

Disability in the Workplace Guidance

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1. Introduction

Individuals with a disability are protected from discrimination in both employment and access to services and facilities. This guide includes the information regarding employment that managers will need to know to ensure that they are complying with the Equality Act 2010. In doing so we will also ensure that the Council is able to deliver its services in an enlightened and informed way.

Eden District Council aims to be an equal opportunity employer and is determined to ensure that no employee receives less favourable treatment on the grounds of a protected characteristic, or is disadvantaged by conditions or requirements which cannot be shown to be justifiable, on the grounds of a protected characteristic.

As a public body, the Council is keen to ensure that its workforce is representative of the district it serves and it is therefore committed to attracting and retaining the skills of individuals who have a disability.

2. Equality Act 2010

The Equality Act 2010 contains measures designed to reduce the discrimination faced by individuals with a protected characteristic. One of the protected characteristics covered by the Act is disability.

The Act, which applies to all UK employers, makes it unlawful to discriminate against employees (including workers) because of a mental or physical disability.

2.1 Definition of Disability

The Equality Act definition of disability is very wide and so people that you might not think of as having a disability, or may not even think of themselves as having a disability, are protected. The Act covers people with a current disability and people who have had a disability in the past (this applies even if they recovered before the Act came in to force).

A person is disabled if they have 'a physical or mental impairment' which has 'a substantial and long-term adverse effect' on their 'ability to carry out normal day-to-day activities'.

It may be helpful to break this down and consider the components:

Impairment - may be a physical or mental impairment, or both. While impairments which are visible can be easy to identify, there can be others which are not obvious - for example, some mental health conditions.

Long-term - lasting at least a year, or likely to be for the rest of the person's life or recur.

Substantial adverse effect - more than minor, but it may fluctuate or change, and may not be present all the time.

Normal day-to-day activities - not defined by the Act, but in and out of the workplace they are taken to be common things for most people. For example, in employment, they might include interacting with colleagues, using a computer, writing, following instructions, keeping to a timetable, sitting down, standing up, driving, lifting and carrying everyday objects.

This broad definition means that it is likely that an increasing number of people will consider themselves as having a disability.

In addition, certain conditions are automatically considered to be a disability without having to meet the definition in the Act. These include cancer, HIV infection, multiple sclerosis, blindness, severe sight-impairment, sight-impairment or partially-sightedness.

Some conditions are specifically excluded from the Act as an impairment. For example, addiction to alcohol, nicotine and any other substance (unless the addiction is the result of medically-prescribed drugs or treatment). However, for example, while the alcoholism itself would not be an impairment, if it led to cirrhosis of the liver, the disease of the organ could be an impairment if it had a substantial and long-term adverse effect on day-to-day activities. Other excluded conditions include pyromania, kleptomania, hay fever, and a tendency to be abusive physically or sexually. But these, too, can be a complicated area where other circumstances in an individual case can mean the exclusion does not apply.

Ultimately, only the courts can say if a particular individual is defined as disabled under the legislation.

Further advice and guidance on the interpretation of the definition of a disability is available from the Human Resources section.

3. Types of Discrimination

There are four main types of discrimination within the protected characteristic of Disability under the Equality Act 2010:

- Direct discrimination
- Indirect discrimination
- Harassment
- Victimisation

There are two additional types which apply solely to this protected characteristic:

- Discrimination arising from disability
- Failure to make 'reasonable adjustments'

More details on the various types of discrimination can be found in Appendix 1.

4. Declaring a Disability

Eden District Council encourages job applicants and existing employees to declare any disability that they may have as this allows the organisation to take appropriate action eg to ensure any necessary workplace support is in place, to assess any workplace risks that may be exacerbated as a result of the particular disability etc.

Wherever possible, the individual's wishes in relation to confidentiality will be observed. However, the Council has a duty of care to its employees and where the declaration of a disability leads it to consider that the health and safety at work of the employee or their colleagues could be compromised, it may be necessary to take

appropriate action. This could include gaining advice from the Council's occupational health provider or disclosing certain information to the employee's manager to allow them to provide the necessary support.

4.1 Applicants

Eden District Council's application form includes an equal opportunities monitoring form which applicants are encouraged to complete.

The equal opportunities monitoring form allows an individual to inform the Council if they have a disability.

4.2 Existing Employees

Given that the equal opportunities monitoring form is not mandatory, it is possible for an individual to join the Council as an employee without having disclosed a disability. In addition to this, an employee may acquire a disability during their employment and wish to notify the Council of this. For this reason a number of methods of declaration have been created for existing employees.

An existing employee of the Council can declare a disability to the Human Resources section at any time. A pro-forma for this purpose has been attached at Appendix 2.

