GUIDANCE

What equality law means for you as an employer: dismissal, redundancy, retirement and after a worker has left

Equality Act 2010
Guidance for employers
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Equality and Human Rights Commission

www.equalityhumanrights.com

Contents

Introduction

This guide is one of a series written by the Equality and Human Rights Commission to explain what you must do to meet the requirements of equality law. These guides will support the introduction of the Equality Act 2010. This Act brings together lots of different equality laws, many of which we have had for a long time. By doing this, the Act makes equality law simpler and easier to understand.

There are seven guides giving advice on your responsibilities under equality law as someone who has other people working for you whether they are employees or in another legal relationship to you. The guides look at the following work situations:

1. When you recruit someone to work for you
2. Working hours and time off
3. Pay and benefits
4. Career development – training, development, promotion and transfer
5. Managing people
6. Dismissal, redundancy, retirement and after someone's left
7. Good practice: equality policies, equality training and monitoring

Other guides and alternative formats

We have also produced:

- A separate series of guides which explain what equality law means for you if you are providing services, carrying out public functions or running an association.
- Different guides for individual people who are working or using services and who want to know their rights to equality.

If you require this guide in an alternative format and/or language please contact us to discuss your needs. Contact details are available at the end of the publication.

The legal status of this guidance

This guidance applies to England, Scotland and Wales. It has been aligned with the Codes of Practice on Employment and on Equal Pay. Following this guidance should have the same effect as following the Codes. In other words, if a person or an organisation who has duties under the Equality Act 2010s provisions on employment and other work situations does what this guidance says they must do, it may help them to avoid an adverse decision by a court in proceedings brought under the Equality Act 2010.

This guide is based on equality law as it is at April 2014. Any future changes in the law will be reflected in further editions.

1 | What equality law means for you as an employer: dismissal, redundancy, retirement and after a worker has left

What's in this guide

If you are an employer, and you are making a decision, or taking action following a decision, to dismiss a worker or make a worker redundant, or regarding what you do after someone has stopped working for you (for example, if you are asked for a reference), equality law applies to you.

Equality law applies:

- whatever the size of your organisation
- whatever sector you work in
- whether you have one worker or 10 or hundreds or thousands
- whether or not you use any formal processes or forms to help you make decisions (although sometimes the law says you must follow a formal process and that some things have to be done in writing).

This guide tells you how you can avoid all the different types of unlawful discrimination. It recognises that smaller and larger employers may operate with different levels of formality, but makes it clear how equality law applies to everyone, and what this means for the way you (and anyone who already works for you) must do things.

This guide covers the following situations and subjects (we explain any unusual words as we go along):

- Dismissing a worker, whether that is for misconduct or because they can no longer do their job
- Making a worker redundant when their job is no longer needed
- Retiring a worker, provided retirement can be objectively justified
- Dealing with someone who used to work for you, for example if you are asked for a reference

What else is in this guide

This guide also contains the following sections, which are similar in each guide in the series, and contain information you are likely to need to understand what we tell you about making decisions about dismissal, redundancy, retirement and what happens after a worker's left:

- Information about when you are responsible for what other people do, such as your employees.
- Information about making reasonable adjustments to remove barriers for disabled people who work for you or apply for a job with you.
- Advice on what to do if someone says they've been discriminated against.
- A list of words and key ideas you need to understand this guide – all words highlighted in bold are in this list. They are highlighted the first time they are used in each section. Exceptions to this are where we think it may be particularly useful for you to check a word or phrase.
- Information on where to find more advice and support.

Throughout the text, we give you some ideas on what you can do if you want to follow equality good practice. While good practice may mean doing more than equality law says you must do, many employers find it useful in recruiting talented people to their workforce and managing them well so they want to stay, which can save you money in the long run. Sometimes equality law itself doesn't tell you exactly how to do what it says you must do, and you can use our good practice tips to help you.

Making sure you know what equality law says you must do as an employer

Are you an employer?

This guide calls you an **employer** if you are the person making decisions about what happens in a **work situation**. Most situations are covered, even if you don't give your worker a written **contract of employment** or if they are a **contract worker** rather than an employee. Other types of worker such as **trainees, apprentices** and **business partners** are also covered. If you are not sure, check under 'work situation' in the List of words and key ideas. Sometimes, equality law only applies to particular types of worker, such as employees, and we make it clear if this is the case.

Protected characteristics

Make sure you know what is meant by:

- **age**
- **disability**
- **gender reassignment**
- **marriage and civil partnership**
- **pregnancy and maternity**
- **race**
- **religion or belief**
- **sex**
- **sexual orientation.**

These are known as **protected characteristics**.

What is unlawful discrimination?

Unlawful discrimination can take a number of different forms:

- You must not treat a person worse than someone else just because of a protected characteristic (this is called direct discrimination).

For example:

- An employer selects a woman for redundancy because she is pregnant.
- An employer uses the excuse of persistent lateness to dismiss a gay man because he is gay; a straight man who has the same pattern of lateness is not dismissed.

- In the case of women who are **pregnant** or on **maternity leave**, the test is not whether the woman is treated worse than someone else, but whether she is treated **unfavourably** from the time she tells you she is pregnant to the end of her maternity leave (equality law calls this the **protected period**) because of her pregnancy or a related illness or because of maternity leave.
- You must not do something to someone in a way that has a worse impact on them and other people who share a particular protected characteristic than it has on people who do not have the same characteristic. Unless you can show that what you have done, or intend to do, is **objectively justified**, this will be **indirect discrimination**. 'Doing something' can include making a decision, or applying a rule or way of doing things.

For example:

An employer has a policy of providing references for former employees which simply state length of service and the number of days they were absent from work regardless of the reason. If the employer cannot objectively justify this approach, it is likely to be indirect discrimination against former employees who were absent because of protected characteristics, as it has a worse impact on them and others who share the same characteristics.

- You must not treat a disabled person **unfavourably** because of something connected to their disability where you cannot show that what you are doing is **objectively justified**. This only applies if you know or could reasonably have been expected to know that the person is a disabled person. The required knowledge is of the facts of the worker's disability but an employer does not also need to realise that those particular facts are likely to meet the legal definition of disability This is called **discrimination arising from disability**.

For example:

A small beauty products company employs a receptionist who is in an accident, as a result of which when she returns to work she has a severe facial disfigurement. Clients of the company make remarks about this and suggest she is unsuitable for this outward-facing role. The company considers dismissing her because of the amount of time other staff spend explaining her situation and how this makes them feel. However, when considering the decision, they realise that the dismissal would be for a reason connected to her disability (the attitude of clients and the impact on the other staff). Instead, the company keeps her in post and trains other staff to challenge the negative attitudes displayed by visitors.

Whilst the company may have considered whether they could objectively justify dismissing her, instead it decides to retain a valued employee and avoid the prospect of a claim for discrimination arising from disability.

- You must not treat a person worse than someone else because they are **associated with** a person who has a protected characteristic.

For example:

An employer selects a person for redundancy not because they meet the selection criteria, but simply because they have a disabled child and the employer believes they may need time off to care for their child.

- You must not treat a person worse than someone else because you incorrectly think they have a protected characteristic (**perception**).

For example:

An employer makes a member of staff redundant because they incorrectly think they have a progressive condition which is likely to be considered a disability. This is almost certainly direct discrimination because of disability based on perception.

- You must not treat a person badly or **victimise** them because they have complained about discrimination or helped someone else complain or done anything to uphold their own or someone else's equality law rights.

For example:

An employee complains of discrimination and a colleague goes to their Employment Tribunal to give them support, although they do not give evidence. The colleague is subsequently selected for redundancy because the employer resents their support for the original employee. This is almost certainly victimisation. This would also apply if the colleague had given evidence in the case.

This also includes dismissing someone or selecting them for redundancy or discriminating against them after they've stopped working for you because they have discussed whether they are paid differently because of a protected characteristic.

For example:

A woman thinks she is underpaid compared with a male colleague because of her sex. She asks him what he is paid, and he tells her, even though his contract forbids him from disclosing his pay to other staff. The employer takes disciplinary action against the man as a result and dismisses him. This would be treated as victimisation.

If this applies to you, you can read more about this in the Equality and Human Rights Commission guide: *What equality law means for you as an employer: pay and benefits.*

- You must not **harass** a person.

For example:

A shopkeeper propositions one of his shop assistants, she rejects his advances and is then selected for redundancy which she believes would not have happened if she had accepted her boss's advances. This is likely to be harassment.

In addition, to make sure that disabled people have the same access, as far as is reasonable, to everything that is involved in getting and doing a job as a non-disabled person, you must make **reasonable adjustments**.

For example:

- An employer is considering dismissing an employee who happens to be a disabled person with a visual impairment. It is likely to be a reasonable adjustment for the employer to make sure that the information the person needs about the disciplinary procedure is available to them by checking what format they need the documents to be in.

- A disabled person has a learning disability and their employer agrees, as a reasonable adjustment, that they can be accompanied to a disciplinary hearing by a support worker as well as by their union representative.

You must make reasonable adjustments to what you do as well as the way that you do it.

