



## Guidance For Managers Complying with the Disability Discrimination Act

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## Disability Discrimination Act Guidance For Managers

### Introduction

The Disability Discrimination Act 1995 (Amendment) Regulations (NI) 2004, states that an employer has a statutory duty to make reasonable adjustments to prevent their practices or arrangements discriminating against persons with a disability/ long term condition.

This document highlights the University's commitment to ensuring equal treatment for persons with a disability/long term condition and explains the impact the Disability Discrimination Act (Amended) Regulations (NI) 2004 has on employment and illustrates working examples of complying with the Act.

*The University does not unlawfully discriminate against an existing employee or applicant with a disability/long term health condition and will make reasonable adjustments to seek to overcome any arrangements or physical features that:*

- *Make it difficult to access employment,*
- *Prevent an applicant with a disability from taking up employment,*
- *Affect the person's ability to stay in employment.*

### Definition of a Disability

The Act defines a disability as 'a **physical or mental impairment**, which has a **substantial** and **long-term** adverse effect on a person's ability to carry out normal **day to day activities**'.

An **impairment** includes a sensory impairment, learning disability or mental illness.

A **substantial** adverse effect renders the person unable to carry out an activity or to carry it out without great difficulty.

A **long-term** effect has lasted or is likely to last for at least 12 months or is likely to recur at least once beyond a 12-month period.

A **day to day activity**, there is no definitive list and each case must be considered individually. The definition is very wide and, depending on the nature, severity and the effect on **normal day-to-day activities** it may include, people with:

- Sensory impairments (vision and hearing);
- Heart conditions;
- Musculoskeletal conditions, affecting the limbs, hands,
- Back or neck;
- Recurring or fluctuating conditions, such as arthritis;
- Mental health problems such as diagnosed depression;
- Epilepsy;
- Asthma;
- Dyslexia;

The Act also covers severe disfigurements, progressive conditions, past disabilities and impairments treated with medications or aids.

Progressive conditions that are likely to change and develop over time are covered by the Act from the moment that the condition leads to an impairment that has some effect, however slight on the ability to carry out normal day-to-day activities. Examples given in the Act are cancer, multiple sclerosis, muscular dystrophy and HIV infection.

### **Conditions Not Covered by the Act**

There are certain conditions such as substance abuse including, alcoholism and nicotine abuse that are not covered by the Act. Whilst addiction to or dependency on substances are not covered, conditions relating to or stemming from these (such as clinical depression, or certain types of liver disease) may mean that the person does meet the definition of a disability.

### **What Happens if Medication or Other Treatment Reduces or Removes the Effects?**

The 'effects' are those, which would be present if there was no medication or treatment-taking place (with the exception of spectacles/contact lenses). For example, a person who is an insulin dependant diabetic, meets the definition of disability because without the insulin there would be a substantial adverse effect on normal day-to-day activities.

## **What is Discrimination?**

The Act makes it unlawful for employers to discriminate on the grounds of disability.

Discrimination occurs when there is **unjustifiable less favourable treatment** towards a person with a disability/long term health condition and the treatment is for a **reason relating to the person's disability**, where this treatment **cannot be justified** or there is a **failure to make a reasonable adjustment**. **Victimisation** is also an unlawful form of discrimination and occurs when someone is treated less favourably because they have complained of disability discrimination or have assisted someone else to do so.

## **Employers' Negative Attitudes & Misconceptions**

Many of the barriers that people with a disability face are created by negative attitudes and misconceptions. The Act makes it unlawful for the University to discriminate on the grounds of disability and includes the following areas:

- Recruitment and Selection.
- Terms and Conditions of Employment.
- Promotion and Transfer.
- Training and Development including arrangements for Induction.
- Pay /Performance Related Pay
- Occupational Pension Schemes.
- Dismissal Process.
- Access to Buildings.
- Harassment.
- Sickness Policies and Procedures.

## **Non-disabled people**

Non-disabled people do not have rights under the DDA (except if victimised) and cannot complain that they have received less professional treatment than a disabled person.

## **Duties and Responsibilities**

### **Employees**

All staff have a responsibility to ensure a working environment in which the dignity of other employees is respected. Staff should be aware of the impact of their own behaviour and attitudes and they must ensure that their own behaviour could not be considered in any way to be offensive. Employees must be sensitive to any adjustments that may be required to allow colleagues to continue in their role.