On a bi-annual basis the Human Resources section issues employees with a copy of the personal data held on their employee file in an effort to ensure the data is still accurate. This process provides employees with a further opportunity to inform the Council of a disability that they may have.

5. Disability in Employment

It is unlawful for an employer to discriminate against a person with a disability in all areas of recruitment and employment, ie applicants who have a disability as well as employees are covered by the provisions of the Act. Areas of recruitment and employment affected include induction, training, promotion and transfer, job specification, advertisement of vacancies, selection of applicants and terms and conditions of service.

It is unlawful for an employer to refuse to give a job to a person with a disability, to dismiss such a person or to treat them less favourably than other people in any way, simply because of the disability. Doing so is what is known as direct discrimination. An employer who makes assumptions about what a person with a disability can and can't do without asking them might be directly discriminating against them.

It is also unlawful for an employer to treat a person with a disability less favourably than a comparator person who does not have a disability if the reason for the less favourable treatment is related to their disability, without very good reason or justification. A reason relating to the disability might be the person's ability to do the job because of their disability or sickness absence record. An employer won't be able to show that they have a good reason not to give someone a job, to dismiss them, or to treat them worse in some way if they haven't first considered reasonable adjustments that might help the person to do the job.

The Equalities Act requires employers to make changes to help people with disabilities at work. These are known as 'reasonable adjustments' and are covered in more detail later in this guidance.

6. Recruitment and Selection

The Council has a Recruitment and Selection Policy as well as a Manager's Guide to the recruitment and selection process. The following information supplements those documents.

It is important to remember that the Council selects employees on merit alone ie the best person for the post based on the job description and person specification. The fact that a candidate has a disability should have no bearing on the selection process.

6.1 Guaranteed Interviews

Eden District Council is a Disability Confident employer which means that we have undertaken an assessment and meet the criteria set out by the Department for Work and Pensions (DWP). Applicants with disabilities who meet the essential criteria for a post will be guaranteed and offered an interview.

6.2 Reasonable Adjustments to the Selection Process

When applicants are invited to interview they are asked to advise the Council of any adjustments they need in order to participate in the selection process. Adjustments could include the following:

- Holding the interview in a location that has wheelchair access;
- Provision of an induction loop for candidates who have a hearing impairment;
- Adjustments to any practical assessments to take account of a disability.

The aim of such adjustments is to provide a level playing field for candidates with disabilities.

Recruiting managers are required to make such reasonable adjustments wherever possible. For further information, please see the later section of this guidance relating to Reasonable Adjustments.

7. Assisting Employees with a Disability During Employment

There may be a number of circumstances where assistance is required for an employee who has a disability. These may include the following:

- Where an applicant with a disability is successfully appointed to a post within the Council;
- Where an employee acquires a disability during the course of their employment with Eden District Council;
- Where an employee chooses to declare a pre-existing disability to the Council at some point during their employment.

In such circumstances, the aim of the Council is to take supportive measures that will allow it to retain the skills, knowledge and experience of the employee wherever possible.

When considering supportive measures or adjustments, making assumptions about an employee's disability and how this might impact on their ability to undertake their role should be avoided. Instead, dialogue between the manager and the employee, supported by an HR adviser and the Council's occupational health provider, should take place to gain factual information in relation to the adjustments that may be required in order to allow the employee to effectively fulfil the duties of their role.

7.1 Reasonable Adjustments

Employers have a duty to make 'reasonable adjustments' in order to reduce or remove any substantial disadvantage caused to a person with a disability by providing equipment, making adaptations or employment arrangements.

Failure to make a reasonable adjustment in relation to a person with a disability will constitute unlawful discrimination. This could lead to a costly employment tribunal claim and also damage the reputation of the Council as a fair and reasonable employer.

The nature of the employer's activities and the size of their undertaking can be taken into account when looking at whether it is reasonable for an employer to make an adjustment in relation to a disabled person. In relation to size however, it is likely that Eden District Council would be looked at as a whole rather each department/section being viewed separately.

Examples of the kinds of adjustments that may be considered are:

- Changing working hours;
- Changing work location;
- Allowing absences for rehabilitation;
- Acquiring or modifying equipment;
- Reallocating part of a job.

Adjustments may be required on a temporary or permanent basis.

Many adjustments don't cost anything at all - just a change in attitude, but for others that do involve a cost, the Government Access to Work scheme is likely to be able to help. This includes substantial financial assistance for making reasonable adjustments.

Whilst an employer has a legal duty to make reasonable adjustments, there may be times when suggested changes are unreasonable and it can lawfully refuse to make them. Whether any suggested adjustments are actually reasonable depends on an assessment of factors including:

- are they practical for the employer to make?
- does the employer have the resources to pay for them?

- will they be effective in overcoming or reducing the 'disadvantage' in the workplace?
- will they have an adverse impact on the health and safety of others?

