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Disability Discrimination Act 1995

(See also notes below on DD Act 2005 which extends the scope of the 1995 Act)

The Disability Discrimination Act (DDA) was introduced to protect disabled people from discrimination in different areas of life such as employment, education, and access to goods and services. The employment provisions came into force on 2 December 1996.

To help employers understand and comply with the legislation, the Government also issued a 'Code of Practice for the Elimination of Discrimination in the Field of Employment against Disabled Persons or Persons who have had a Disability'.

Although this Code does not impose any legal obligations as such, reference to it is admissible in evidence in any proceedings under the DDA before an employment tribunal or court. It also provides practical guidance on how discrimination can be eliminated.

Who is affected

The DDA's employment provisions require all employers to make reasonable adjustments to their workplace and work practices so that people with a disability are not disadvantaged in employment or in applying for work. What is reasonable will depend on each employer's situation, but the duty to make adjustments is especially onerous where an existing worker has a disability or becomes disabled.

In order to justify less favourable treatment of a disabled person or failure to make adjustments to the workplace, an employer must be able to show that the reason is both material to the circumstances and substantial. This means that the reason must not be trivial or minor, and must genuinely relate to the case in question.

Where there is a reasonable adjustment that the employer should make but he or she fails to do so, then the difference it would have made is taken into account when considering whether less favourable treatment is justified. One example would be where a person who uses a wheelchair is not offered a job because the work station is inaccessible to wheelchairs. If a simple rearrangement of furniture would have solved the problem, then turning the person down on those grounds could not be justified.

Definitions

The DDA defines a disabled person as someone who has or has had "a physical or mental impairment which has a substantial and long term adverse effect on his ability to carry out normal day-to-day activities". (Where this effect has already lasted or is expected to last for at least 12 months)

a) Impairment

No specific definition of impairment is provided in the Act, but it is intended to include sensory impairments, such as those affecting sight and hearing, as well as purely

physical impairments. Mental impairment is intended to cover a wide range of problems relating to mental function, including learning disabilities. It also includes mental illness. In addition, recent case law has indicated that mental conditions such as bulimia, agoraphobia, post-traumatic stress disorder and ME can amount to disabilities, depending on whether their impact on the individual is long term and substantial.

The progressive conditions of cancer, multiple sclerosis and HIV will be covered from the point of diagnosis from December 2005 (see DDA 2005).

The definition of impairment has given rise to some interesting decisions. Tribunals have accepted diabetes, epilepsy and severe but undiagnosed abdominal pains as disabilities, but a garden centre employee who was dismissed because he could not lift heavy items was held not to be disabled, because he could lift items that were part of "normal day-to-day activities."

**Long-term sickness could in some cases be classed as a disability, so it is important to ensure your organisation has good sickness and absence management policies, and to take legal advice if you are considering dismissing someone for any reason connected with sickness or disability.

b) "Substantial" adverse effect

In order to be protected under the DDA, a person's impairment must substantially affect his or her ability to carry out normal day-to-day activities. If the effect is minor or trivial, they will not be regarded as having a disability.

In some cases a person's disability can be successfully treated or corrected. Nevertheless, for the purposes of the Act it is assessed according to the effect it would have had without medical treatment. For instance, a person with a hearing impairment is assessed on the basis of their hearing level without a hearing aid even if use of a hearing aid improves the situation. This approach does not apply, however, to sight problems which can be corrected by wearing glasses or contact lenses. In such cases, consideration should be given to the person's ability to carry out normal day-to-day activities when glasses or contact lenses are worn.

Where an impairment consists of a severe disfigurement (excluding tattoos or body piercings), it is automatically treated as having a substantial adverse effect on a person's ability to carry out normal day-to-day activities.

c) "Long-term" adverse effect

An impairment is regarded as "long-term" if it has lasted or is expected to last for at least 12 months. In the case of conditions which cease to have an immediate effect but are likely to recur, the person remains protected (for example, epilepsy or rheumatoid arthritis).

d) Normal day-to-day activities

Under the Act, an impairment is only to be treated as affecting a person's ability to carry out normal day-to-day activities if it affects one of the following:

mobility; manual dexterity; physical co-ordination; continence; ability to lift carry or move everyday objects; speech; co-hearing or eyesight; memory or ability to concentrate, learn or understand; perception of the risk of physical danger.

Reasonable adjustments

Employers have a duty to make reasonable adjustments to accommodate a disabled person where he or she is put at a substantial disadvantage as a result of :

- a) arrangements made by (or on behalf of) the employer relating to offers of employment, promotion, transfer, training or any other benefit.
- b) any physical feature of the employer's premises.

"Physical features" include any permanent or temporary feature of the premises such as the entrance and exit, fixtures and fittings, furniture and equipment.

The DDA provides a list of the sort of adjustments employers might have to make in order to comply with the law:

- a) adjustments to premises.
- b) allocating some of the disabled person's duties to another person.
- c) transferring the person to fill an existing vacancy.
- d) altering the person's working hours.
- e) assigning the person to a different place of work.
- f) allowing the person to be absent during working hours for rehabilitation, assessment or treatment.
- g) giving, or arranging for the person to be given training.
- h) acquiring or modifying equipment.
- i) modifying instructions or reference manuals.
- j) modifying procedures for testing or assessment.
- k) providing a reader or interpreter.
- l) providing supervision.

Is it reasonable?

In some cases, an adjustment involving little or no cost or disruption is all that is needed in order to accommodate a disabled person. Such changes are likely to be seen as "reasonable" for an employer to have to make. To help employers decide whether or not more complex or substantial adjustments are reasonable, however, the DDA sets out a checklist of factors which should be taken into account:

- a) the extent to which the adjustment will prevent the disadvantage.
- b) whether it is practicable for the employer to make the adjustment.
- c) how much the adjustment will cost (including the cost of staff and other resources) and whether it will cause significant disruption.
- d) the extent of the employer's financial and other resources.
- e) whether the employer can obtain financial or other assistance to help make the adjustment.

Where it is reasonable for an employer to make an adjustment, but he or she fails to do so, this will amount to discrimination unless the failure can be justified. To do so, the reason must be substantial and material to the circumstances of the particular case.

It is important to realise that the DDA does not place a general duty on employers to accommodate disabled people at work. Instead it gives a right to particular job applicants or employees. So, for example, employers are not expected to make changes in anticipation of applications from disabled people in general – but only if they know (or could reasonably be expected to know) that a disabled person is, or may be applying, and is likely to be substantially disadvantaged

Disability Discrimination Act 2005

The Disability Discrimination Act 2005 introduces further significant changes to the original 1995 Act. The first of these changes came into effect in December 2005. For the purposes of the voluntary sector, the two changes to be particularly aware of are :

1. An expanded definition of “disability”(which came into effect on 5 December 2005);
and
2. A new positive duty on ‘public authorities’ to actively promote equality of opportunity for disabled people (planned to come into effect in December 2006).

Definition of disability

The definition is extended to include people with HIV, cancer and MS from the point of diagnosis (i.e. don't have to wait until condition has substantial adverse effect on ability to perform day-to-day activities).

In addition, people suffering from mental illness no longer have to show that the illness is “clinically well-recognised” before they will be covered by the DDA.

Public duty

The new duty on public authorities may be relevant to voluntary organisations where under a contract with a public authority a voluntary organisation will be ‘standing in the shoes’ of the authority in carrying out a particular public function. In such a case, the draft Code of Practice on the duty suggests that the organisation will have responsibility for meeting the disability equality duty.

[NYFVO/EA/December 2005].