer, or
- carrying out your employer's instructions to do something (who the law calls your employer's agent)

does something that is **unlawful discrimination, harassment or victimisation**, your employer can be held legally responsible for what they have done.

This part of the guide explains:

- When your employer can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation
- How your employer can reduce the risk that they will be held legally responsible
- When your employer's employees or agents may be personally liable
- What happens if the discrimination is done by a person who is not your employer's worker or agent
- What happens if a person instructs someone else to do something that is against equality law
- What happens if a person helps someone else to do something that is against equality law
- What happens if an employer tries to stop equality law applying to a situation

### **When your employer can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation**

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Your employer is legally responsible for acts of discrimination, harassment and victimisation carried out by their employees in the course of their employment.

Your employer is also legally responsible as the ‘principal’ for the acts of their agents done with their authority. Their agent is anyone your employer has instructed to do something on their behalf, even if your employer does not have a formal contract with them.

As long as:

- the employee was acting in the course of their employment – in other words, while they were doing their job, or
- the agent was acting within the general scope of their principal’s authority – in other words, while they were carrying out your employer’s instructions

it does not matter whether or not your employer:

- knew about, or
- approved of

what their employee or agent did.

#### Examples —

- A shopkeeper goes abroad for three months and leaves an employee in charge of the shop. This employee harasses a colleague with a learning disability, by constantly criticising how they do their work. The colleague leaves the job as a result of this unwanted conduct. This could amount to harassment related to disability and the shopkeeper could be responsible for the actions of their employee.
- 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, except that 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, your employer will not be held legally responsible if they can show that:

- they took **all reasonable steps** to stop an employee acting unlawfully

- an agent acted outside the scope of their authority (in other words, that they did something so different from what your employer asked them to do that they could no longer be thought of as acting on your employer's behalf).

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

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

When your employer or their employees or agents are planning what happens to you in a work situation, your employer needs to make sure that their decisions, rules or ways of doing things are not:

- **direct discrimination**, or
- **indirect discrimination** that they cannot **objectively justify**, or
- **discrimination arising from disability** that they cannot **objectively justify**, or
- **harassment**,
- and that they have made **reasonable adjustments** for you if you are a disabled person.

So it is important for your employer to make sure that their employees and agents know how equality law applies to what they are doing.

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

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An employee 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:

- your employer is also liable as their employer or principal, or
- your employer would be responsible but they show that:

- they took **all reasonable steps** to prevent their employee discriminating against, harassing or victimising you, or
- that their agent acted outside the scope of their authority.

**Example** — A factory worker racially harasses their colleague. The employer would be liable for the worker's actions, but is able to show that they took all reasonable steps to stop the harassment. The colleague can still claim compensation against the factory worker in an employment tribunal.

But there is an exception to this. An employee 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 employee or agent **reasonably** believes this to be true.

It is a criminal offence, punishable by a fine, for an employer or principal to make a false statement which an employee or agent relies upon to carry out an unlawful act.

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

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Usually 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 their employee or agent to discriminate against, harass or victimise another person, or to attempt to do so.

'Causing' or 'inducing' someone to do something can include situations where someone is made to do something or persuaded to do it, even if they were not directly instructed to do it. Both:

- the person who receives the instruction or is caused or induced to discriminate against, harass or victimise, and
- the person who is on the receiving end of the discrimination, harassment or victimisation

have a claim against the person giving the instructions if they suffer loss or harm as a result of the instructing or causing or inducing of the discrimination, harassment or victimisation.

This applies whether or not the instruction is actually carried out.

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

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A person must not help someone else carry out an act which the person helping knows is unlawful under equality law.

However, if the person helping has been told by the person they help that the act is lawful and he or she **reasonably** believes this to be true, he or she will not be legally responsible.

It is a criminal offence, punishable by a fine, to make a false statement which another person relies on to help to carry out an unlawful act.

## What happens if an employer tries to stop equality law applying to a situation

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An employer cannot stop equality law applying to a situation if it does in fact apply. For example, there is no point in an employer making a statement in a contract of employment that equality law does not apply. The statement will not have any legal

effect. That is, it will not be possible for the employer to enforce or rely on a term in a contract that tries to do this. This is the case even if the other person has stated they have understood the term and/or they have agreed to it.

### **Examples —**

- A worker's contract includes a term saying that they cannot bring a claim in an Employment Tribunal. Their employer sexually harasses them. The term in their contract does not stop them bringing a claim for sexual harassment in the Employment Tribunal.
- A business partner's partnership agreement contains a term that says 'equality law does not apply to this agreement'. The partner develops a visual impairment and needs reasonable adjustments to remove barriers to their continuing to do their job. The other partners instead ask them to resign from the partnership. The partner can still bring a claim in the Employment Tribunal for a failure to make reasonable adjustments and unlawful disability discrimination.
- An applicant for a job is told 'equality law does not apply to this business, it is too small'. She still agrees to go to work there. When she becomes pregnant, she is dismissed. She can still bring a claim in the Employment Tribunal for pregnancy discrimination.

## 3 | The employer's duty to make reasonable adjustments to remove barriers for disabled people

Equality law recognises that bringing about equality for disabled people may mean changing the way in which employment is structured, the removal of physical barriers and/or providing extra support for a disabled **worker** or **job applicant**.

This is the **duty to make reasonable adjustments**.

The duty to make reasonable adjustments aims to make sure that as a **disabled person**, you have the same access to everything that is involved in getting and doing a job as a non-disabled person.

