

EIS EQUALITY

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The Educational
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TEACHING & DISABILITY

It is important that those with disabilities have the opportunity to fulfil their potential in all areas of learning and work. The teaching profession should be no different from any other profession in this respect.

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INTRODUCTION

It is important that those with disabilities have the opportunity to fulfil their potential in all areas of learning and work. The teaching profession should be no different from any other profession in this respect.

LEGISLATION

In October 2010, the Equality Act 2010 replaced, among other related legislation, the Disability Discrimination Act 1995.

Definition

Within the Act, disability is now termed as a 'protected characteristic'. For the purpose of the Act, a person is disabled if they;

'have a physical or mental impairment which has a substantial, long term, adverse effect on their ability to carry out day-to-day activities.'

According to this definition, '*impairment*' can include sensory impairments, such as sight and hearing, or mental impairments such as learning disabilities, dyslexia and mental illness.

To have a *long-term* disability means that the disability:-

- has lasted for at least twelve months; or
- is expected to last for at least twelve months; or
- is likely to last for the rest of your life, if you are expected to live for less than twelve months.

'*Day-to-day activities*' include answering the phone, getting out of bed, using stairs, sitting, standing, using public transport, understanding or remembering things and dealing with others.

A list of areas badly affected by disability was referenced in previous legislation, but this has been removed. However, reflecting on the following may be useful when considering being affected by disability:-

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

It should also be noted that although there has been a move away from producing a prescriptive list of conditions that would be covered as a disability, the following are automatically covered once diagnosed:-

- HIV
- Cancer
- Multiple sclerosis
- Registered blind or partially sighted

The new single Equality Duty is in 2 parts – the ‘General Duty’ and ‘Specific Duties’.

The Public Sector Equality Duty – General Duty

Under the General Duty, employers must have ‘due regard’ to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations.

To eliminate unlawful disability discrimination, it is against the law for an employer:-

- to treat you less favourably because you are disabled than someone without a disability would be treated in the same circumstances. This is called **direct discrimination**
- to discriminate against you because of your connection with someone else who is disabled, for example, your partner or child. This is called **discrimination by association** and can be applied to carers
- to discriminate against you indirectly for example by requiring something which applies to all your colleagues but which is much more difficult for you and for disabled people to meet. This is called **indirect discrimination**
- to treat you unfavourably and apply **discrimination arising from your disability**. For example, to dismiss you not because you are disabled, but for sickness absence as a consequence of your disability
- not to make **reasonable adjustments** to the workplace to allow you to work or to continue to work
- to **harass** you if you are disabled, for example, by making jokes about your disability or about disability in general
- to **victimise** you if you take legal action because of discrimination against you, or if you help someone else to take legal action because of discrimination.

The Equality Act maintains and supports the spirit of the Disability Discrimination Act 1995 on reasonable adjustments. There is a duty on organisations and employers to make reasonable adjustments where a disabled worker would be at a substantial disadvantage compared with their non-disabled colleagues. It covers 'provisions, criteria and practices', 'physical features' and 'provision of auxiliary aids'.

The previous criteria from the DDA still apply in deciding whether the proposed adjustment is 'reasonable'. The reasonableness of an adjustment is determined by:-

- Whether it is effective
- Whether it is practical
- What it costs
- The resources of the organisation
- The availability of financial support.

The law forbids the disabled worker having to pay for the adjustment.

Examples of the types of reasonable adjustments that an employer might make include:-

- making physical adjustments to the premises
- supplying special equipment to help you do your job, or providing information in an accessible format
- transferring you to a different post or work place
- altering your hours of work or giving you extra time off.

The Public Sector Equality Duty – Specific Duties

The Specific Duties are placed on some public authorities by Scottish Ministers. In relation to education, the public authority responsible for schools is the local authority. Further and Higher Education Institutions are regarded as public authorities for the purpose of the Duty.

The Specific Duties require employers to:-

- report on mainstreaming
- gather employment information, use it, and explain how it is to be used
- set equality outcomes and report against progress
- publish gender pay gap information
- publish an equal pay statement
- publish occupational segregation information
- carry out and publish equality impact assessments.