For example:

A disabled person has a spinal condition that causes them severe pain. One day, the person shouts at their employer. This is completely out of character, and is because of the pain they are experiencing. Usually, this would lead to an employee being considered for disciplinary action. However, their employer knows about the person's disability and, as a reasonable adjustment, operates a higher threshold before considering their behaviour to be unacceptable. (They have also encouraged the disabled person to be open with colleagues about their condition so that other staff understand the reason for the difference in treatment). This does not mean that the disabled person can behave as they like; the employer only has to make reasonable adjustments, so if their behaviour is unacceptably bad, the employer still has the option of disciplinary action. If this was the case, although the disciplinary action might amount to treating the disabled person unfavourably for something arising from their disability (their short temper), the employer would probably be able to **objectively justify** their approach.

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 3.

You must not discriminate, harass or victimise a person even after your employment relationship with them ends if what you are doing arises out of and is closely connected to the employment relationship that you have had with them.

For example:

A worker is selected for redundancy and they believe that they were selected because of their race. They bring a claim for race discrimination at the Employment Tribunal. Their employer receives a request for a reference from a new employer and provides a bad reference because the worker has made a claim of race discrimination. This will be unlawful victimisation.

The public sector equality duties

Public sector employers and other employers who carry out public functions on behalf of public authorities may have to have what the law calls ‘due regard’ to the need to eliminate the types of conduct which are prohibited under the Equality Act discussed in this guide, and to advance equality of opportunity and foster good relations between people who have particular protected characteristics and people who don’t. This is called the ‘public sector equality duty’. This applies to all protected characteristics except that in the case of marriage and civil partnership (where a body should take all reasonable steps to prevent discrimination occurring in order to avoid liability for discriminatory conduct by its employees or agents).

Some public authorities are also subject to what are known as specific equality duties. These require those public authorities to which they apply to take specific steps which are designed to enable them to better perform the public sector equality duty. They include steps relating to their role as employers, like monitoring information about employees. These specific duties are different in England, Scotland and Wales. The public sector equality duties extend to equal pay.

In addition, public sector employers will be required to comply with the Human Rights Act 1998 and their employees may have rights against them under the Act.

Further information about the public sector equality duties and the Human Rights Act is available from the Commission.

Situations where equality law is different

Sometimes there are situations where equality law applies differently. This guide refers to these as **exceptions**.

There are several exceptions which relate to dismissal or redundancy and which apply to any employer:

- Age criteria,
- Occupational requirements,
- Obeying another law, and
- National security.

There are two exceptions which relate to dismissal, redundancy or retirement and which apply only to some employers or jobs:

- Having or not having a particular religion or belief, which applies only to **religion or belief organisations**, and

- Having or not having a particular protected characteristic, which applies only to **organised religions** or jobs for the purpose of an organised religion.

This guide only lists the exceptions that apply to dismissal, redundancy or retirement. There are other exceptions, which apply in other situations, for example, when you are recruiting someone to do a job.

As well as these exceptions, equality law allows you to treat a disabled person better – or **more favourably** – than a non-disabled person. This recognises that disabled people face a lot of barriers to participating in work and other activities.

Age criteria

Age is different from other protected characteristics. If you can show that it is **objectively justified**, you can make a decision based on someone's age.

However, there are only limited circumstances in which direct age discrimination will be objectively justified.

To show that something is **objectively justified**, you must be able to show that there is a good reason for doing what you are doing and that what you are doing is **proportionate**.

The test is not quite the same as for **indirect discrimination**. This is because for indirect discrimination you are allowed to rely on any reason for wanting to make a decision or apply a rule provided it represents a real objective consideration and it is **proportionate**.

When what you are doing is **direct** age discrimination you are only allowed to rely on a limited number of reasons. These are generally those that would be in the wider public interest, like promoting access to employment for younger people, or preserving the dignity of older workers as opposed to reasons particular to your business. Even if you have a good reason, your actions must still be **proportionate**.

Be careful not to use stereotypes about a person's age to make a judgment about their fitness or ability to do a job.

This guide explains when you can make redundancy payments based on someone's age, and the limited circumstances where it may be objectively justifiable to require an employee to retire because they have reached a particular age.

Occupational requirements

If you can show that a particular protected characteristic is central to a particular job, you can insist that only someone who has that particular protected characteristic is suitable for the job. This is known as an 'occupational requirement'. There are specific provisions in relation to religious organisations, which are considered below.

If you have appointed a person using an occupational requirement and they no longer have that particular protected characteristic, equality law allows you to dismiss them without this being unlawful discrimination.

Obeying another law

You can usually take into account a protected characteristic where not doing this would mean you broke another law. For example, if the law said that a person had to be a particular age to do something and you discovered that they were not that age, you could dismiss them without this being unlawful discrimination.

National security

You can take a person's protected characteristic into account if there is a need to safeguard national security, and the discrimination is proportionate.

Having a particular religion or belief if you are a religion or belief organisation

If you are a **religion or belief organisation**, you may be able to say that a job requires a person doing the job to hold a particular religion or belief if, having regard to the nature or context of the job, this is an occupational requirement and it is **objectively justified**. You could then dismiss the person if they no longer held that religion or belief without this being unlawful discrimination.

For example:

A Humanist organisation which promotes humanist philosophy and principles would probably be able to apply an occupational requirement for its chief executive to be a Humanist. If the chief executive stopped being a Humanist, the organisation could dismiss them without this being unlawful discrimination.

Having or not having a particular protected characteristic if you are an organised religion or if a job is for the purposes of an organised religion

If:

- a job or role exists for the purposes of an organised religion, such as being a Minister or otherwise promoting or representing the religion, and
- because of the nature or context of the employment, it is necessary to avoid conflict with the strongly held religious convictions of a significant number of the religion's followers or to conform to the doctrines of the religion by applying a requirement to the job or role,

you may be able to dismiss a person because:

- They are male or female (if the requirements of the post change bringing it within the exception).
- They are a transsexual person
  - they marry or enter in to a civil partnership, including taking into account who they are married to or in a civil partnership with (such as someone who marries a divorced person whose former spouse is still alive)
  - they manifest a particular sexual orientation, for example, a gay or lesbian or bisexual person who is in a relationship with a same sex partner.

The requirement must be crucial to the job or role, and not merely one of several important factors. The job or role must be closely related to the purposes of the religion and the application of the requirement must be proportionate.

Good practice tips on using exceptions

If someone disagrees with you and brings an Employment Tribunal claim, you may need to show why you thought an exception applied. When you're making the decision:

- Look at the exceptions to see if they might apply to your situation or organisation.
- If you decide an exception does apply, keep a note of why you decided this.
- Tell people which exception you are using, for example, in any information you give workers about what you are doing.

Public Sector Equality Duty and Human Rights

Public sector employers must have what the law calls 'due regard' to the need to eliminate the types of conduct which are prohibited under the Equality Act 2010 discussed in this guide and to advance equality of opportunity and foster good relations between those who have particular protected characteristics and those who don't. This is called the 'public sector equality duty'. Other bodies, who carry out public functions on behalf of public authorities, also have to comply with the public sector equality duty, in relation to those particular functions.

The three aims of the duty apply to all protected characteristics apart from marriage and civil partnership, which is only relevant to the first aim (eliminating discrimination). Thus a body subject to the duty must have due regard to the need to eliminate discrimination where it is prohibited under the Equality Act 2010 because of marriage or civil partnership in the context of employment.

In addition, public sector employers will be required to comply with the Human Rights Act 1998 and their employees may have rights against them under the Act.

Further information about the public sector equality duties and the Human Rights Act is available from the Equality and Human Rights Commission.

What's next in this guide

The next part of this guide tells you more about how you can avoid all the different types of unlawful discrimination in the following situations:

- Dismissing a worker, whether that is for misconduct or because they can no longer do their job
- Making a worker redundant when their job is no longer needed
- Retiring a worker, provided retirement can be objectively justified
- Dealing with someone who used to work for you, for example if you are asked for a reference

Avoiding unlawful discrimination when dismissing a worker

First, use the information earlier in this guide to make sure you know what equality law says you must do as an employer.

This section looks at three issues:

- Reasons and procedures
- Making sure you are not discriminating unlawfully in dismissing a disabled person
- Dismissing a disabled person because they can no longer do the job

Fair and unfair dismissal

This guide only tells you about equality law. There are other laws which you need to follow to make sure a dismissal is fair. You can find out more about these from Acas, whose contact details are in *'Further sources of information and advice'*. Following the procedures to make sure a dismissal is fair will also help you avoid unlawful discrimination.

Reasons and procedures

You must avoid unlawful discrimination in the reasons for doing something and the way that you do it.

Make sure that your reasons for dismissing someone do not amount to unlawful discrimination.

Make sure that the disciplinary procedures you follow are not unlawfully discriminating either.

For example:

An employer tells a worker they are going to hold a disciplinary hearing with a view to dismissing them for misconduct. The date and time are set for a day which happens to be a religious holiday for the religion the worker holds. Unless the employer can **objectively justify** insisting on the hearing on that day (which the worker may well be unable to attend), this is likely to be **indirect discrimination** because of religion or belief.

There is more information about avoiding unlawful discrimination in disciplinary procedures in the Equality and Human Rights Commission guide: *What equality law means for you as an employer: managing workers.*

Making sure you are not discriminating unlawfully in dismissing a disabled person

There are extra steps you need to take before you dismiss someone who is a disabled person. This is because you must consider not only whether you are **discriminating directly** or **indirectly** because of a person's disability, but also:

- You must not treat a disabled person **unfavourably** because of something connected to their disability where you cannot show that what you are doing is **objectively justified**. This is known as **discrimination arising from disability**. This only applies if you know or could **reasonably** be expected to know that the person is a disabled person. Remember, you do not have to **know** that the

person is disabled as defined by the Equality Act 2010, only that they have an impairment which is likely to meet the definition.