When the duty arises, your **employer** is under a positive and proactive duty to take steps to remove or reduce or prevent the obstacles you face as a disabled worker or job applicant.

Many of the adjustments your employer can make will not be particularly expensive, and they are not required to do more than it is reasonable for them to do. What is reasonable depends, among other factors, on the size and nature of your employer's organisation.

If, however,

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

you can bring a claim against your employer in the Employment Tribunal, and your employer may be ordered to pay you compensation as well as make the reasonable adjustments. A failure to make reasonable adjustments counts as unlawful discrimination. You can read more about what to do if you believe you've been discriminated against in Chapter 4.

In particular, if you are a disabled person, the need to make adjustments for you as a worker or job applicant:

- must not be a reason not to appoint you to a job or promote you if you are the best person for the job with the adjustments in place
- must not be a reason to dismiss you
- must be considered in relation to every aspect of your job provided the adjustments are reasonable for your employer to make.

Many factors will be involved in deciding what adjustments to make and they will depend on individual circumstances. Different people will need different changes, even if they appear to have similar impairments.

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

It is advisable for your employer to discuss the adjustments with you, otherwise any changes they make may not be effective.

The rest of this section looks at the detail of the duty and gives examples of the sorts of adjustments your employer could make. It looks at:

- Which disabled people does the duty apply to?
- How can your employer find out if you are a disabled person?
- The three requirements of the duty
- Are you at a substantial disadvantage as a disabled person in that work situation?
- Changes to policies and the way an organisation usually does things
- Dealing with physical barriers
- Providing extra equipment or aids
- Making sure an adjustment is effective
- Who pays for reasonable adjustments?
- What is meant by 'reasonable'
- Reasonable adjustments in practice
- Specific situations
  - Employment services
  - Occupational pensions
- Questions about health or disability

## Which disabled people does the duty apply to?

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The duty applies to you if you:

- are working for an employer, or
- apply for a job with an employer, or
- tell an employer you are thinking of applying for a job with them.

It applies to all stages and aspects of employment. So, for example, where the duty arises your employer must make reasonable adjustments to disciplinary or dismissal procedures and decisions. It does not matter if you were a disabled person when you began working for them, or if you have become a disabled person while working for them.

The duty may also apply after you have stopped working for an employer.

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

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

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

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

**Example** — An employee's performance has recently got worse and they have started being late for work. Previously they had a very good record of punctuality and performance.

Rather than just telling them they must improve, their employer talks to them in private. This allows the employer to check whether the change in performance could be for a disability-related reason. The employee says that they are experiencing a recurrence of depression and are not sleeping well which is making them late.

Together, they agree to change the employee's hours slightly while they are in this situation and that the employee can ask for help whenever they are finding it difficult to start or complete a task. These are reasonable adjustments.

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 during recruitment before shortlisting someone or making a job offer. 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 at the end of this part of 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.

There is more information about what this means in the Equality and Human Rights Commission guide: *Your rights to equality at work: when you apply for a job*.

## 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 calls this a **provision, criterion or practice**).

**Example** — An employer has a policy that designated car parking spaces are only offered to senior managers. A worker who is not a manager, but has a mobility impairment and needs to park very close to the office, is given a designated car parking space. This is likely to be a reasonable adjustment to the employer's car parking policy.

- The second requirement involves making changes to overcome barriers created by the **physical features** of a workplace.

**Example** — Clear glass doors at the end of a corridor in a particular workplace present a hazard for a visually impaired worker. Adding stick-on signs or other indicators to the doors so that they become more visible is likely to be a reasonable adjustment for the employer to make.

- The third requirement involves providing extra equipment (which equality law calls an **auxiliary aid**) or getting someone to do something to assist you (which equality law calls an **auxiliary service**).

**Example** — An employer provides specialist software for a member of staff who develops a visual impairment and whose job involves using a computer.

Each of these requirements is looked at in more detail later in this part of the guide.

## Are you at a substantial disadvantage as a disabled person?

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The question an employer needs to ask themselves is whether:

- the way they do things

- any physical feature of their workplace
- the absence of an auxiliary aid or service

puts you, as a disabled worker or job applicant, at a substantial disadvantage compared with a person who is not disabled.

Anything that is more than minor or trivial is a substantial disadvantage.

If a substantial disadvantage does exist, then the employer must make reasonable adjustments.

The aim of the adjustments the employer makes is to remove or reduce the substantial disadvantage.

But the employer only has to make adjustments that are reasonable for them to make. There is more information about how to work out what is reasonable a bit later in this part of the guide.

## Changes to policies and the way an organisation usually does things

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The first requirement involves changing the way things are done (equality law calls this a **provision, criterion or practice**).

This means the employer must look at whether they need to change some written or unwritten policies, and/or some of the ways they usually do things, to remove or reduce barriers that would place you at a substantial disadvantage, for example, by stopping you working for that employer or applying for a job with that employer or stopping you being fully involved at work.

This includes your employer's processes for deciding who is offered a job, criteria for promotion or training, benefits, working conditions and contractual arrangements.

### Examples —

- Supervisors in an organisation are usually employed on a full-time basis. The employer agrees to a disabled person whose impairment causes severe fatigue working on a part-time or job share basis. By doing this, the employer is making a reasonable adjustment.
- Providing job applicants with different ways of providing information to support their application where using your standard form would put them at a substantial disadvantage.

- 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. By doing this, the employer is making a reasonable adjustment.

## Dealing with physical barriers

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The second requirement involves making changes to overcome barriers created by the **physical features** of an employer's workplace.