Employees have an individual and collective responsibility for ensuring that aids and equipment provided under the Act are maintained and all faults reported.

### **Manager**

It is the responsibility of line managers in the first instance to ensure that an employee with a disability is not subject to discrimination. The line manager may be the first person to become aware that an employee has a disability. It is imperative, therefore, that managers understand the Act and how it impacts on their responsibilities to staff.

The actions and decisions of managers will help ensure that a person with a disability is not treated unfairly, less favourably, or discriminated against.

Managers need to establish the specific effects of a person's impairment upon their ability to do their job and should take into account the available advice and guidance from the relevant people including, the employee, Occupational Health Department, Safety Services and the Diversity and Inclusion Unit.

Managers should consult the employee concerned, and if appropriate, carry out a risk assessment and seek further advice via the Occupational Health from the individual's GP or consultant.

## **Human Resources Business Partner**

The Human Resources Business Partner can help provide support and guidance to employees and managers when dealing with a disability issue.

## **Occupational Health**

The Occupational Health Department is one of the sources of support and medical advice for the employee and their manager, when dealing with a disability issue.

A manager may refer an employee, via their Human Resources Business Partner, to Occupational Health if an employee is experiencing difficulties in carry out their work role or is returning to work following a disability related absence.

Occupational Health will assess and advise both the Human Resources Business Partner, line manager and employee on adjustments that can be introduced to enable the employee to continue in their work.

They will advise on:

- functional ability;
- reasonable adjustment to enable safe working;
- work-relatedness;
- trends for recovery;
- prognosis – likelihood and timescale for return to work; and
- relevant legal obligations.

## **Diversity and Inclusion Unit**

The University has a Diversity and Inclusion Unit that can advise staff and management on compliance with the Disability Discrimination Act, the University's Disability Action Plan and practical issues around support for reasonable adjustments and equality of access to employment opportunities etc. As part of its statutory reporting process the Diversity and Inclusion unit assists with Equality screening of policies and procedures, analysis of pay and practices (with reference to Disability) and reports on issues and positive action measures both internally and externally to ECNI.

## **Safety Services**

The University Safety Services offers advice on all aspects of health and safety at work and provides a wide range of safety services.

## **What are Reasonable Adjustments?**

The Act says that discrimination occurs when an employer fails to comply with a duty of reasonable adjustment in relation to a disabled person.

Reasonable adjustments are practical ways to remove certain disadvantages faced by a person with a disability and help them to contribute fully to the workforce. The Act says that the duty to make reasonable adjustments applies where any physical feature of the employer's premises, or any practices, policies or criteria made by the employer, place a disabled person at a substantial disadvantage compared with a non-disabled person.

Failing to make reasonable adjustments is discrimination/ less favourable treatment that can never be justified.

## **Health and Safety**

The University is not required to do anything under the Act that would result in a breach of any other statutory obligations including health and safety.

There is not likely to be any discrepancy between the Act and the Health and Safety at Work (NI) Order 1978. Indeed it is often the case that where a reasonable adjustment for the employment of a person with a disability is made, any health and safety risk can be significantly reduced.

## **Managing Misconduct**

While it is important to ensure that an employee with a disability is not discriminated or unfairly treated in the workplace a manager has a duty to address inappropriate conduct of all staff regardless of differences.



## **Reasonable Adjustments at Recruitment and Selection**

In recruitment and selection it is unlawful to discriminate against a person with a disability in the arrangements for deciding who should get the job.

## **Job Description and Recruitment Criteria**

The job description should accurately reflect the duties and responsibilities of the job and the personal specification must only contain criteria which is job related.

An employer is entitled to specify that applicants must have certain qualifications. However the employer will have to demonstrate that the qualifications or experience applied are essential and that no adjustments could be made to accommodate the applicant with a disability.

For example, do all employees within an office environment need to answer the phone, lift heavy objects or climb stairs?

If the recruitment criteria requires an applicant to have a certain qualification or skill which is not essential to fulfil a particular role, this may be discriminatory.

For example, stipulating that a job which requires minimal travel i.e. an office based job needs an applicant to have a driving licence is discriminating against a visually impaired person instead, if a driving licence is essential it would be reasonable for the criteria to specify:

- As part of the essential criteria you will be required to hold a full current driving licence and have access to a car. This criteria will be waived in the case of an applicant whose disability prohibits driving but who is able to demonstrate the effectiveness of alternative transport arrangements. Reasonable financial assistance will be provided.

