

# er | 113

DEPARTMENT  
OF HIGHER  
AND FURTHER  
EDUCATION,  
TRAINING &  
EMPLOYMENT

EMPLOYMENT RIGHTS  
FACTS AT A GLANCE FOR SMALL FIRMS

Disability discrimination  
in employment



## DISABILITY DISCRIMINATION IN EMPLOYMENT

*Er/113 provides some basic details of employment law. It does not attempt to describe every detail, and should not be taken as an authoritative statement of the law. More detailed information is provided in the booklets listed below.*

The Disability Discrimination Act 1995 introduces, over a period of time, new laws and measures aimed at ending the discrimination faced by many people with disabilities. It gives disabled people new rights in:

- *employment;*
- *access to goods, facilities and services; and*
- *the management, buying or renting of property.*

The Equality Commission for Northern Ireland has within its responsibility: to work towards the elimination of discrimination against disabled people, to promote the equalisation of opportunities for disabled people, to encourage good practice in the treatment of disabled people, and to keep under review

the working of the Disability Discrimination Act 1995.

Er/113 is concerned with the employment provision aspects of the Disability Discrimination Act 1995, however, some information is given also about the responsibilities of all businesses as service providers.

The Act applies in Great Britain and in Northern Ireland.

### *WHO IS NOT COVERED BY THE EMPLOYMENT PROVISION OF THE ACT?*

- *employers with fewer than 15 (full or part-time employees);*
- *prison officers, firefighters, members of a police force;*
- *employees who work wholly outside Great Britain;*
- *members of the Armed Forces; and*
- *people who work on board ships, aircraft or hovercraft.*

However, businesses employing fewer than 15 employees may wish, as good practice, to ensure that their present employment arrangements do not discriminate against people with disabilities.

### *WHO COUNTS AS AN EMPLOYEE*

### *UNDER THE ACT?*

Anyone employed under a contract of service or apprenticeship is counted as an employee. This includes permanent and temporary workers, whether they work full or part-time. It also includes employees whom the employer hires out to another organisation. These contract workers should also be included in the count of employees of the organisation which hires them, to determine whether the small firms' exemption applies.

### *WHAT IS A DISABILITY?*

The Act defines disability as "a physical or mental impairment which has a substantial and long-term adverse affect on a person's ability to carry out normal day-to-day activities". This definition applies to all the provisions of the Act.

### *WHO ARE DISABLED PEOPLE?*

"Disabled people" are those with a disability as defined in the Act and includes people who have had a disability in the past.

If they continue to meet the Act's definition of disability people who have had a disability, in the past would continue to be regarded as people with a current disability.

The definition of disability in the Act is meant to include people who would generally be considered to be disabled. Therefore, in most cases, there is unlikely to be any doubt whether a person has, or has had, a disability.

### *WHAT DOES DISCRIMINATION MEAN?*

Discrimination occurs when, for a reason related to his or her disability, the disabled person is treated less favourably than other people, and this treatment cannot be justified. It also occurs when an employer fails to comply with a duty to make a reasonable adjustment in relation to the disabled person, and the failure cannot be justified. An employer cannot justify less favourable treatment if, by making a reasonable adjustment, it would remove the reason for the treatment.

### *WHAT ARE "REASONABLE ADJUSTMENTS"?*

A reasonable adjustment is any step(s) that it is reasonable for an employer to take in all the circumstances.

### WHAT DOES “REASONABLE” MEAN?

The Act lists a number of factors which may have a bearing on whether it will be reasonable for the employer to have to make a particular adjustment. These are:

- *the effectiveness of the particular adjustment in preventing the disadvantage;*
- *the practicability of the adjustment;*
- *the financial and other costs of the adjustment and the extent of any disruption caused;*
- *the extent of the employer’s financial and other resources; and*
- *the availability to the employer of financial or other assistance to help make an adjustment.*

Failure to make reasonable adjustment can only be justified if the reason for failing to do so is relevant to the circumstances of the particular case, and substantial.