As each situation is likely to be different, it is advisable to contact the HR section for guidance on whether possible adjustments are reasonable. Advice from the Council's occupational health provider may also be gained to provide clarity in this area.

7.2 Disability and Ill Health

Whilst it is not always the case, disability can lead to ill health and, in order to ensure such matters are managed in a fair and consistent manner, the Council has an Absence Management Policy. Please refer to this for further details on this topic.

8. The Role of Human Resources

HR are able to offer advice and information on disability issues concerning current employees and applicants and to ensure that the Council meets its corporate objectives and ensures minimum compliance with employment related disability legislation and good practice. This includes:

- Enabling managers to make informed decisions about employment issues for people with disabilities;
- Providing advice to enable managers to comply with the requirements of the Equality Act;
- Enabling managers to focus on a person's abilities rather than their disability;
- Making every effort to retain employees who become disabled;
- Enabling managers to understand and overcome assumptions and stereotypes which can exist when employing people with disabilities;
- Giving specific advice on recruiting and interviewing people with disabilities;
- Advising managers and staff on appropriate behaviour and language when interacting with people with disabilities;
- Ensuring compliance with the DWP Disability Confident Employer scheme eg ensuring that disabled applicants are guaranteed an interview where they meet the essential criteria of the job specification;
- Providing signposting to advice on 'reasonable adjustments' as specified in the Equality Act:
 - To raise managers' awareness of specialist aids and equipment which may be made available in the workplace;
 - To make managers aware of how to go about adapting buildings and equipment to meet the needs of people with disabilities;
 - To advise managers on alterations to working hours, place of work, job content, practical assessments etc;
 - Allocation of training;

- Supervision.
- Providing information on and negotiating with Jobcentre Plus on Access to Work funding. This is normally used to buy expensive equipment that is deemed to be a reasonable adjustment. The Access to Work fund can also be used to pay for transport to get a disabled employee to and from the workplace;
- Taking action to ensure that all employees develop an appropriate level of disability awareness.

9. The Role of Occupational Health

The role of the Occupational Health Service is to:

- Process pre-employment questionnaires to assess the extent of the effect of any medical conditions whilst also assessing the work environment and work practices to determine whether any reasonable adjustments can be made to accommodate the person's disability;
- Assess whether an employee is likely to meet the definition of having a disability under the Equality Act and provide advice relating to reasonable adjustments;
- Undertake confidential medical enquiries following referrals from the Council where an employee has had a continuous period of ill health or is still attending work and not coping at the same level due to ill health;
- Provide professional advice and recommendations to enable the employee to return to work or to have sustained regular attendance and satisfactory performance at work.

10. Job Centre Plus - Access to Work

Jobcentre Plus provides information and advice to employers to support them in the adoption of good employment policies and practices in the recruitment, retention, training and career development of people with disabilities.

Support is provided through Disability Employment Advisers and Access to Work.

Disability Employment Advisers are employment specialists, who are usually based in Jobcentre Plus offices or Jobcentres and who work in partnership with external organisations of and for people with disabilities.

Access to Work Advisers have specialist knowledge of the Access to Work programme which provides support to people with disabilities and their employers to help overcome work related obstacles associated with disability. The programme might pay towards equipment, adapting premises or a support worker. It can also pay towards the cost of getting to work if the individual is not able to use trains or buses.

Further information can be found on the Gov.uk website:
<https://www.gov.uk/access-to-work>

Access to Work must be contacted by the employee rather than the employer. Employees wishing to explore the help available from Access to Work can call or email the Access to Work team:

Access to Work: atwosu.london@dwp.gsi.gov.uk

Telephone: **0345 268 8489**

Textphone: **0345 608 8753**

When contacting Access to Work, it may be helpful for the employee to have the following information to hand:

- their National Insurance number;
- the workplace address, including postcode;
- the name, email address and work phone number of a workplace contact, for example their manager or the HR team;

Appendix 1

Types of Discrimination

Direct Discrimination

This breaks down into three different types of direct discrimination where someone is treated less favourably than others because of:

- their disability - this is ordinary **direct discrimination**;
- the disability of someone they are associated with, such as a friend, family member or colleague - this is **direct discrimination by association**;
- how they are perceived - that they are believed to have a disability. Regardless of whether this perception is correct or not, this would be **direct discrimination by perception**.

Direct discrimination in all its forms could, for example, involve a decision not to employ someone, to dismiss them, withhold promotion or training, offer poorer terms and conditions or deny contractual benefits because of disability. In almost all circumstances, it cannot be justified and would be unlawful.