- If a worker is a disabled person, you must make **reasonable adjustments** if these are needed to remove barriers the person faces in doing their job. What this means is that you must first consider what adjustments would remove the barriers for the worker and second, if they are reasonable adjustments, you must make them. Would a reasonable adjustment remove the reason you are considering dismissing that worker?

For example:

A disabled person is being considered for disciplinary action which might lead to dismissal because of their persistent lateness. Their employer should find out whether their lateness is connected to their disability. There may be a poor frequency of accessible buses. Or it could be because the person's condition is very painful in the morning so that getting to work on time is difficult for them. If the employer dismisses the worker and cannot **objectively justify** what they have done, this could be discrimination arising from disability. The answer to this may well be for the employer to consider if there are any changes they could make which would be reasonable adjustments. The employer could look at varying their starting time rather than dismissing them. If they continued to be late even with an adjusted start time the employer may of course still wish to consider disciplinary action.

Dismissing a disabled person because they can no longer do the job

You must be particularly careful to avoid unlawful discrimination if the reason why you believe you need to dismiss someone who is a disabled person is because they can no longer do the job, for example, because they have been absent from work.

Although in this situation, the term 'medical retirement' may be used, or 'retirement on ill- health grounds', what this means in reality is that a person is leaving work because they are considered incapable of doing their job for a reason related to their health, and there are benefits for them in retiring, such as a pension.

If you and your worker genuinely agree that they should leave, then it is unlikely you will face a claim for unlawful discrimination.

If there is no agreement, for example, because your employee does not want to leave, or they see a prospect of returning to work, then you must make sure that you:

- consider if there are reasonable adjustments which would mean they could return to work and continue to work for you (even if not in exactly the same job), and

- make sure you are not treating them unfavourably because of something connected to their disability, such as a need for regular breaks, if you cannot **objectively justify** your approach.

What this means in practice

Before you consider making someone leave because of disability you should have thoroughly explored all other options to make reasonable adjustments to keep them at work.

This includes looking at any changes you could make to your working arrangements, or the physical features of your workplace, or whether you can provide additional equipment.

For example:

A worker is finding working full-time difficult because of increasing fatigue. The employer considers whether it is reasonable to let them work part-time rather than automatically considering them for early medical retirement.

If the impact of a person's impairment is becoming more severe for them but this is not impacting on their ability to do their job then this should not be part of a decision about whether they continue to work for you.

However, if an impairment is making it harder for a disabled person to do their job, then the first step you must take is to consider what reasonable adjustments could be put in place to keep them at work.

If you do not look at reasonable adjustments, then requiring someone to stop working for you may be unlawful disability discrimination.

Reasonable adjustments to consider

Reasonable adjustments will vary according to the situation and the person's particular needs. However, things to consider could include:

- A phased return to work if someone has been off for a long while.
- Part-time or flexible hours if someone is finding full-time working difficult.
- Changes to premises, such as installing a ramp, improving signs, or moving someone's desk nearer essential office equipment.
- Provision of additional equipment, such as specific computer software or hardware if this is relevant to their job.

- Additional support (for example, a part-time reader for someone who has a visual impairment to help manage the volume of written information which they have to get through).
- Reassigning some elements of their job to another member of staff or transferring them to another role in your organisation.

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 3, including how to work out what is reasonable and how the government-run Access to Work scheme may be able to help.

Taking advice

In appropriate cases, as well as discussing it with the worker themselves, you may wish to consider seeking expert advice on the extent of someone's capabilities and on what might be done to change premises or working arrangements. There are organisations that specialise in working with employers and their staff to help retain disabled workers through working out what adjustments could be made and whether they are reasonable. Further details about these organisations are given in Part 5 of this Guide.

However, you should be cautious about relying on medical advice alone to assess someone's situation. A health professional may not be aware that employers have a duty to make reasonable adjustments, what these adjustments might be, or of the relevant working arrangements.

When it may be appropriate for someone to leave

If after consideration of:

- the impact of a person's disability on the job
- any reasonable adjustments
- discussions with the person themselves, and
- (where appropriate) expert advice

it is not possible for someone to continue at work, then it may be appropriate for the person to leave.

Avoiding unlawful discrimination when making redundancy decisions

Making redundancies is one of the most difficult situations any employer can face.

First, use the information earlier in this guide to make sure you know what equality law says you must do as an employer.

This section looks how you can make sure you are not discriminating unlawfully in selecting people for redundancy, and in particular:

- Redundancy procedures and criteria
- Which jobs are in the selection pool?
- Deciding on the matrix factors and how you score against them
  - Length of service
  - Absence record and working hours
  - Training and qualifications
- Avoiding unlawful discrimination against disabled people
- Maternity leave and suitable alternative employment
- Age and redundancy payments

Redundancy procedures and criteria

Making sure a redundancy dismissal is fair

This guide only tells you about equality law. There are other laws which you need to follow to make sure a redundancy dismissal is fair. You can find out more about these from Acas, whose contact details are in 'Further sources of information and advice'. Following the procedures to make sure a redundancy dismissal is fair will also help you avoid unlawful discrimination.

Make sure that the redundancy procedures you follow and the criteria you use do not unlawfully discriminate either. Remember that in the case of disabled people, failing to make reasonable adjustments, including adjustments to redundancy criteria and procedures, is a form of unlawful discrimination.

This applies whether you are seeking volunteers for redundancy or making compulsory redundancies.

However, it is possible to make redundancy payments based on age and there is more information about this on page 25.

Which jobs are in the selection pool?

Which jobs do you need to select from? In other words, what is the pool from which you will be making your selection?

Are you, for instance, stopping a particular service or production line or closing a geographical location?

If you are not selecting everyone in a particular category of workers, such as everyone in a particular place or doing a particular job which will no longer be needed, you must make sure that your pool selection does not discriminate unlawfully.

For example:

An organisation is facing budget cuts and decides to reduce the size of its marketing team. There are four people in the team (one man and three women) and the employer decides to put just the two people who work part-time, who are both women, into the pool for redundancy, believing that their earnings are less important to them than to those people who work full-time, who are more likely to be 'breadwinners'. Because women are more likely to work part-time, this approach will be indirectly discriminatory (having a worse impact on the two part-timers who are women and on other women than it does on men) unless the employer can **objectively justify** what they have done. An approach which would be less likely to discriminate unlawfully would be to put everyone in the marketing department into the pool.

Deciding on the matrix factors and how you score against them

Once you have decided on your pool, you still need to make sure that you think through the consequences of using particular criteria for selection for redundancy from the chosen pool. If you don't do this, you might still end up discriminating unlawfully.

Good practice tips for avoiding unlawful discrimination

- Use a selection matrix containing a number of separate selection criteria rather than just one selection criterion, to reduce the risk of any possible discriminatory impact.
- Consult your recognised trade union if you have one.
- Make sure that you – or anyone who scores employees against the criteria – have been trained on how to avoid unlawful discrimination.

We look at the following criteria in more detail, because they are criteria where you may be more at risk of discriminating unlawfully. In each case, whether there is unlawful discrimination will depend on there being a link between the impact of the criterion and the protected characteristic of the person being made redundant:

- Length of service
- Absence record and working hours
- Training and qualifications

Length of service

It is possible to use a length of service criterion for selecting people for redundancy but only in certain circumstances:

- A criterion like this needs to be used cautiously because it could indirectly discriminate.

For example:

If there are people in the pool who would end up being selected in greater numbers because a length of service criterion has been applied, such as:

- younger people who will not have built up as long an employment record
- women, who often have more interrupted careers, or
- disabled people, whose disability may have interrupted their career

for then using this criterion might be discriminatory.

- Length of service should only be one of the factors you consider when selecting people for redundancy.
- As one of several selection criteria, it will probably be lawful (in the sense that it is likely to be objectively justified direct age discrimination) if you are using it with the aim of, for example:

  - respecting loyalty and protecting older workers who may find it more difficult to re-enter employment, or
  - retaining experience
- and you can show:
  - that length of service is a **proportionate** way of achieving your aim
  - why your aim could not be achieved in another way that doesn't disadvantage the selected workers to the same extent.

Depending on the size and nature of the pool for redundancy selection, you should use additional criteria based on other factors to make sure that you are selecting in a way that does not discriminate.

Absence record and working hours

If you use workers' absence record or working hours to select people for redundancy, you must be careful to avoid direct or indirect discrimination.

For example:

- If a woman is selected because of her absence on maternity leave or because of pregnancy-related illness, this will almost always be direct discrimination because of pregnancy or maternity.
- If a disabled person is selected because they have needed time off or because they work flexibly for a reason connected to their disability, this risks being **discrimination arising from disability** unless the employer can **objectively justify** using this criterion.

This means you need to consider which absences you will include if you are using attendance record as one of your criteria. Use only those which could apply to everyone regardless of their protected characteristics. This has implications for how absence is recorded, which is explained in the Equality and Human Rights Commission guide: What equality law means for you as an employer: working hours and time off.

Training and qualifications

The appropriateness of using qualifications to select people for redundancy will vary according to the situation. If you have two individuals working in similar roles, but one has an additional relevant qualification which adds to their ability to do the job, deciding to make the less well-qualified person redundant is unlikely to discriminate unlawfully.