This means your employer may need to make some changes to their building or premises.

Exactly what kind of change the employer makes will depend on the kind of barriers the premises present to you. The employer will need to consider the whole of their premises. They may have to make more than one change.

Physical features include: steps, stairways, kerbs, exterior surfaces and paving, parking areas, building entrances and exits (including emergency escape routes), internal and external doors, gates, toilet and washing facilities, public facilities (such as telephones, counters or service desks), lighting and ventilation, lifts and escalators, floor coverings, signs, furniture, and temporary or movable items (such as equipment and display racks). Physical features also include the sheer scale of premises (for example, the size of a building). This is not an exhaustive list.

- Physical features could be something to do with the structure of the actual building itself like steps, changes of level, emergency exits or narrow doorways.
- Or it could be something about the way the building or premises have been fitted out, things like heavy doors, inaccessible toilets or inappropriate lighting.
- It could even be the way things are arranged inside the premises such as fixtures and fittings like shelf heights in storage areas or fixed seating in canteens.

**Example** — An employer has recruited a worker who is a wheelchair user and who would have difficulty negotiating her way around the office. In consultation with the new worker, the employer rearranges the layout of furniture in the office. The employer has made reasonable adjustments.

## Providing extra equipment or aids

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The third requirement of the duty involves providing extra equipment – which equality law calls **auxiliary aids** – and **auxiliary services**, where someone else is used to assist you, such as a reader, a sign language interpreter or a support worker.

This means an employer may need to provide some extra equipment, auxiliary aids or services for you if you work for them or apply for a job with them.

An auxiliary aid or service may make it easier for you to do your job or to participate in an interview or selection process. So the employer should consider whether it is reasonable to provide this.

The kind of equipment or aid will depend very much on:

- you as an individual disabled person and
- the job you are or will be doing or what is involved in the recruitment process.

You may well have experience of what you need, or you and your employer may be able to get expert advice from some of the organisations listed in Chapter 5: *Further sources of information and advice*.

## Making sure an adjustment is effective

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It may be that several adjustments are required in order to remove or reduce a range of disadvantages and sometimes these will not be obvious to the employer. So your employer should work, as much as possible, with you to identify the kind of disadvantages or problems that you face but also the potential solutions in terms of adjustments.

But even if you don't know what to suggest, your employer must still consider what adjustments may be needed.

**Example** — A disabled employee has been absent from work as a result of depression. Neither the employee nor their doctor is able to suggest any adjustments that could be made. Nevertheless the employer should still consider whether any adjustments, such as working from home for a time or changing working hours or offering more day-to-day support, would be reasonable.

You and/or your employer may be able to get expert advice from some of the organisations listed in Chapter 5: *Further sources of information and advice*.

## Who pays for reasonable adjustments?

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If something is a reasonable adjustment, your employer or prospective employer must pay for it. The cost of an adjustment can be taken into account in deciding if it is reasonable or not.

However, there is a government scheme called Access to Work which can help you if your health or disability affect your work. They help by giving advice and support. Access to Work can also help with extra costs which would not be reasonable for your employer 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 your employer knows about Access to Work. Although the advice and support are given to you, your employer will obviously benefit too. Information about Access to Work is in Chapter 5: *Further sources of information and advice*.

## What is meant by 'reasonable'

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Your employer only has to do what is reasonable.

Various factors influence whether a particular adjustment is considered reasonable. The responsibility for making the decision about reasonableness rests with the employer, although you could challenge it if you felt this was necessary.

When deciding whether an adjustment is reasonable an employer can consider:

- how effective the change will be in avoiding the disadvantage you would otherwise experience
- its practicality
- the cost

- their organisation's resources and size
- the availability of financial support.

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

Issues your employer can consider:

- Employers are allowed to treat disabled people better or 'more favourably' than non-disabled people and sometimes this may be part of the solution.
- The adjustment must be effective in helping to remove or reduce any disadvantage you are facing. If it doesn't have any impact at all or only a very minor one, then there is no point.
- In reality it may take several different adjustments to deal with that disadvantage but each change must contribute towards this.
- The employer can consider whether an adjustment is practical. The easier an adjustment is, the more likely it is to be reasonable. However, just because something is difficult doesn't mean it can't also be reasonable. The employer needs to balance this against other factors.
- If an adjustment costs little or nothing and is not disruptive, it would be reasonable unless some other factor (such as impracticality or lack of effectiveness) made it unreasonable.
- Your employer's size and resources are another factor. If an adjustment costs a significant amount, it is more likely to be reasonable for your employer to make it if your employer has substantial financial resources. Your employer's resources must be looked at across their whole organisation, not just for the branch or section where you are or would be working. This is an issue which the employer has to balance against the other factors.
- In changing policies, criteria or practices, the employer does not have to change the basic nature of the job, where this would go beyond what is reasonable.
- What is reasonable in one situation may be different from what is reasonable in another situation, such as where you are already working for your 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.

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 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 allows a disabled person to work flexible hours to enable them to have additional breaks to overcome fatigue arising from their disability. It could also include permitting part-time working, or different working hours to avoid the need to travel in the rush hour if this is a problem related to an impairment. A phased return to work with a gradual build-up of hours might also be appropriate in some circumstances.

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

**Example** — An employer relocates the work station of a newly disabled employee (who now uses a wheelchair) from an inaccessible third floor office to an accessible one on the ground floor. If the employer operates from more than

one workplace, it may be reasonable to move the 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 might have to provide special equipment (such as an adapted keyboard for someone with arthritis or a large screen for a visually impaired person), an adapted telephone for someone with a hearing impairment, or other modified equipment for disabled workers (such as longer

handles on a machine).