### WHAT STEPS NEED TO BE TAKEN?

The Act gives several examples of the steps employers may have to take to prevent their arrangements or premises placing people with disabilities at a substantial disadvantage. These are:

- *making adjustments to premises;*
- *allocating some of the disabled person’s duties to another person;*
- *transferring the person to fill an existing vacancy;*
- *altering the person’s working hours;*
- *assigning the person to a different place of work;*
- *allowing absences during working hours for rehabilitation, assessment or treatment;*
- *giving or arranging training for the person;*
- *acquiring or modifying equipment;*
- *modifying instructions or reference manuals;*
- *modifying procedures for testing or assessment;*
- *providing a reader or interpreter;*
- *providing supervision.*

More than one of these steps, or other adjustments, will sometimes have to be taken.

### *WHAT IF A LEASE PROHIBITS ALTERATIONS TO PREMISES?*

If an employer rents premises there may be conditions imposed by the landlord's lease which, for example, state that certain alterations cannot be made. In these circumstances, the employer should write to the landlord asking for permission and explaining that the alteration is needed in order to comply with a duty of reasonable adjustment in connection with the Act. The employer does not have to make the alteration until the landlord has given permission. The landlord must reply to the employer within 21 days or such longer time as is reasonable. The landlord cannot unreasonably withhold consent for an alteration, but it is acceptable to attach reasonable conditions to the consent.

### *DO AN EMPLOYER'S DUTIES APPLY TO ALL AREAS OF EMPLOYMENT?*

Yes. These include:

- *recruitment;*
- *terms and conditions of service;*
- *arrangements made for employees who become disabled (or who have a disability which worsens);*
- *pensions;*

- *dismissal;*
- *opportunities for promotion, transfer, training or receipt of other employment benefits; or refusal of such opportunities.*

### *OTHER PROVISIONS*

The act also has provisions concerning discrimination in relation to occupational pension schemes and group insurance schemes for employees, and discrimination by organisations which hire contract workers.

### *PART III OF THE DDA*

The Act also makes it unlawful for those providing goods, facilities or services to the public and those selling, letting or managing premises to discriminate against disabled people in certain circumstances. There is no exemption for small businesses.

- *since December 1996, it has been unlawful for service providers to treat disabled people less favourably for a reason related to their disability;*
- *since 1 October 1999, service providers have had to make reasonable adjustments for disabled people, such as providing extra help or making changes to the way they provide their services;*

- *from 1 October 2004, service providers will also have to consider making reasonable adjustments to the physical features of their premises to overcome physical barriers to access.*

### MAKING A COMPLAINT.

People with disabilities who believe they have been the subject of discrimination in employment matters or consider a reasonable adjustment has not been made, may make a complaint to an Industrial Tribunal.

*(Complaints about discrimination in other fields within the Act are dealt with by the civil courts.)* Complaints to an Industrial Tribunal must be made within **3 months** from when the discrimination took place. The Labour Relations Agency (LRA) has a statutory duty to conciliate in these complaints. The telephone number of the LRA's headquarters office in Belfast is (028) 9032 1442, and it's district office in Londonderry is (028) 7126 9639. Conciliation is free, voluntary, and attempts, through discussion, to help the parties to a dispute reach their own agreement. If there is no resolution through conciliation or withdrawal by the applicant, then the complaint will proceed to a tribunal hearing.

Where a complaint is upheld, an Industrial Tribunal may then:

Declare the rights of the parties involved;

Order the respondent to pay compensation to the claimant;

Recommend that the respondent (for example, an employer) may take reasonable action, within a specified time, to prevent or reduce the adverse effect on the complainant (for example, a person with a disability) of the discrimination or failure to make an adjustment.

### WHERE CAN I GET FURTHER INFORMATION?

The Equality Unit  
OFMDFM  
Room E318  
Castle Buildings  
Stormont  
Tel: 028 9052 3289

### Free leaflets

A range of free leaflets and more general further information about the Act can be obtained from the Equality Commission for Northern Ireland, Andras House, 60 Great Victoria Street, Belfast BT2 7BB. Information and Advice and also be obtained from the Disability Advisory Service, Adelaide House, 39-49 Adelaide Belfast; and Disability Action, 2 Annadale Avenue, Belfast BT7 3JH.







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Published by the DEPARTMENT OF HIGHER AND FURTHER EDUCATION, TRAINING & EMPLOYMENT  
27/03/01