## **Disclosure of Disability on Application Form**

Application forms contain a question on disability and responses to this question need to be followed up prior to interview. Where an applicant has indicated on the application form that they have a disability, the People and Culture Directorate (Resourcing) will contact the applicant and arrange along with the Diversity and Inclusion Unit for the appropriate adjustments to be put in place.

Adjustments could include:

- A sign language interpreter at interview.
- Extended time to prepare a presentation.
- Interviews conducted in an accessible venue.
- Parking provided near the interview location.

## **Interviews**

It is necessary to prepare in advance for interviews. Applicants are given the opportunity to indicate in advance if they have a disability and suggest adjustments to help overcome the disadvantage. The Chair should be aware of the situation and the panel members should be briefed on the situation.

It is important not to make assumptions about what a person with a disability can and cannot do. The majority of people with a disability need little or no special support for an interview and their disability may be irrelevant to their ability to do this job.

Interviews should be specific, examining the skills; training, experience and ability of the interviewees and questions should not be focused on the details of the applicant's disability.

## **Offering a Position**

Where an applicant with a disability is successful in a post, the individual will be invited to discuss his/her employment needs with the Line Manager and Occupational Health Provider before starting to ensure relevant adjustments are made. The Line Manager will liaise with the relevant departments including People and Culture, HR Business Partner, Safety Services and the Diversity and Inclusion Unit regarding the provisions that need to be made.

## **Making Reasonable Adjustments in Employment**

It is the duty of the employer to take such steps as is reasonable to prevent the arrangements or features of the workplace putting a disabled person at a substantial disadvantage.

### **Examples of Reasonable Adjustments include:**

#### **Making Adjustments to the Work Environment**

For example, altering the height of a computer workstation so that an employee with a neck injury can work without aggravating the injury.

Providing a stair lift to enable a wheelchair user to remain part of the team and enable them to get to their office on an upper floor or relocate them to a ground floor office.

#### **Re-allocation of Duties**

Re-allocating some of the duties carried out by the person with a disability to another employee. For example a person with arthritis may find filing or photocopying difficult. A possible reasonable adjustment might be to reallocate these duties to another member of staff.

## **Job Transfer**

For example, an employee who is unable to drive could be reallocated to a desk job or any other role where they are not required to drive but for which they meet the essential criteria for the post. In these circumstances an employee does not need to undergo the interview process. However, redeployment should only take place when there are no more reasonable adjustments that can be made to an employee's existing role. Every effort should be made to retain the employee in that role.

## **Altering Hours of Work**

For example, an employee suffers from panic attacks when in stressful situations and finds it particularly stressful to travel in heavy traffic. The University, could change the employee's hours of work, to ensure they do not have to travel in heavy traffic.

## **Assigning an Employee to a Different Place of Work**

For example, this may include moving the employee to a different lab, or a different building depending on the nature of their disability.

## **Time Off for Rehabilitation, Assessment or Treatment**

For example, an employee who is undertaking a course of treatment for cancer should be allowed to attend the hospital during working hours. It may also be appropriate to adjust the hours of duty so that they do not always coincide with appointments.

Time off for rehabilitation should not be recorded as sickness.

## **Providing Training**

This may be linked to one of the other reasonable adjustments made for the employee.

For example, an employee who has been allocated to an existing vacancy may require training to help them carry out that role.

Alternatively an employee who has been provided with a piece of equipment, for example voice recognition software, may also need to be trained in how to use it.

Refresher training may be necessary if the employee returns to work after a long period of absence.

A visually impaired person attending computer training may require the computer to have speech output software.

### **Acquiring or Modifying Equipment**

For example, an employee who has dyslexia may benefit from voice-activated software, a spell checker or a Dictaphone to help record minutes or reports.

## **Modifying Instructions or Reference Manuals**

For example, an employee with dyslexia may require their daily tasks to be repeated slowly in order for them to write them out, or they may require them to be provided in a written format by the line manager.

For example, an employee, suffering from a degenerative eye condition that leads to a sight-disability may benefit from the employer providing written materials in an enlarged format.