The employer does not have to provide or modify equipment for personal purposes unconnected with your job, such as providing a wheelchair if you need one in any event but do not have one. This is because in this situation the disadvantages you are facing do not flow from things your employer has control over.

- **Modifying instructions or reference manuals.**

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

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

- **Providing supervision or other support.**

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

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

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

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

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

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

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

- **Modifying disciplinary or grievance procedures.**

**Example** — A person with a learning disability is allowed to take a friend (who does not work with them) to act as an advocate at a meeting with the person's employer about a grievance. The employer also makes sure that the meeting is conducted in a way that does not disadvantage or patronise the disabled person.

- **Adjusting redundancy selection criteria.**

**Example** — A person with an autoimmune disease has taken several short periods of absence during the year because of the condition. When their employer is taking the absences into account as a criterion for selecting people for redundancy, they discount these periods of disability-related absence.

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

**Example** — A disabled 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. Your employer's other staff may therefore have an important role in helping make sure that a reasonable adjustment is carried out in practice. Your employer must make this happen. It is unlikely to be a valid 'defence' to a claim under equality law for a failure to make reasonable adjustments for an employer to argue that an adjustment was unreasonable because other staff were obstructive or unhelpful when the employer tried to make an adjustment happen. The employer would at least need to be able to show that they took all reasonable steps to try and resolve the problem of the attitude of their other staff.

**Example** — An employer makes sure that a worker with autism has a structured working day as a reasonable adjustment. As part of the reasonable adjustment, it is the responsibility of the employer to make sure that other workers co-operate with this arrangement.

If you do not want your employer to involve other workers, the employer must not breach your confidentiality by telling them about your situation.

But if you are reluctant for other staff to know about your impairment, and your employer believes that a reasonable adjustment requires the co-operation of your colleagues, it may not be possible for the employer to make the adjustment unless you are prepared for some information to be shared. It does not have to be detailed information, just enough to explain to other staff what they need to do.

## Specific situations

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### Employment services

An **employment service provider** must not unlawfully discriminate against people who are using or want to use its services. There is more information about what this means in the list of words and key ideas.

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 is 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

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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 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.

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.

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

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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 direct discrimination as a result of the information that you gave (or failed to give) when answering the questions

Separately, 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.

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

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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 to check the **diversity** of applicants.
- 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**. The employer 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 the employer would know you can 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 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.

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

If you believe you have been **unlawfully discriminated** against by your **employer**, or by a worker employed by them or by their **agent**, what can you do about it? Or if you have applied for a job (or been stopped from applying) and believe you have been unlawfully discriminated against during the application process, what can you do about it?

This part of this guide covers:

- Your choices
- Was what happened against equality law?
- Complaining to the employer:
  - Making an informal complaint
  - Raising a formal grievance
  - Alternative Dispute Resolution
  - Monitoring the outcome
- The questions procedure, which you can use to find out more information from an employer if you think you may have been unlawfully discriminated against, harassed or victimised. The questions procedure was abolished on 6 April 2014. However it will still apply to events that happened before that date and you can still ask an employer questions about events that happened on or after that date.
- Key points about discrimination cases in a work situation:
  - Where claims are brought
  - Time limits for making a claim
  - The standard and burden of proof
  - What the Employment Tribunal can order your employer to do.
- Where to find out more about making a n Employment Tribunal claim

Read the whole of this part of the guide before you decide what to do, so you know all the options you have.

It is especially important that you work out when the last day is that you can tell the Employment Tribunal about your complaint, so that you don't miss that deadline, even if you are trying to work things out with your employer first.

## Your choices

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There are three things you can do:

- complain to the employer informally
- raise a grievance under your employer's grievance procedure
- make a claim to the Employment Tribunal.

You do not have to choose only one of these. Instead, you could try them in turn. If you cannot get the employer to put things right, then you can make a claim to the Employment Tribunal.

Just be aware that if you do decide to make a claim to the Employment Tribunal, you need to tell the tribunal about your claim (by filling in a form) within three months (less one day) of what happened. More information about time limits is given later on in this guide.

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

You should think carefully about whether making a claim to the Employment Tribunal is the right thing for you personally.

Making a claim may be demanding on your time and emotions, and before starting the process you may want to look at whether or not you have a good chance of succeeding. You may also want to see if there are better ways of sorting out your complaint.

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

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

## Was what happened against equality law?

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Write down what happened as soon as you can after it happened, or tell someone else about it so they can write it down. Put in as much detail as you can about who was involved and what was said or done. Remember, the problem will sometimes be that something was not done.

### Examples —

- If you are a disabled person and you asked for a **reasonable adjustment** which was not made.
- If someone did not change a decision they had made or stop applying a rule or way of doing things and this had a worse impact on you and other people with the same protected characteristic (**indirect discrimination**).

Read the rest of this guide. Does what happened sound like any of the things we say a person or organisation must or must not do?

Sometimes it is difficult to work out if what happened is against equality law. You need to show that your protected characteristics played a part in what happened. The rest of this guide tells you more about what this means for the different types of unlawful discrimination or for harassment or victimisation.

If you think you need more information from the person or organisation before deciding what to do, then you can ask them questions about what happened. We explain how you can do this at page 72.

If you feel you need to get more advice on whether what happened was against equality law, you will find information on places where you can get help in Chapter 5: *Further sources of information and advice*.