Public bodies must report at least every two years on how they are mainstreaming the General Duty, i.e. make the Equality Duty integral to the exercise of its functions. The use of equality impact assessments can help this process.

Public bodies should publish a set of equality outcomes which:-

- take reasonable steps to involve people who share a protected characteristic e.g. disability, and those who represent them e.g. trade unions
- consider relevant evidence
- if outcomes do not meet the General Duty in relation to every protected characteristic, the employer must publish reasons why not; and
- must be easily accessible.

Public bodies have a duty to assess and review policies and practices. Equality impact assessments can be used to determine this.

Public bodies also have a duty to gather and use employee information each year. The information gathered should relate to the composition of the authority's employees and the recruitment, development and retention of employees, specifically with respect to the number and relevant protected characteristics of the employees. The information gathered must be easily accessible. All information gathered should be published every two years.

Monitoring

It is important that members with disabilities believe that their employer is serious about achieving real improvements. The duty clearly requires employers to consult with their disabled employees. The EIS can play an important part in this by ensuring that the monitoring is a valid exercise.

People with disabilities have been reluctant to complete monitoring forms because they are concerned about possible discrimination. Others do not believe that they will be covered by the Act or that their disability is personal to them and not the business of their employer. Making employee monitoring part of an overall approach to equality helps encourage people to complete their monitoring form. Disabled members may be in danger of missing out on their rights as a disabled person. This is particularly the case with mental health where employees do not wish to disclose their disability or do not consider it a disability covered by the Act.

Monitoring must be a confidential and voluntary exercise. If monitoring is anonymous the information is not covered by the Data Protection Act. An employer must ensure that permission is sought if non-anonymous information is to be used as it would then be covered by the Data Protection Act.

To monitor disability within the workforce, one question should suffice;

Do you consider yourself to be disabled? Yes/No

However, there may be employees who do not consider themselves disabled; therefore the definition of disability according to the Act should be provided. Furthermore, an explanation of the purpose of monitoring should also be provided.

SUPPORT

School Leadership

Leadership teams within schools must be supportive and well-informed. They must be able to plan ahead to meet the needs of all disabled people, rather than simply respond to individual cases.

They should be aware that in order to deliver true equality of opportunity for disabled people there is a requirement to do more than treat them the same as everyone else. This premise underpins the need to combat discrimination and to promote equality of opportunity and provides the basis for making reasonable adjustments.

Leaders in schools should be proactive in implementing their Equality policy within the school. The Equality policy should:-

- be part of the school's development plan
- give details of how the school will put the policy into practice and assess how effective it is
- clearly define roles and responsibilities, so that people know what is expected of them; and
- explain clearly what the school will do if the policy is not followed.

The robustness of the policy should be tested and evaluated using equality impact assessments. Equality impact assessments should be carried out when a policy change occurs or a new policy is devised. An equality impact assessment should be carried out if the policy is a major one in terms of scale or significance or if there is a clear indication that, although the policy is minor, it is likely to have a major impact upon disabled people.

Leadership teams should also understand the workload implications that can arise due to a teacher's disability. For example, it may take dyslexic teachers longer to write school reports.

Employment

If you are sick or disabled, there are a number of different benefits and tax credits you may be able to claim, e.g. Personal Independence Payment (PIP). Once a disabled teacher finds employment, 'Access to Work' funding can also provide a valuable supplement. This 'Access to Work' funding can be used for a variety of purposes, e.g. paying for equipment and funding transport to and from school.

More details on financial support can be found at Disability Rights UK (<http://www.disabilityrightsuk.org/>) and the UK Government website for those with disabilities (<https://www.gov.uk/browse/disabilities>).

Occupational Health support can also be provided by an employer.

USEFUL SOURCES

Disability Rights UK - <http://www.disabilityrightsuk.org/>

UK Government Services - <https://www.gov.uk/browse/disabilities>

SKILL: National Bureau for Students with Disabilities: Into Teaching Programme - <http://www.skill.org.uk/page.aspx?c=261&p=382>



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