Indirect Discrimination

This type of discrimination is usually less obvious than direct discrimination and can often be unintended. In law, it is where a provision, criterion or practice is applied equally to a group of employees/job applicants, but has (or will have) the effect of putting those who share a certain protected characteristic at a particular disadvantage when compared to others in the group, and the employer is unable to justify it.

An employee or job applicant claiming indirect discrimination must show how they have been personally disadvantaged, as well as how the discrimination has or would disadvantage other employees or job candidates with the same protected characteristic.

The Equality Act does not define a 'provision, criterion or practice'. However, in the workplace, the term is most likely to include an employer's policies, procedures, rules and requirements, whether written down or not. Examples might include recruitment selection criteria, contractual benefits, a redundancy scoring matrix or any other work practice.

In some limited circumstances, indirect discrimination may be objectively justified if the employer can prove it is 'a proportionate means of achieving a legitimate aim'.

In attempting to demonstrate 'a proportionate means of achieving a legitimate aim', an employer must show:

- there is a legitimate aim such as a good business reason, however cost alone is unlikely to be considered sufficient **and**
- the actions are proportionate, appropriate and necessary.

Both points apply in justifying 'a proportionate means of achieving a legitimate aim', not just one of them.

An employer should also consider if there is another way to achieve the same aim which would be less discriminatory, and be able to show that it has been fair and reasonable, and looked for a less discriminatory alternative.

The process of determining whether discrimination is justified involves weighing up the employer's need against the discriminatory effect on the employee and group of employees with the protected characteristic - in this case, disability. Employers should scrutinise closely whether any discriminatory act, policy, procedure or rule can really be justified, and whether there is another way of achieving the same aim which would be less discriminatory.

Harassment

Harassment is defined as 'unwanted conduct' and must be related to a relevant protected characteristic - in this case, disability. It must also have the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual. This can include bullying, nicknames, threats, intrusive or inappropriate questions, excluding someone (ignoring, not inviting someone to meetings or events etc) or insults. It can be verbal, written or physical. Also, unwanted jokes and/or gossip which the employee finds offensive can be harassment, and to say they were 'banter' is no defence.

Also, it is possible for an employee to make a complaint of harassment where they are not on the receiving end of the conduct, but witness it and it has a negative impact on their dignity at work or the working environment. The employee making a complaint of harassment in this situation would not need to have the same disability as the colleague who is being harassed, or any disability.

Victimisation

Victimisation is when an employee suffers what the law terms a 'detriment' - something that causes damage, harm, or loss - because of:

- making an allegation of discrimination, and/or
- supporting a complaint of discrimination, and/or
- giving evidence relating to a complaint about discrimination, and/or
- raising a grievance concerning equality or discrimination, and/or
- doing anything else for the purposes of (or in connection with) the Equality Act 2010.

An employee is protected under the Equality Act if they make, or support, an allegation of victimisation in good faith - even if the information or evidence they give proves to be inaccurate. However, an employee is not protected if they give, or support, information or evidence in bad faith - in other words, maliciously.

Discrimination Arising from Disability

The Equality Act also protects an employee from what the law terms 'discrimination arising from disability' - this is where they are treated unfavourably, not because of the disability itself, but because of something linked with their disability. The disabled person claiming this type of discrimination does not have to compare their treatment to how someone else is treated.

Examples of something connected with a disability might include:

- absence from work because of illness;
- problems with movement;
- difficulties with reading, writing, talking, listening or understanding.

Failure to Make Reasonable Adjustments

Failure to make 'reasonable adjustments' is one of the most common types of disability discrimination. A 'reasonable adjustment' is a change or adaptation to the working environment that has the effect of removing or minimising the impact of the individual's impairment in the workplace so they are able to undertake their job duties, or apply for a job, without being at a disadvantage.

Appendix 2

How to Declare your Disability - Self Declaration Form

Eden District Council encourages employees to declare any disability that they may have. In relation to confidentiality, your wishes will be respected except for where information you provide could lead to your health and safety at work, or that of your colleagues, being compromised. In such circumstances a member of the Human Resources team would contact you to discuss any interventions they feel are necessary. This could include making your line manager aware of the measures required to ensure your safety at work or gaining advice from the Council's occupational health provider.

Your Name:	
Your Department:	
Your Job Title:	

Do you consider yourself to have a disability? Yes/No

Details of your disability (optional)

Do you require any adjustments to your post or workplace to make it easier for you to get to work and do your job? Yes/No
(If so, please provide details)

Any other relevant information you feel we should know about your disability:

Would like to be contacted about further support, eg Access to Work, assisting your manager understand responsibilities, guaranteed interviews etc. Yes/No

If you are providing this information on a confidential basis to the HR team only (with the exceptions detailed above regarding health and safety) please tick this box

Please return this form to:
Principal Human Resources Advisor, Town Hall, Penrith, Cumbria CA11 7QF