### Is your complaint about equality law or is it about another sort of problem at work?

This guide focuses on making a complaint about something that is against equality law.

You may have a complaint about something that happened at work which is not

related to a **protected characteristic**.

Sometimes it is difficult to work out which laws (if any) apply to a situation.

If you are not sure what to do, you can get advice about your situation from other organisations, particularly the Arbitration and Conciliation Service (Acas) or Citizens Advice or your trade union. Contact details for these and other organisations who may be able to help you are in Chapter 5: *Further sources of information and advice*.

## Ways you can try to get your employer to sort out the situation by complaining directly to them

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### Making a complaint informally

It may be that your employer can look into what has happened and decide what to do without it being necessary for you to make a formal complaint.

Often all it needs to stop something happening is for the other person to understand the effect of what they have done or that the situation is being taken seriously by you – and their – employer.

This is especially the case if they did not intend something to have the impact it did – for example, if what has happened is indirect discrimination or discrimination arising from disability.

Making a complaint informally means talking to the person at your workplace who can make the situation better. This may be your manager or, if it is your manager who is behaving in the way you believe is unlawful discrimination, someone higher up. In a small organisation, it may be your employer themselves.

It is a good idea to ask your manager or employer for a meeting, so that there is enough time for you to talk about what has happened and to say what you'd like them to do.

The meeting needs to be somewhere where you can talk to your manager or employer without other people hearing what you are saying.

Even though it is an informal meeting, you can still prepare for the meeting by writing down what you want to say. This can help you make sure you have said everything you want to say to your manager or employer.

This may be especially important if you work for a small organisation and it is the person in charge (who may be the only manager) who has done what you want to complain about. If you can, you may get a better result from the meeting if you can explain what has happened in a way that does not immediately make your employer feel you are blaming them for doing something wrong.

If you need help with this, you could contact one of the organisations listed in Chapter 5 or you could ask your trade union if you have one or a colleague or friend. It may help to practise what you want to say.

Tell the person you are meeting:

- what has happened
- what effect it had or is having on you
- what you want them to do about it, for example, talking informally to the person or people who have done something.

Your manager or employer may need time to think about what has happened and what to do about it. They may need to talk to other people to find out if they saw or heard anything. Tell your manager or employer if you agree to them doing this. If you do not agree, this may make it harder for them to find out what happened.

Your manager or employer should tell you what they are going to do, and then later what the result was.

If, after investigating what has happened, your manager or employer decides:

- no unlawful discrimination took place, or
- that they are not responsible for what has happened (see Chapter 2)

then they should tell you this is what they have decided within a reasonable time.

If they don't explain why they decided this, you can ask them to explain. They do not have to explain, but if they do it may help you to decide what to do next: for example, if it is worth taking things further.

You then have two options:

- accepting the outcome
- taking things further by making a formal complaint using any procedures your employer has for doing this.

If your employer or manager agrees with you that what happened was unlawful discrimination, then they will want to make sure it does not happen again.

This may mean you don't need you to do anything other than carry on with your job as usual. Or they may want you to do something such as meeting the person who discriminated against you. In any case, you may need to go on working with that person.

Don't feel that you have to do anything you are not comfortable with. But it may help sort things out to do what your employer suggests, if necessary with some expert help, for example, from your trade union or from another person or organisation, such as a mediator.

If the discrimination was serious or just one of a series of events, your employer may want to take disciplinary action against the person who discriminated against you. You would probably have to explain to a disciplinary hearing what happened. You may be able to get help or support in doing this from your trade union if you have one or from one of the organisations listed in Chapter 5: *Further sources of information and advice*.

If your employer does not tell you what they have decided, even after you have reminded them, then you can either make a formal complaint or make an Employment Tribunal claim.

Make sure you know when the last day is for bringing your claim so you don't miss this deadline.

### **Using your employer's grievance procedures**

If you are not satisfied with the result of your informal complaint, then you can make a formal complaint, using the set procedures your employer has. It is the use of the set procedures that makes it 'formal'.

If you make a formal complaint, this is often called a 'grievance'. Your employer should be able to tell you what their procedures are.

If they don't have any information they can give you, there is a standard procedure which you can get from Acas. Your employer can use this too, if, for example, they don't have their own procedures. Contact details for Acas are in Chapter 5: *Further sources of information and advice*.

If you are not happy about the outcome of a grievance procedure, then you have a right to appeal.

### **Alternative dispute resolution**

If you or your employer want to get help in sorting out a complaint about discrimination, you can agree to what is usually called 'alternative dispute resolution'

or ADR. ADR involves finding a way of sorting out the complaint without a formal tribunal hearing. ADR techniques include mediation and conciliation.

In complaints relating to work situations, this can happen:

- as part of an informal process
- when formal grievance procedures are being used, or
- before an Employment Tribunal claim has been brought or finally decided.

There are different organisations who may be able to help with this, for example your trade union or Acas.

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

## **What your employer can do if they find that there has been unlawful discrimination**

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The action your employer can take will depend on the specific details of the case and its seriousness. Your employer should take into consideration any underlying circumstances and the outcome of previous similar cases. Actions your employer could take include:

- Some form of alternative dispute resolution, which may be especially useful where you and the person who discriminated have to carry on working together.
- Equality training for the person who discriminated.
- Appropriate disciplinary action (your employer can find out more about disciplinary procedures from Acas).

## **What your employer can do if they find that there wasn't any unlawful discrimination**

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If your employer hears your grievance and any appeal but decides that you weren't unlawfully discriminated against, they still need to find a way for everyone to continue to work together.