You can also say that a person must have a particular qualification if that qualification is an essential requirement for the job that cannot be met by experience or further training.

However, if you use qualifications which are not especially relevant or define the qualifications too narrowly without thinking through the consequences, you may find you are unlawfully discriminating if the use of those qualifications would have a worse impact on people who share a protected characteristic and you cannot objectively justify this. For example, choosing to make redundant just those employees with a qualification from a non-British university.

Avoiding unlawful discrimination against disabled people

There are particular requirements when you are considering a redundancy situation to make sure that disabled people are not being placed at a disadvantage for reasons relating to their disability. Where necessary, you must make **reasonable adjustments** to the criteria and process.

If an employee in the pool is a disabled person, and you knew or could reasonably have been expected to have known this, you must not treat them unfavourably because of something connected to their disability unless you can show that what you are doing is **objectively justified**.

For example:

An employer knows that one of their employees is a disabled person. They select employees from the pool on the basis of absence over the past two years. The disabled person has taken a lot of time off work in relation to their disability (the time off being ‘something connected with the disability’). If the employer cannot objectively justify this decision, it is likely to be discrimination arising from disability. A better approach would be for the employer to exclude disability-related absence from the absence which is used to score employees against that criterion (this would probably also be a reasonable adjustment, which we look at next).

In addition, if an employee in the pool is a disabled person, you must make ‘reasonable adjustments’ if these are needed to remove barriers the person faces which a non- disabled person would not face. What this means is that you must first consider what adjustments would remove the barriers for the worker and second, if they are reasonable adjustments, you must make them.

For example:

A manufacturer is making some employees redundant. One of the criteria for redundancy is whether someone can operate every machine on the employer's production line. A disabled person cannot operate one of the machines because of the nature of their impairment. The employer decides it is a reasonable adjustment to the criterion to adjust the employee's mark so as to ignore the absence of that machine, so they score the same as a worker who has operated that machine to a satisfactory standard.

Remember, you only need to make changes to the criteria if the employee needs these to overcome a **substantial disadvantage**. You should look at each of the criteria in turn and how the disabled person is scored against them, making adjustments to each of them where necessary. You are only required to do what is reasonable.

You also need to ensure that any disabled person being considered for redundancy or who wishes to apply for voluntary redundancy does not face a disadvantage in obtaining information, being made aware of the procedure or receiving communications about the redundancy.

For example:

A worker has a learning disability and the employer is offering voluntary redundancy. The employer provides the worker with the information in Easy Read formats and makes sure that someone suitable spends time explaining the options to the worker.

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 3, including how to work out what is reasonable.

Maternity leave and suitable alternative employment

Where during a redundancy exercise alternative jobs are available in your organisation or with an associated employer, you should make sure these are offered to potentially redundant employees using criteria which do not unlawfully discriminate.

The situation is different if any of the potentially redundant employees is a woman on maternity leave.

In this situation, she does not have to go through selection against the criteria for filling a vacant post.

Instead, you must offer her any suitable available job with you, your successor (if your organisation is being taken over or passed onto another organisation), or any associated employer.

The offer must be of a new contract to come into effect as soon as the previous contract ends and must be such that:

- the work is suitable and appropriate for her to do, and
- the capacity, place of employment and other terms and conditions are not substantially less favourable than under the previous contract.

For example:

A company decides to combine its head office and regional teams and create a 'centre of excellence' in the location where the head office already is. A new organisation structure is drawn up which involves some head count reductions. The company intends that all employees should have the opportunity to apply for posts in the new structure. Those unsuccessful at interview will be made redundant. At the time this is implemented, one of the existing members of the head office team is on ordinary maternity leave. As such, she has a prior right to be offered a suitable available vacancy in the new organisation without having to go through the competitive interview process.

Age and redundancy payments

Even though they are on the face of it indirect discrimination because of age (since younger employees are likely to lose out, since they will find it harder to build up the longer service), you are allowed to make enhanced redundancy payments based on length of service without having to objectively justify this, so long as they are calculated in the same way as statutory redundancy payments.

For example:

- An employer operates a redundancy scheme which provides enhanced redundancy payments based on employees' actual weekly pay, instead of the (lower) maximum set out in the statutory redundancy scheme. Equality law allows this.
- Using the statutory redundancy scheme formula and the scheme's maximum weekly wage, another employer calculates every employee's redundancy entitlement, then applies a multiple of two to the total. Equality law allows this too.

If you have your own contractual redundancy scheme that uses age or length of service in a different way, in other words, is not related to the statutory redundancy scheme, this may be unlawful discrimination unless you can **objectively justify** what you are doing.

If you think this may apply to you, then you need to take further advice. You can find more about where to get further information and advice later in this guide.

Managing retirement

There is now no default retirement age. This means that in most cases, workers can now retire when they are ready rather than when their employer decides. It is direct age discrimination to require or persuade a worker to retire because of their age unless you can **objectively justify** doing so.

To show that something is **objectively justified**, you must be able to show that there is a good reason for doing what you are doing and that what you are doing is **proportionate**.

The test is not quite the same as for **indirect discrimination**. This is because for indirect discrimination you are allowed to rely on any reason for wanting to make a decision or apply a rule provided it represents a real, objective consideration and it is **proportionate**.

When what you are doing is **direct** age discrimination, you are only allowed to rely on a limited number of reasons. These are generally those that would be in the wider public interest, like promoting access to employment for younger people or preserving the dignity of older workers, as opposed to reasons particular to your business. Even if you have such a reason, your actions must still be **proportionate**.

Retirement age is not necessarily the same as pension age – the age when a person becomes entitled to their pension. Equality law does not affect the age at which someone gets the state retirement pension. Neither does equality law affect the age at which a person can receive any occupational pension, which is decided by the rules of the pension scheme. Some workers may continue working beyond the age when they become entitled to a pension.

This part of the guidance considers the following:

- What is a legitimate aim?
- Is setting a retirement age proportionate?
- Discriminatory retirement because of other protected characteristics
- Good practice in managing an older workforce

Retirement and age discrimination

It is direct age discrimination to require or persuade a worker to retire because of their age unless you can **objectively justify** doing so. It is important to avoid making general assumptions about an individual person's capability and job performance at any particular age. This applies whether you are setting a general retirement age for all workers in a particular job (often known as a 'Normal Retirement Age') or choosing to retire an individual at a particular age.

In removing the general default retirement age in 2011, the government said that no one should be deprived of the opportunity to work simply because they have reached a particular age. In most circumstances, it will not be objectively justifiable for you to set your own retirement age instead. To objectively justify doing so, you would need to be able to produce convincing evidence to show, in relation to the particular job:

1. That you have a clearly identified, legitimate aim; and
2. that the policy of setting a retirement age is a **proportionate** way of achieving that aim, and the actual age chosen for retirement is also proportionate.

There will only be a very limited number of circumstances in which you will be able to show that a decision to retire a person because of their age is a proportionate way of achieving a legitimate aim.

What is a legitimate aim?

This depends on the nature of your business and the jobs involved. Legitimate aims for having a retirement age are generally those that are in the wider public interest, rather than reasons specific to an employer's business such as cost-reduction or improving competitiveness.

Legitimate aims might include:

- maintaining health and safety standards. For this to be a legitimate aim, there needs to be a real health and safety concern, based on a proper assessment of risk, and not an imagined one. The risk must relate to a specific activity and must also be at a higher level than the level of risk which normally exists in everyday life.
- in limited circumstances, providing sufficient opportunities for promotion, thereby encouraging staff to stay. This is sometimes known as 'inter-generational fairness'. This will only be a legitimate aim if there is evidence of a genuine problem caused by promotion opportunities for workers (of any age group) being blocked by older workers not retiring – for example, in small organisations genuinely operating on a fixed budget. If sufficient promotion opportunities for a

specific type of post already arise from normal staff turnover, this would not be a legitimate aim.

- facilitating workforce planning (that is, ensuring you have the personnel in place to meet your future business objectives), so that there are realistic expectations as to when certain vacancies will arise. This is only likely to be a legitimate aim in a small minority of organisations. You would have to be able to demonstrate that, given the nature of your organisation, you cannot properly achieve your business aims without advance information about future vacancies.
- Maintaining the dignity of older workers. For example, limiting the need to expel older workers for competence related reasons and thereby preserving a culture of collegiate support and respect.

It will be for you as an employer to demonstrate, with evidence, that the aim is genuinely legitimate.

Is setting a retirement age proportionate?

Even if you can establish a legitimate aim, you would need to show that it is proportionate

- to set a retirement age at all
- to set it at the particular age you have chosen.

This applies whether you have set a 'Normal Retirement Age' or are seeking to dismiss a particular worker because of their age. In the case of a Normal Retirement Age, this is the age at which workers in the same kind of job within an organisation are usually made to retire. It might not be the same as the retirement age set out in the workers' contract of employment, if in practice you require them to retire at a different age.

Remember, there is no longer a default retirement age. You cannot therefore simply rely on the fact that the default retirement age used to be 65 but consider what age, if any, would be proportionate in the particular context of your workforce.