## **Providing Supervision**

For example, an employee who returns to work following a period of absence due to a disability such as depression may need additional guidance and supervision especially in the short term to help them recover their skills and confidence.

This list is not intended to be a comprehensive list of examples. There will be situations where adjustments can be made which do not fall under any of the above headings. The important point is to consider the requirements of the individual (which are best identified by consulting the employee concerned) in line with the needs of the service.

The Act lists a number of factors, which may have a bearing on whether it will be reasonable for the University 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 adjustments and the extent of any disruption caused.

## **Who Should Be Told About a Person's Disability?**

In some cases, a reasonable adjustment will not work without the co-operation of other employees. It may be necessary to tell other employees of a person's disability (**in confidence**). **However**, a manager should not disclose any information about a person without consulting with them first.

## **Confidentiality**

The Act does not prevent a person with a disability keeping the disability confidential from an employer. This is likely to mean that unless the employer could reasonably be expected to know about the person's disability anyway, the employer will not be under a duty to make a reasonable adjustment.

## **Positive Discrimination**

Unlike other discrimination legislation the Act allows employers to treat applicants and employees with a disability more favourably than non-disabled people. Employers must make all reasonable adjustments necessary to enable a person with a disability compete on an equal basis with a non-disabled person and thus provide equality of opportunity. However the act does not require the employer to do anything that would result in a breach of other statutory obligations.

## **When a Disability Changes or Becomes More Severe**

It is important to remember that someone's disability may not remain static. Changes or deterioration may occur over time. The effectiveness of adjustments will need to be monitored and changes made as appropriate. Where the employee has a progressive condition it will be necessary to consider the effects of this on the person's future employment, and you should consult the person at regular stages to assess their needs and how these may be changing.

## **Recording Absence**

It is the managers responsibility to keep up-to-date and accurate records of all employee's periods of sickness. A manager should record absences related to an individual's disability as this will help determine if further adjustments are required to assist the employee within the workplace.



If an employee is absent from work due to their disability the period of absence should not be used against the employee within a disciplinary or capability case. Managers have the right to treat other periods of sickness in accordance with the University's [Sickness Absence Procedure](#).

### **Ending Employment**

Ending the employment of a disabled person for a reason related to their disability must be justified. This would include showing that all reasonable adjustments and redeployment options had been fully exhausted before this conclusion was reached. It is vital to consider the diversity of the work roles within the University and ensure that all options have been fully considered.

## **Appendix 1**

### **Steps To Take Regarding Applicants With A Disability**

#### **Step 1**

If applicant has stated on their application form that they require assistance to attend interview, ensure that the reasonable adjustments are in place i.e. interpreter, loop system, wheelchair access etc.

#### **Step 2**

If applicant is successful at interview, refer to Occupational Health for pre-employment medical assessment [as standard for all potential employees].

#### **Step 3**

Where reasonable adjustments are required, a meeting should be arranged between, People and Culture, Line Manager and the new employee. This meeting will determine the necessary reasonable adjustments.

#### **Step 4**

If necessary, the new employee and People and Culture will meet with the Disability Employment Service to further discuss reasonable adjustments to the workplace.

## **Appendix 2**

### **Steps To Take If An Employee Develops A Disability**

#### **Step 1**

Refer employee to the Occupational Health Provider, via the Human Resources Business Partner, who will advise if the condition falls within the definition of the Act. Occupational Health will also advise:

- [a] If a reasonable adjustment can be made within the employees workplace;
- [b] If is it necessary to investigate redeployment opportunities;
- [c] If retirement on ill health grounds is appropriate.

#### **Step 3**

People and Culture should meet with the employee to determine course of action. It may be necessary to contact EFDNI or the Disablement Advisory Service located at the Training and Employment Agency, Gloucester House, who offer a range of practical and financial help to assist disabled people.

#### **Step 4**

If it is determined by and the Disablement Advisory Service that the most appropriate reasonable adjustment is redeployment – assess the extent of the individual's qualifications or relevant.

#### **Step 5**

Contact Resourcing to determine any suitable vacancies/redeployment opportunities. The HR Business Partner will add the employee to the Redeployment Portal.  
NB: It is important to remember that a post cannot be created to accommodate a member of staff with a disability.

#### **Step 6**

Once a suitable vacancy has been determined, employees should meet with the appropriate manager and HR Business Partner to investigate the need for any further reasonable adjustments in the workplace.