Your employer may be able to do this themselves, or it may be better to bring in help from outside as with alternative dispute resolution.

## Monitoring the outcome

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Whether your employer decides that there has been unlawful discrimination or not, you must not be treated badly for having complained. For example, if your employer made you transfer to another part of their organisation (if it is big enough) this may be **victimisation**. However, you could ask to be transferred, and your employer should do this if you are sure this is what you really want.

Your employer should monitor the situation at your workplace to make sure that the unlawful discrimination (if your employer found there was discrimination) has stopped and that there is no victimisation of you or anyone who helped you.

If you are not satisfied with what has happened, whether that is with

- your employer's investigation
- their decision
- the action they have taken to put the situation right
- how you have been treated after you made the complaint

you could bring a claim in the Employment Tribunal. This is explained in the next part of this guide.

## The questions procedure

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If you believe you may have experienced unlawful discrimination, harassment or victimisation under equality law it is good practice to seek relevant information from the employer. This can help you decide if you have a valid claim or not. How you can do this will depend on whether or not the claim is about something that happened before 6 April 2014.

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

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

[government/publications/discrimination-and-other-prohibited-conduct-complaints-questionnaire](#)

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

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

If the employer doesn't respond to the questionnaire within eight weeks of it being sent, the Employment Tribunal can take that into account when making its judgment. It can also take into account answers which are evasive or unclear.

There is an exception to this. The Employment Tribunal cannot take the failure to answer into account if an employer states that to give an answer could prejudice criminal proceedings and if it is reasonable to claim that it would. Most of the time, breaking equality law only leads to a claim in a civil court. Occasionally, breaking equality law can be punished by the criminal courts. In that situation, the employer may be able to refuse to answer the questions if in answering they might incriminate themselves and if it is reasonable for them not to answer.

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

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

Acas has produced non-statutory guidance for employers and employees asking and answering questions after 6 April 2014. It is available at [www.acas.org.uk/media/pdf/m/p/Asking-and-responding-to-questions-of-discrimination-in-the-workplace.pdf](http://www.acas.org.uk/media/pdf/m/p/Asking-and-responding-to-questions-of-discrimination-in-the-workplace.pdf)

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

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

## Key points about discrimination cases in a work situation

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The key points this guide explains are:

- Where claims are brought
- Time limits for bringing a claim
- The standard and burden of proof
- What the Employment Tribunal can order your employer to do
- Settling a dispute.

## Where claims are brought

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An Employment Tribunal can decide a complaint involving unlawful discrimination in a work situation.

Employment Tribunals can also decide cases about:

- Collective agreements, which can cover any terms of employment, such as pay or other benefits or working conditions.
- Equal pay and occupational pensions cases, which you can read more about in the Equality and Human Rights Commission guide: *Your rights to equality at work: pay and benefits*.
- Requirements an employer places on someone to discriminate against people as part of their job, for example, if someone works in a shop, telling them not to serve customers with a particular protected characteristic.

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

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

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

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

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

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

## Time limits for bringing a claim

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

**Example** — An employer unlawfully discriminates against a worker. The discrimination took place on 5 May. The worker must tell the Employment Tribunal about their claim using the proper form by 4 August at the latest.

There are two situations where this is slightly different:

- in equal pay cases, different time limits apply – see the Equality and Human Rights Commission guide: *Your rights to equality at work: pay and benefits*, and
- for cases involving the armed forces, the time limit is six months (less one day).

If you bring a claim after the date has passed, it is up to the Employment Tribunal to decide whether it is fair to everyone concerned, including both you and the employer, to allow your claim to be brought later than this. You will need to explain why you were not able to bring the claim within the time limit.

Do not assume they will allow you to bring a late claim. They may not, in which case, you will have lost any chance to get the situation put right by the Employment Tribunal.

When a claim concerns something that was not a one-off incident, but which has happened over a period of time, the time limit starts when the period has ended.

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

aged 35. If the policy ceased to operate in favour of this age group, claims would have to be made within three months of this happening.

If you are complaining about a failure to do something, for example, a failure to make **reasonable adjustments**, then the three months begins when the employer made a decision not to do it.

If there is no solid evidence of when they made a decision, then the decision is assumed to have been made either:

- when the person who failed to do the thing does something else which shows they don't intend to do it, or
- at the end of the time when they might reasonably have been expected to do the thing.

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

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

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

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

You may be able to get advice on this from Acas or Citizens Advice or your trade union. Contact details for these and other organisations who may be able to help you are in Chapter 5: *Further sources of information and advice*.

## The standard and burden of proof

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The standard of proof in discrimination cases is the usual one in civil (non-criminal) cases. Each side must try to prove the facts of their case are true on the balance of probabilities, in other words, that it is more likely than not in the view of the tribunal that their version of events is true.

If you are claiming unlawful discrimination, harassment or victimisation against the employer, then the burden of proof begins with you. There are two situations in which the burden of proof will shift onto the employer:

- If you prove enough facts from which the tribunal can decide, without any other explanation, that the discrimination, harassment or victimisation has taken place, or
- If your complaint is that you have not been offered a job because the employer found out about your disability having asked questions which they were not allowed to ask under the rules against **pre-employment health or disability enquiries**.

In either of these situations, the burden then shifts onto the employer to show that they or someone for whose actions or omissions they were responsible did not discriminate against, harass or victimise you.