First, you should be able to demonstrate that there are no less discriminatory alternatives to having a compulsory retirement age. For instance, even where an employer can demonstrate a legitimate aim of workforce planning in relation to distribution of workers in different jobs and promotion paths, in organisations where there is a reasonably high turnover of staff imposing a retirement age will not be a proportionate means of achieving this aim. Workers come and go for all kinds of reasons and it is likely to be disproportionate to attribute workforce planning difficulties or promotion blockages to lack of a retirement age, except in limited

circumstances. For example, in very small organisations with a majority of long-serving workers, there may occasionally be situations where promotion blockages genuinely need to be resolved in order to retain specialist staff for particular jobs.

In considering whether a retirement policy is objectively justified, you cannot rely on assumptions and generalisations: you need to be able to produce evidence. Remember that the means of achieving your aim will not be proportionate if the same aim can be achieved in a less discriminatory way.

A bus company imposes a retirement age of 72 on their bus drivers. They have a legitimate aim, that of ensuring the health and safety of passengers. However, the retirement age may not be proportionate if regular medical and performance tests for individual drivers would provide a less discriminatory way of avoiding the risk of sudden incapacity. To show that it is proportionate to have a compulsory retirement age, the employer would need evidence that this approach is the least discriminatory way of dealing effectively with the health and safety risks they have identified.

Second, even if you are confident that having a retirement age for certain jobs in the organisation is a proportionate approach, you must then carefully select the age of retirement to make sure that it discriminates to the least degree possible.

A sports authority decides that the referees it employs must retire at the age of 48 in order to ensure they are of high quality and maintain performance standards. Although this aim is legitimate, the imposition of a retirement age is unlikely to be proportionate. This is because quality can be tested on an individual basis by annual fitness tests and ongoing performance assessments which all referees have to undergo in any event. The authority has no evidence that performance or fitness drops off at 48. Even if having a retirement age were an appropriate means of achieving the authority's aim, in these circumstances choosing the age of 48 is unlikely to be proportionate.

Acas has produced guidance for employers, *'Working without the default retirement age'* (available at www.acas.org.uk/media/pdf/d/4/Working_wtihout_the_DRA_Employer_guidance_-_MARCH_2011.pdf. It discusses issues surrounding planning ahead and performance management of older workers.

Discriminatory retirement because of other protected characteristics

Even if you are able to justify setting a retirement age so that it does not amount to age discrimination, you must still avoid discriminating against people because of other protected characteristics. For example, you must not allow men to work longer

than women or select someone for retirement because they have a disability.

The information elsewhere in this guide tells you more about unlawful discrimination and how to avoid it.

Good practice in managing an older workforce

Managing performance

You need to be careful not to make assumptions that workers' performance will deteriorate as they get older. Research shows that older workers' productivity does not usually decline at least up to the age of 70 where the same level of training is provided as for younger workers.

If you do have evidence for concerns about the performance of an older worker, you should treat them in the same way that you would treat any younger worker whose performance was giving you concern. It is discriminatory to fail to address performance concerns because you are making assumptions that older workers will be leaving soon. It is also discriminatory to be harder on older workers than others, for example because you would like to encourage them to leave or because you are making assumptions about their capacity to improve. Any performance management system you have should be fair for all your workers.

With physically demanding jobs, it is especially important to have good health and safety procedures and safeguards in place to protect workers of all ages. For older manual workers with jobs that are physically demanding, it may be a good idea to have periodic medical checks to address any health and safety concerns about their ability to continue in that role. If a manual worker is having difficulties performing their job, it may be possible to offer them a transfer to a less physically demanding role – possibly a non-manual job.

Where there are no suitable alternative roles, you should use your normal procedures for addressing concerns about a worker's capability.

Developmental and training needs and future plans

You should not make assumptions about workers' developmental or training needs based on their age. In particular, do not assume that older workers would resist training in new areas. You should discuss older workers' needs and aspirations with them just as you would with other workers. As with workers of all ages, it is good practice to ask them what form of training they would prefer, for example one-to-one on the job, in a group session or self-taught on computer.

It is also good practice to have a formal time, for example in an annual appraisal, when each worker can discuss their future plans and aspirations. Older workers should not be excluded from this opportunity. You can initiate a discussion about a worker's future plans provided you raise this in a neutral way and do not treat anyone less favourably because of their reply. These days, many workers of all ages would

like the chance to work flexibly or reduce hours. Having a flexible working policy that applies to everyone is good practice and avoids the risk of discrimination.

But it would be discriminatory for you to assume that an older worker wants to reduce their hours, or for you to pressurise an older worker into working shorter hours. It is also important that older workers are able to explore options with you in conversation without being pressurised subsequently to reduce hours just because they mentioned it as a possibility.

Sickness

A worked aged 65 or over who is absent through short or long-term sickness should be treated in the same way as any younger worker. If a worker is on long-term sickness absence, you should consult with them and obtain informed medical advice as to when they might be able to return, or any adjustments to the workplace which would enable them to return earlier.

Insured benefits

You are allowed to stop offering group insured benefits, for example private medical cover or life assurance, to workers who have reached the age of 65 (or any older state pension age) even if they carry on working for you – provided this does not breach their contract of employment.

After someone has left a job

Sometimes your responsibilities as an employer continue after someone has stopped working for you and you must still not discriminate unlawfully against them, harass them or **victimise** them.

For example:

When a worker is dismissed, they are told they can come in the next week to clear their desk and collect their belongings. That night, the worker sends an email to their employer saying they believe they were dismissed because they are black. The employer is upset about the allegation of race discrimination and tells the employee that they cannot after all come in to collect their belongings. This is likely to be victimisation.

Avoiding unlawful discrimination when giving references

Giving references more generally

This guide only tells you about equality law. There are other laws which you need to follow when doing references, for example, laws relating to negligence or defamation. You can find out more about these from Acas, whose contact details in 'Further sources of information and advice'.

The most likely area where you will have contact with someone who used to work for you is if they (or their prospective new employer) ask you to give them a reference.

You must not:

- refuse to give a reference at all, or
- give a bad reference

because of a protected characteristic or if refusing to give a reference would count as **victimisation**.

For example:

A worker's former employer refuses to give them a reference because they supported someone else's claim for sexual harassment. This would almost certainly be victimisation.

It does not matter how long ago the person worked for you, as long as the worker could show that any unlawful discrimination arises out of and is closely connected to the previous employment relationship.

If someone is still working for you when they ask for a reference in order to change jobs, this is still part of their employment, and you must not unlawfully discriminate against them, just as in every other work situation.

Must I supply someone with a reference?

In general, there is no legal requirement for you to provide someone with a reference, provided your policy on providing references (or not providing them) is applied without unlawfully discriminating against anyone. However, if someone's employment contract says that references will be provided then you must provide one.

Be aware that in sectors where workers are subject to special rules (such as finance) and cannot get a job without a reference, the courts have said that there is an implied term in the contract that employers will provide one.

If you do give references, they must not include comments about the person's characteristic (or in the case of disability, comments about something connected with the person's disability) that might be unlawfully discriminatory.

The same rules apply to telephone and other verbal references.

Good practice tip on giving references

- If you express an opinion in a reference (as opposed to stating a fact) make sure it is not unlawfully discriminatory.
- Don't supply sensitive data, for example, on sickness absence, unless permission to do this has been given in writing explicitly by the worker. However, be aware that simply giving information about someone's total number of days' absence in a specific period does not breach the Data Protection Act 1998.

You should not refer to absence which is not sickness absence if it is related to a protected characteristic and telling the person's new employer about it would breach their confidentiality – for example, maternity leave, disability leave or gender reassignment leave, all of which this guide suggests you should record separately from sickness absence.

A worker can give you explicit permission to disclose information if they wish you to – for example, they may want their new employer to know the reason for a period of absence. But you must not do this without permission.

Can I give someone a bad reference if they have a poor work record?

If, regardless of someone's protected characteristics, the reference would have been bad, then you are of course entitled to do this and you should resist attempts to make you change it.

However, if you have given someone an undeserved bad reference in circumstances which make this **unlawful discrimination**, they are entitled to ask you to change what you have said. If you do not do this, they may be able to bring an Employment Tribunal case against you.

Confidentiality

- Be aware that the person you are writing about may read what you have written, and make sure it is factually correct and not unlawfully discriminatory. The worker may see it because the person's new employer gives them a copy. Even if you have provided a reference 'in confidence', the new employer may decide that they should give it to the worker to comply with **data protection** rules. Usually, they will contact you to ask whether you object to the reference being disclosed,

but even if you do object, they can still give your reference to the worker if they believe the worker's interest in seeing what has been written outweighs your interest in having it treated confidentially.

- If someone does not get a job, or has a job offer withdrawn, and they believe that this is because you provided a discriminatory reference, they can currently ask to see a copy using the **questions procedure.** Although the questions procedure was abolished on 6 April 2014 you can still be asked for information by someone bringing a claim. You can read more about this in Chapter 4 'What to do if someone says they've been discriminated against'.

2 | When you are responsible for what other people do

As an **employer** or in another **work situation**, it is not just how you personally behave that matters.

If another person who is:

- employed by you, or
- carrying out your instructions to do something (who the law calls your agent) does something that is **unlawful discrimination**, **harassment** or **victimisation**, you can be held legally responsible for what they have done.

This part of the guide explains:

- When you can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation
- How you can reduce the risk that you will be held legally responsible
- How you can make sure your employees and agents know how equality law applies to what they are doing
- When your employees or agents may be personally liable
- What happens if the discrimination is done by a person who is not a worker of yours or your agent
- What happens if a person instructs someone else to do something that is against equality law
- What happens if a person helps someone else to do something that is against equality law
- What happens if you try to stop equality law applying to a situation

When you can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation

As an employer, you are legally responsible for acts of discrimination, harassment and victimisation carried out by your **employees** in the course of their employment.

You are also legally responsible as the 'principal' for the acts of your **agents** done with your authority. Your agent is someone you have instructed to do something on your behalf, but who is not an employee, even if you do not have a formal contract with them.

As long as:

- your employee was acting in the course of their employment – in other words, while they were doing their job, or
- your agent was acting within the general scope of your authority – in other words, while they were carrying out your instructions

it does not matter whether or not you:

- knew about or
- approved of

what your employee or agent did.

For example:

- A shopkeeper goes abroad for three months and leaves an employee in charge of the shop. This employee harasses a colleague with a learning disability, by constantly criticising how they do their work. The colleague leaves the job as a result of this unwanted conduct. This could amount to harassment related to disability and the shopkeeper could be responsible for the actions of their employee.
- An employer engages a head-hunter to work in-house to recruit a team of senior management. The head-hunter weeds out applications from women of child bearing age. This is almost certainly unlawful sex discrimination. Both the employer and the head-hunter (who is the employer's agent) would be legally responsible for the discrimination, except that the employer can show that they told the head-hunter to comply with equality law. This means that the authority given to the head-hunter as agent did not extend to acting in a discriminatory way, the agent acted outside the scope of the employer's authority and only the agent is liable for the discrimination.

However, you will not be held legally responsible if you can show that:

- you took **all reasonable steps** to stop an employee acting unlawfully.
- an agent acted outside the scope of your authority (in other words, that they did something so different from what you asked them to do that they could no longer be thought of as acting on your behalf).

How you can reduce the risk that you will be held legally responsible

You can reduce the risk that you will be held legally responsible for the behaviour of the people who work for you if you tell them how to behave so that they avoid unlawful discrimination, harassment or victimisation.

This does not just apply to situations where you and your staff are dealing face-to-face with other people in a work situation, but also to how you plan what happens.

When you or your employees or agents are planning what happens to people in a work situation, you need to make sure that your decisions, rules or ways of doing things are not:

- **Direct discrimination,** or
- **Indirect discrimination** that you cannot **objectively justify**, or
- **Discrimination arising from disability** that you cannot **objectively justify**, or
- **Harassment**

and that you have made **reasonable adjustments** for any disabled people who are working for you or applying for a job with you or in another work situation you are in charge of.

So it is important to make sure that your employees and agents know how equality law applies to what they are doing.

How you can make sure your employees and agents know how equality law applies to what they are doing

Tell your employees and agents what equality law says about how they must and must not behave while they are working for you.

Below are some examples of reasonable steps you can take to prevent unlawful discrimination or harassment happening in your workplace:

- telling your employees and agents when they start working for you – and checking from time to time that they remember what you told them, for example, by seeing if/how it has made a difference to how they behave. This could be a very simple checklist you talk them through, or you could give them this guide, or you could arrange for them to have **equality training**
- writing down the standards of behaviour you expect in an **equality policy**
- including a requirement about behaving in line with equality law in every worker's **terms of employment** or other contract, and making it clear that breaches of equality law will be treated as disciplinary matters or breaches of contract.

You can read more about equality training and equality policies in the Equality and Human Rights Commission guide: *Good equality practice for employers: equality policies, equality training and monitoring*.

Using written terms of employment for employees

Employment law says you must, as an employer, give every employee a written statement of the main terms of their employment. So you could include a sentence in these written terms that tells the person working for you they must meet the requirements of equality law, making it clear that a failure to do so will be a disciplinary offence.

Obviously, if you do this, it is important that you also tell the employee what it means. You could use an equality policy to do this, or you could just discuss it with them, or you could give them this guide to read. But it is important that they are clear on what equality law says they must and must not do, or you may be held legally responsible for what they do.

Remember, if the employee is a disabled person, it may be a reasonable adjustment to give them the information in a way that they can understand.

If you receive a complaint claiming unlawful discrimination by one of your employees or someone else in a work situation you are in charge of, you can use the written terms to show that you have taken a reasonable step to prevent unlawful

discrimination and harassment occurring. You may need to consider if other steps would also be reasonable, such as providing training.

If someone does complain, you should investigate what has taken place and, if appropriate, you may need to discipline the person who has unlawfully discriminated against or harassed someone else, give them an informal or formal warning, or provide training; the action you take will obviously vary according to the nature of the breach and how serious it was.

If you do find that an employee has unlawfully discriminated against someone else in a work situation, then look again at what you are telling your staff to make sure they know what equality law means for how they behave towards the people they are working with.

You can read more about what to do if someone says they've been discriminated against in Chapter 4.

Good practice tip for how you and your staff should behave

Ideally, you want anyone who works for you to treat everyone they come across with dignity and respect. This will help you provide a good working environment (not just without discriminating but more generally) and can make your workers more productive.

If your staff do unlawfully discriminate against their fellow workers or others in a work situation, your reputation may suffer even if the person on the receiving end does not bring a legal case against you.

When your employees or agents may be personally liable

Your employee or agent may be personally responsible for their own acts of discrimination, harassment or victimisation carried out during their employment or while acting with your authority. This applies where either:

- you are also liable as their employer or principal, or
- you would be responsible but you show that:
  - you took **all reasonable steps** to prevent your employee discriminating against, harassing or victimising someone, or
  - that your agent acted outside the scope of your authority.

For example:

A factory worker racially harasses their colleague. The employer would be liable for the worker's actions, but is able to show that they took all reasonable steps to stop the harassment. The colleague can still claim compensation against the factory worker in an Employment Tribunal.

But there is an exception to this. An employee or agent will not be responsible if their employer or principal has told them that there is nothing wrong with what they are doing and the employee or agent **reasonably** believes this to be true.

It is a criminal offence, punishable by a fine, for an employer or principal to make a false statement which an employee or agent relies upon to carry out an unlawful act.

What happens if the discrimination is done by a person who is not a worker of yours or your agent

Usually you will not be responsible for discrimination, harassment or victimisation by someone who does not work for you or is not your agent. However, case law indicates that it is possible you could be found to be legally responsible for failing to take action in specific circumstances. These would arise where you have some degree of control over a situation where there is a continuing course of offensive conduct of which you are aware but do not take action to prevent its recurrence..

For example:

A woman is employed by you to work in a hostel for young men aged between 18 and 21. Some of the young men regularly make sexually abusive comments to her and sometimes touch her inappropriately. She has complained to her manager about this many times but he has done nothing to stop it, by warning the young men that the conduct is unacceptable and that they might be required to leave the hostel if it does not stop. The employer might be legally responsible for the harassment by the young men.

What happens if a person instructs someone else to do something that is against equality law

An employer or principal must not instruct, cause or induce their employee or agent to discriminate against, harass or victimise another person, or to attempt to do so.

'Causing' or 'inducing' someone to do something can include situations where someone is made to do something or persuaded to do it, even if they were not directly instructed to do it.

Both:

- the person who receives the instruction or is caused or induced to discriminate against, harass or victimise, and
- the person who is on the receiving end of the discrimination, harassment or victimization have a claim against the person giving the instructions if they suffer loss or harm as a result of the instructing or causing or inducing of the discrimination, harassment or victimisation.

This applies whether or not the instruction is actually carried out.

What happens if a person helps someone else to do something that is against equality law

A person must not help someone else carry out an act which the person helping knows is unlawful under equality law.

However, if the person helping has been told by the person they help that the act is lawful and he or she **reasonably** believes this to be true, he or she will not be legally responsible.

It is a criminal offence, punishable by a fine, to make a false statement which another person relies on to help to carry out an unlawful act.

What happens if you try to stop equality law applying to a situation

You cannot stop equality law applying to a situation if it does in fact apply. For example, there is no point in making a statement in a contract of employment that equality law does not apply. The statement will not have any legal effect. That is, it will not be possible to enforce or rely on a term in a contract that tries to do this. This is the case even if the other person has stated they have understood the term and/or they have agreed to it.

For example:

- A worker's contract includes a term saying that they cannot bring a claim in an Employment Tribunal. Their employer sexually harasses them. The term in their contract does not stop them bringing a claim for sexual harassment in the Employment Tribunal.
- A business partner's partnership agreement contains a term that says 'equality law does not apply to this agreement'. The partner develops a visual impairment and needs reasonable adjustments to remove barriers to their continuing to do their job. The other partners instead ask them to resign from the partnership. The partner can still bring a claim in the Employment Tribunal for a failure to make reasonable adjustments and unlawful disability discrimination.
- An applicant for a job is told 'equality law does not apply to this business, it is too small'. She still agrees to go to work there. When she becomes pregnant, she is dismissed. She can still bring a claim in the Employment Tribunal for pregnancy discrimination.

3 | The duty to make reasonable adjustments to remove barriers for disabled people

Equality law recognises that bringing about equality for disabled people may mean changing the way in which employment is structured, the removal of physical barriers and/or providing extra support for a disabled worker.

This is the **duty to make reasonable adjustments**.

The duty to make reasonable adjustments aims to make sure that a disabled person has the same access to everything that is involved in getting and doing a job as a non-disabled person.