## What the Employment Tribunal can order the employer to do

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If you win your case, the tribunal can order what is called a 'remedy'. The main remedies available to the Employment Tribunal are to:

- Make a declaration that your employer has discriminated.
- Award compensation to be paid for the financial loss you have suffered (for example, loss of earnings), and damages for injury to your feelings.
- Make a recommendation, requiring your employer to do something specific within a certain time to remove or reduce the bad effects which the claim has shown to exist on the individual.

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

- At present, the Employment Tribunal can make a recommendation requiring your employer to do something specific within a certain time to remove or reduce the bad effects which the claim has shown to exist on the wider workforce (although not in equal pay cases). The Employment Tribunal can make this kind of recommendation even if the person who has won their case no longer works for the employer. The Government has said it will abolish the Employment Tribunals' power to make these kind of wider recommendations. If it may be relevant to a case in which you are involved, you will need to check whether this power still exists.

#### Examples —

- introducing an equal opportunities policy
- ensuring its harassment policy is more effectively implemented
- setting up a review panel to deal with equal opportunities and harassment/grievance procedures
- re-training staff, or
- making public the selection criteria used for transfer or promotion of staff.

If your employer does not do what they have been told to do in a recommendation relating to you, the tribunal may order them to pay you compensation, or an increased amount of compensation, instead.

In cases of **indirect discrimination**, if your employer can prove that they did not intend what they did to be discriminatory, the tribunal must consider all of the remedies before looking at damages.

The tribunal can also order your employer to pay your legal costs and expenses, although this does not often happen in Employment Tribunal cases. However, the Tribunal is now likely to order your employer to reimburse any fees you had to pay the tribunal after 29 July 2013 to bring your claim, if that claim is successful.

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

The Government also intends to introduce legislation in October 2014 which will require an Employment Tribunal to order, subject to certain exceptions, an employer

to undertake an equal pay audit where the Tribunal finds that the employer has breached an equality clause and/or discriminated because of sex in relation to pay.

## Settling a dispute

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Taking legal proceedings can be a stressful and time consuming experience. It may be in your best interest to try to settle your dispute i.e. reach an agreement with your employer where possible to avoid going to an Employment Tribunal or court hearing. There are three ways in which you can settle a dispute:

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

### Agreement between you and the employer

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

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

### Acas

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

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

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

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

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

### Qualifying settlement agreement

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

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

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

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

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You can find out more about how to bring an Employment Tribunal case against your employer from the Employment Tribunal itself. They have information that tells you how to fill in the right form, and what to expect once you have made a claim.

This applies to England, Scotland and Wales, although occasionally tribunal procedures themselves are different in England and Wales and in Scotland.

You can find contact details for the Employment Tribunal in Chapter 5: *Further sources of information and advice*.

## 5 | Further sources of information and advice

### General advice and information

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#### **Equality and Human Rights Commission**

The Equality and Human Rights Commission is the independent advocate for equality and human rights in Britain. It aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights. If you need expert information, advice and support on discrimination and human rights issues and the applicable law, especially if you need more help than advice agencies and other local organisations can provide, please contact the Equality Advisory and Support Service (EASS), below. EASS was commissioned by Government in 2012 to replace the EHRC Helpline, which is now closed. EASS is completely independent of the Commission.

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

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

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

#### **Acas – The Independent Advisory, Conciliation and Arbitration Service:**

Acas aims to improve organisations and working life through better employment relations. It provides impartial advice, training, information and a range of problem resolution services.

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

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

Guidance from the government's website for employers.

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

## **Access to Work**

Access to Work can help disabled people or their employers if their condition or disability affects the ease by which they can carry out their job or gain employment. It gives advice and support with extra costs which may arise because of certain needs.

- Website: [www.gov.uk/access-to-work](http://www.gov.uk/access-to-work)

London, East England and South East England

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

Wales, South West England, West Midlands and East Midlands

- Telephone: 02920 423 291
- Textphone: 0845 602 5850
- Email: [atwosu.cardiff@dpw.gsi.gov.uk](mailto:atwosu.cardiff@dpw.gsi.gov.uk)

Scotland, North West England, North East England and Yorkshire and Humberside

- Telephone: 0141 950 5327
- Email: [atwosu.glasgow@jobcentreplus.gsi.gov.uk](mailto:atwosu.glasgow@jobcentreplus.gsi.gov.uk)

## **Advicenow**

An independent, not-for-profit website providing accurate, up-to-date information on rights and legal issues.

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

## **Advice UK**

A UK network of advice-providing organisations. They do not give out advice themselves, but the website has a directory of advice-giving agencies.

- Website: [www.adviceuk.org.uk](http://www.adviceuk.org.uk)
- Telephone: 0300 777 0107 or 0300 777 0108
- Email: [mail@adviceuk.org.uk](mailto:mail@adviceuk.org.uk)

## **Age UK**

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

- Website: [www.ageuk.org.uk](http://www.ageuk.org.uk)
- Telephone: 0800 169 6565
- Email: [contact@ageuk.org.uk](mailto:contact@ageuk.org.uk)

## **Association of Disabled Professionals (ADP)**

The ADP website offers advice, support, resources and general information for disabled professionals, entrepreneurs and employers.

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

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

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

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

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

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

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

### **Citizens Advice Bureau**

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

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

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

### **Citizens Advice Scotland**

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

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

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

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

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

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

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

### **ChildcareLink**

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

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

### **Close the Gap Scotland**

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

- Website: [www.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.