When the duty arises, you are under a positive and proactive duty to take steps to remove or reduce or prevent the obstacles a disabled worker or job applicant faces.

Many of the adjustments you can make will not be particularly expensive, and you are not required to do more than what is reasonable for you to do. What is reasonable for you to do depends, among other factors, on the size and nature of your organisation.

If, however, you do nothing, and a disabled person can show that there were barriers you should have identified and reasonable adjustments you could have made, they can bring a claim against you in the Employment Tribunal, and you may be ordered to pay them compensation as well as make the reasonable adjustments.

In particular, the need to make adjustments for an individual worker or job applicant:

- must not be a reason not to appoint someone to a job or promote them if they are the best person for the job with the adjustments in place
- must not be a reason to dismiss a worker
- must be considered in relation to every aspect of a person's job provided the adjustments are reasonable for you to make.

Many factors will be involved in deciding what adjustments to make and they will depend on individual circumstances. Different people will need different changes,

even if they appear to have similar impairments.

You only have to make adjustments where you are aware – or should reasonably be aware – that an employee or applicant has a disability. The required knowledge is of the facts of the worker's disability but an employer does not also need to realise that those particular facts are likely to meet the legal definition of disability.

It is advisable for you to discuss the adjustments with the disabled person, otherwise the changes may not be effective.

The rest of this section looks at the detail of the duty and gives examples of the sorts of adjustments you could make. It looks at:

- Which disabled people does the duty apply to?
- Finding out if someone is a disabled person
- The three requirements of the duty
- Are disabled people at a substantial disadvantage?
- Changes to policies and the way your organisation usually does things
- Dealing with physical barriers
- Providing extra equipment or aids
- Making sure an adjustment is effective
- Who pays for reasonable adjustments?
- What is meant by 'reasonable'
- Reasonable adjustments in practice
- Specific situations
  - Employment services
  - Occupational pensions
- Questions about health or disability

Which disabled people does the duty apply to?

The duty applies to any disabled person who:

- works for you, or
- applies for a job with you, or
- tells you they are thinking of applying for a job with you.

It applies to all stages and aspects of employment. So, for example, where the duty arises you must make reasonable adjustments to disciplinary or dismissal procedures and decisions. It does not matter if the worker was a disabled person when they began working for you, or if they have become a disabled person while working for you.

The duty may also apply after employment has ended.

The duty also applies in relation to **employment services**, with some differences which are explained later in this chapter.

Reasonable adjustments may also be required in relation to occupational pension schemes. This is explained later in this chapter.

Finding out if someone is a disabled person

You only have to make these changes where you know or could reasonably be expected to know that a worker or job applicant is a disabled person.

This means doing everything you can reasonably be expected to do to find out.

For example:

An employee's performance has recently got worse and they have started being late for work. Previously they had a very good record of punctuality and performance.

Rather than just telling them they must improve, their employer talks to them in private. This allows the employer to check whether the change in performance could be for a disability-related reason. The employee says that they are experiencing a recurrence of depression and are not sleeping well which is making them late.

Together, they agree to change the employee's hours slightly while they are in this situation and that the employee can ask for help whenever they are finding it difficult to start or complete a task. These are reasonable adjustments.

This does not, however, mean asking intrusive questions or ones that violate someone's dignity. Think about privacy and confidentiality in what you ask and how you ask.

Be aware that there are restrictions on when you can ask health- or disability-related questions before shortlisting someone or making a job offer. This is to make sure that job applicants are not discriminated against because of issues related to health or disability. The exceptions to the restriction are set out at the end of this part of this guide.

You can ask questions to find out if a job applicant needs reasonable adjustments for the recruitment process. But you must use their answers only for working out the adjustments they need and whether these are reasonable.

If the adjustments are reasonable, and you used the fact that the person needed them as a reason not to take them further into the recruitment process, this would be unlawful discrimination.

If a job applicant does not ask for adjustments in advance but turns out to need them, you must still make them, although what is reasonable in these circumstances may be different from what would be reasonable with more notice. You must not hold the fact that you have to make last minute adjustments against the applicant.

For example:

A job applicant does not tell an employer in advance that they use a wheelchair and the employer does not know about this. On arriving for the interview the applicant discovers that the room is not accessible. Although the employer could not have been expected to make the necessary changes in advance, it would be a reasonable adjustment to hold the interview in an alternative, accessible room if one was available without too much disruption or cost. Alternatively, it might be a reasonable adjustment to reschedule the interview if this was practicable.

There is more information about what this means in the Equality and Human Rights Commission guide: *What equality law means for you as an employer: when you recruit someone to work for you*.

Good practice tip: be prepared for making reasonable adjustments

Equality law says that you must make reasonable adjustments if you know that a worker or job applicant is a disabled person, that they need adjustments and that those adjustments are reasonable.

You don't have to put reasonable adjustments in place just in case a disabled person applies for a job, or just in case one of your existing workers becomes a disabled person.

But you may want to be prepared:

- Think in advance about what the core tasks of a particular job are and what adjustments might be possible (before starting a recruitment or promotion exercise, for example).
- Ask job applicants if they need reasonable adjustments to take part in the recruitment process. Do bear in mind the restriction on asking health- or disability-related questions and make it clear to applicants that the only reason you are asking is to make sure that you remove any barriers during the recruitment process, so far as is reasonable (or if one of the other exceptions applies).
- Put in place a process for working out reasonable adjustments in the event of an existing employee becoming disabled or a disabled person starting work with the organisation, before being faced with an individual situation.
- Make sure you know in advance what support is available to disabled people from Access to Work.
- If you are making renovations or alterations to your building, thinking about how you can make the new parts of your building more accessible for disabled people will help you if you later employ a disabled person and will allow you to attract more potential employees.

As well as avoiding a possible Employment Tribunal claim, being open to making reasonable adjustments will mean you have a wider choice of workers. A disabled applicant may be the best person for the job. Or you may be able to avoid losing the skills of someone who already works for you who has become a disabled person just by making a few changes.

The three requirements of the duty

The duty contains three requirements that apply in situations where a disabled person would otherwise be placed at a **substantial disadvantage** compared with people who are not disabled.

- The first requirement involves changing the way things are done (equality law calls this a **provision, criterion** or **practice**).

For example:

An employer has a policy that designated car parking spaces are only offered to senior managers. A worker who is not a manager, but has a mobility impairment and needs to park very close to the office, is given a designated car parking space. This is likely to be a reasonable adjustment to the employer's car parking policy.

- The second requirement involves making changes to overcome barriers created by the **physical features** of your workplace.

For example:

Clear glass doors at the end of a corridor in a particular workplace present a hazard for a visually impaired worker. Adding stick-on signs or other indicators to the doors so that they become more visible is likely to be a reasonable adjustment for the employer to make.

- The third requirement involves providing extra equipment (which equality law calls an **auxiliary aid**) or getting someone to do something to assist the disabled person (which equality law calls an **auxiliary service**).

For example:

An employer provides specialist software for a member of staff who develops a visual impairment and whose job involves using a computer.

Each of these requirements is looked at in more detail later in this part of the guide.

Are disabled people at a substantial disadvantage?

The question you need to ask yourself is whether:

- the way you do things
- any physical feature of your workplace
- the absence of an auxiliary aid or service

puts a disabled worker or job applicant at a substantial disadvantage compared with a person who is not disabled.

Anything that is more than minor or trivial is a substantial disadvantage.

If a substantial disadvantage does exist, then you must make reasonable adjustments.

The aim of the adjustments you make is to remove or reduce the substantial disadvantage.

But you only have to make adjustments that are reasonable for you to make. There is more information about how to work out what is reasonable a bit later in this part of the guide.

Changes to policies and the way your organisation usually does things

The first requirement involves changing the way things are done (equality law calls this a **provision, criterion** or **practice**).

This means looking at whether you need to change some written or unwritten policies, and/or some of the ways you usually do things, to remove or reduce barriers that would place a disabled person at a substantial disadvantage, for example, by preventing them from being able to work for you or applying for a job with you or stopping them being fully involved at work.

This includes your processes for deciding who is offered employment, criteria for promotion or training, benefits, working conditions and contractual arrangements.

For example:

- Supervisors in an organisation are usually employed on a full-time basis. The employer agrees to a disabled person whose impairment causes severe fatigue working on a part-time or job share basis. By doing this, the employer is making a reasonable adjustment.
- Providing job applicants with different ways of providing information to support their application where using your standard form would put them at a substantial disadvantage.
- The design of a particular workplace makes it difficult for a disabled person with a hearing impairment to hear, because the main office is open plan and has hard flooring, so there is a lot of background noise. Their employer agrees that staff meetings should be held in a quieter place that allows that person to fully participate in the meeting. By doing this, the employer is making a reasonable adjustment.

Dealing with physical barriers

The second requirement involves making changes to overcome barriers created by the **physical features** of your workplace.

This means you may need to make some changes to your building or premises for a disabled person who works for you, or applies for a job with you.

Exactly what kind of change you make will depend on the kind of barriers your premises present. You will need to consider the whole of your premises. You may have to make more than one change.

Physical features include: steps, stairways, kerbs, exterior surfaces and paving, parking areas, building entrances and exits (including emergency escape routes), internal and external doors, gates, toilet and washing facilities, public facilities (such as telephones, counters or service desks), lighting and ventilation, lifts and escalators, floor coverings, signs, furniture, and temporary or movable items (such as equipment and display racks). Physical features also include the sheer scale of premises (for example, the size of a building). This is not an exhaustive list.