	<p>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.</p>
<b>monitoring form</b>	<p>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.</p>
<b>more favourably</b>	<p>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 <i>requires</i> treating them more favourably. An employer can also <i>choose</i> 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.</p>
<b>national security</b>	<p>The security of the nation and its protection from external and internal threats, particularly from activities such as terrorism and threats from other nations.</p>
<b>normal retirement age</b>	<p>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.</p>
<b>objective justification</b>	<p>See <b>objectively justified</b>.</p>
<b>objectively justified</b>	<p>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 <b>proportionate</b>.</p>
<b>occupational health</b>	<p>Occupational health has no legal meaning in the context of the Equality Act, but it can be used to refer to the ongoing</p>

	<p>maintenance and promotion of physical, mental and social wellbeing for all workers. The phrase is often used as a shorthand way of referring to <b>occupational health services</b> provided by the employer.</p>
<b>occupational health practitioner</b>	<p>A health professional providing occupational health services.</p>
<b>occupational health service</b>	<p>This usually refers to doctors or nurses employed in-house by an employer or through an external provider who the employer may ask to see workers and give medical advice on their health when workplace issues arise.</p>
<b>occupational pension</b>	<p>A pension which an employee may receive after retirement as a contractual benefit.</p>
<b>occupational requirement</b>	<p>An employer can discriminate against a worker in very limited circumstances where it is an 'occupational requirement' to have a particular protected characteristic and the application of the requirement is <b>objectively justified</b>. There are two particular occupational requirement exceptions where employment is for the purposes of an organised religion or the employer has an ethos based on religion or belief, but very specific requirements need to be fulfilled.</p>
<b>office-holders</b>	<p>There are personal and public offices. A personal office is a remunerated office or post to which a person is appointed personally under the direction of someone else. A person is appointed to a public office by a member of the government, or the appointment is recommended by them, or the appointment can be made on the recommendation or with the approval of both Houses of Parliament, the Scottish Parliament or the National Assembly for Wales.</p>
<b>palantypist</b>	<p>Also known as 'Speech to Text Reporter'. A palantypist reproduces speech into a text format onto a computer screen at verbatim speeds for Deaf or hard of hearing people to read.</p>
<b>past disability</b>	<p>A person who has had a disability as defined by the Equality Act.</p>

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

**pre-employment disability and health enquiries**

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

**pregnancy and maternity**

Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context where special protections apply.

**principal**

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

**procurement**

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

**proportionate**

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

**protected characteristics**

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

orientation.

**protected period**

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

**provision, criterion or practice**

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

**public authority**

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

**public bodies**

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

**public functions**

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

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

protection. This is not an exhaustive list.

Any act or activity undertaken by a public authority in relation to delivery of a public service or carrying out duties or functions of a public nature e.g. the provision of policing and prison services, including, government policy-making or local authority planning services.

**public sector equality duty**

The duty on a public authority when carrying out its functions to have due regard to the need to eliminate unlawful discrimination and harassment, foster good relations and advance equality of opportunity.

**questions procedure**

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

**race**

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

**rated as equivalent**

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

**reasonable adjustment**

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

**regulations**

Secondary legislation made under an Act of Parliament (or European legislation) setting out subsidiary matters which assist in the Act's implementation.

**religion or belief**

Religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief (e.g. atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition.

**religion or belief organisations**

An organisation founded on an ethos based on a religion or belief. Faith schools are one example of a religion or belief organisation. See also **religion or belief**.

**religious organisation**

See **religion or belief organisations**.

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

	sex, the opposite sex or to both sexes.
<b>single-sex facilities</b>	Facilities which are only available to men or to women, the provision of which may be lawful under the Equality Act.
<b>specific equality duties</b>	These are duties imposed on certain public authorities. They are designed to ensure that the better performance by a public authority of the public sector equality duty. See also <b>public sector equality duty</b> .
<b>stakeholders</b>	People with an interest in a subject or issue who are likely to be affected by any decision relating to it and/or have responsibilities relating to it.
<b>substantial</b>	This word tends to come up most in connection with the definition of disability and the duty to make reasonable adjustments for disabled workers. The Equality Act says only that 'substantial' means more than minor or trivial.
<b>terms of employment</b>	The provisions of a person's contract of employment, whether provided for expressly in the contract itself or incorporated by statute, custom and practice or common law etc.
<b>textphone</b>	A type of telephone for Deaf or hard of hearing people which is attached to a keyboard and a screen on which the messages sent and received are displayed.
<b>trade unions</b>	These are organisations formed to represent workers' rights and interests to their employers, for example in order to improve working conditions, wages or benefits. They also advocate more widely on behalf of their members' interests and make recommendations to government, industry bodies and other policy makers.
<b>transsexual person</b>	Refers to a person who has the protected characteristic of <b>gender reassignment</b> . This may be a woman who has transitioned or is transitioning to be a man, or a man who has transitioned or is transitioning to be a woman. The law does not require a person to undergo a medical procedure to be recognised as a transsexual person. Once a transsexual person has acquired a <b>gender recognition certificate</b> , it is probably the case that they should be

treated entirely as their acquired gender.

**tribunal**

See **Employment Tribunal**

**two ticks symbol**

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

**UK Text Relay Service**

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

**unfavourably**

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

**vicarious liability**

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

**victimisation**

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

**victimise**

The act of **victimisation**.

**vocational service**

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

**vocational training**

Training to do a particular job or task.

**Work Choice**

Work Choice provides support to disabled people in helping them get and keep a job. The type of support varies according to the help needed but can include

training and developing skills; building confidence and interview coaching.

**work of equal value**

See **equal work**.

**worker**

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

# Contacts

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

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

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