- These could be something to do with the structure of the actual building itself like steps, changes of level, emergency exits or narrow doorways.
- Or it could be something about the way the building or premises have been fitted out, things like heavy doors, inaccessible toilets or inappropriate lighting.

- It could even be the way things are arranged inside the premises such as fixtures and fittings like shelf heights in storage areas or fixed seating in canteens.

For example:

An employer has recruited a worker who is a wheelchair user and who would have difficulty negotiating her way around the office. In consultation with the new worker, the employer rearranges the layout of furniture in the office. The employer has made reasonable adjustments.

Providing extra equipment or aids

The third requirement of the duty involves providing extra equipment – which equality law calls **auxiliary aids** – and **auxiliary services**, where someone else is used to assist the disabled person, such as a reader, a sign language interpreter or a support worker.

An auxiliary aid or service may make it easier for a disabled person to do their job or to participate in an interview or selection process. So you should consider whether it is reasonable to provide this.

The kind of equipment or aid or service will depend very much on the individual disabled person and the job they are or will be doing or what is involved in the recruitment process. The disabled person themselves may have experience of what they need, or you may be able to get expert advice from some of the organisations listed in ‘Further sources of information and advice’.

Making sure an adjustment is effective

It may be that several adjustments are required in order to remove or reduce a range of disadvantages and sometimes these will not be obvious to you. So you should work, as much as possible, with the disabled person to identify the kind of disadvantages or problems that they face and also the potential solutions in terms of adjustments.

But even if the disabled person does not know what to suggest, you must still consider what adjustments may be needed.

For example:

A disabled employee has been absent from work as a result of depression. Neither the employee nor their doctor is able to suggest any adjustments that could be made. Nevertheless the employer should still consider whether any adjustments, such as working from home for a time or changing working hours or offering more day-to-day support, would be reasonable.

You may be able to get expert advice from some of the organisations listed in *'Further sources of information and advice'.*

Who pays for reasonable adjustments?

If something is a reasonable adjustment, you must pay for it as the employer or prospective employer. The cost of an adjustment can be taken into account in deciding if it is reasonable or not.

However, there is a government scheme called Access to Work which can help a person whose health or disability affects their work by giving them advice and support. Access to Work can help with extra costs which would not be reasonable for an employer or prospective employer to pay.

For example, Access to Work might pay towards the cost of getting to work if the disabled person cannot use public transport, or for assistance with communication at job interviews.

A person may be able to get advice and support from Access to Work if they are:

- in a paid job, or
- unemployed and about to start a job, or
- unemployed and about to start a Work Trial, or
- self-employed and
- their disability or health condition stops them from being able to do parts of their job.

Make sure your worker or job applicant knows about Access to Work. Although the advice and support are given to the worker or job applicant themselves, you will obviously benefit too. Information about Access to Work is in *'Further sources of information and advice'.*

What is meant by 'reasonable'

You only have to do what is reasonable.

Various factors influence whether a particular adjustment is considered reasonable and the responsibility for making the decision about reasonableness rests with you as the employer.

When deciding whether an adjustment is reasonable you can consider:

- how effective the change will be in avoiding the disadvantage the disabled person would otherwise experience
- its practicality
- the cost
- your organisation's resources and size
- the availability of financial support.

Your overall aim should be, as far as possible, to remove or reduce any disadvantage faced by a disabled worker or job applicant.

Issues to consider:

- You can treat disabled people better or 'more favourably' than non-disabled people and sometimes this may be part of the solution.
- The adjustment must be effective in helping to remove or reduce any disadvantage the disabled person is facing. If it doesn't have any impact then there is no point.
- In reality it may take several different adjustments to deal with that disadvantage but each change must contribute towards this.
- You can consider whether an adjustment is practical. The easier an adjustment is, the more likely it is to be reasonable. However, just because something is difficult doesn't mean it can't also be reasonable. You need to balance this against other factors.
- If an adjustment costs little or nothing and is not disruptive, it would be reasonable unless some other factor (such as impracticality or lack of effectiveness) made it unreasonable.
- Your size and resources are another factor. If an adjustment costs a significant amount, it is more likely to be reasonable for you to make it if you have substantial financial resources. Your resources must be looked at across your

whole organisation, not just for the branch or section where the disabled person is or would be working. This is an issue which you have to balance against the other factors.

- In changing policies, criteria or practices, you do not have to change the basic nature of the job, where this would go beyond what is reasonable.
- What is reasonable in one situation may be different from what is reasonable in another situation, such as where someone is already working for you and faces losing their job without an adjustment, or where someone is a job applicant. Where someone is already working for you, or about to start a long-term job with you, you would probably be expected to make more permanent changes (and, if necessary, spend more money) than you would to make adjustments for someone who is attending a job interview for an hour.
- If you are a larger rather than a smaller employer you are also more likely to have to make certain adjustments such as redeployment or flexible working patterns which may be easier for an organisation with more staff.
- If advice or support is available, for example, from Access to Work or from another organisation (sometimes charities will help with costs of adjustments), then this is more likely to make the adjustment reasonable.
- If making a particular adjustment would increase the risks to the health and safety of anybody, including the disabled person concerned, then you can consider this when making a decision about whether that particular adjustment or solution is reasonable. But your decision must be based on a proper assessment of the potential health and safety risks.

If, having taken all of the relevant issues into account, you decide that an adjustment is reasonable then you must make it happen.

If there is a disagreement about whether an adjustment is reasonable or not, in the end, only an Employment Tribunal can decide this.

Providing information in an alternative format

Equality law says that where providing information is involved, the steps which it is reasonable for the employer to take include steps to make sure that the information is provided in an accessible format.

For example:

- A job applicant asks for information about the job to be read onto an audio CD and sent to them. This is likely to be a reasonable adjustment that the employer must make.

Reasonable adjustments in practice

Examples of steps it might be reasonable for you to have to take include:

- Making adjustments to premises.

For example:

An employer makes structural or other physical changes such as widening a doorway, providing a ramp or moving furniture for a wheelchair user; relocates light switches, door handles, or shelves for someone who has difficulty in reaching; or provides appropriate contrast in decor to help the safe mobility of a visually impaired person.

- Allocating some of the disabled person's duties to another person.

For example:

An employer reallocates minor or subsidiary duties to another employee as a disabled person has difficulty doing them because of their disability. For example, the job involves occasionally going onto the open roof of a building but the employer transfers this work away from an employee whose disability involves severe vertigo.

- Transferring the person to fill an existing vacancy.

For example:

An employer should consider whether a suitable alternative post is available for a worker who becomes disabled (or whose disability worsens), where no reasonable adjustment would enable the worker to continue doing the current job. This might also involve retraining or other reasonable adjustments such as equipment for the new post or a transfer to a position on a higher grade.

- Altering the person's hours of working or training.

For example:

An employer allows a disabled person to work flexible hours to enable them to have additional breaks to overcome fatigue arising from their disability. It could also include permitting part-time working, or different working hours to avoid the need to travel in the rush hour if this is a problem related to an impairment. A phased return to work with a gradual build-up of hours might also be appropriate in some circumstances.

- Assigning the person to a different place of work or training.

For example:

An employer relocates the work station of a newly disabled employee (who now uses a wheelchair) from an inaccessible third floor office to an accessible one on the ground floor. If the employer operates from more than one workplace, it may be reasonable to move the employee's place of work to other premises of the same employer if the first building is inaccessible and the other premises are not.

- Allowing the person to be absent during working or training hours for rehabilitation, assessment or treatment.

For example:

An employer allows a disabled person who has recently developed a condition to have more time off work than would be allowed to non-disabled workers to enable them to have rehabilitation. A similar adjustment would be appropriate if a disability worsens or if a disabled person needs occasional treatment anyway.

- Giving, or arranging for, training or mentoring (whether for the disabled person or any other person). This could be training in particular pieces of equipment which the disabled person uses, or an alteration to the standard employee training to make sure it is accessible for the disabled employee.

For example:

- All workers are trained in the use of a particular machine but an employer provides slightly different or longer training for an employee with restricted hand or arm movements, or training in additional software for a visually impaired person so that they can use a computer with speech output.
- An employer provides training for employees on conducting meetings in a way that enables a Deaf staff member to participate effectively.
- A disabled person returns to work after a six-month period of absence due to a stroke. Their employer pays for them to see a work mentor, and allows time off to see the mentor, to help with their loss of confidence following the onset of their disability.

- Acquiring or modifying equipment.

For example:

An employer might have to provide special equipment (such as an adapted keyboard for someone with arthritis or a large screen for a visually impaired person), an adapted telephone for someone with a hearing impairment, or other modified equipment for disabled workers (such as longer handles on a machine).

You do not have to provide or modify equipment for personal purposes unconnected with a worker's job, such as providing a wheelchair if a person needs one in any event but does not have one. This is because the disadvantages do not flow from things you have control over.

- Modifying instructions or reference manuals.

For example:

The format of instructions and manuals might need to be modified for some disabled people (such as being produced in Braille or on audio CD) and instructions for people with learning disabilities might need to be conveyed orally with individual demonstration or in Easy Read.

- Modifying procedures for testing or assessment.

For example:

A person with restricted manual dexterity would be disadvantaged by a written test, so the employer gives that person an oral test instead.

- Providing a reader or interpreter.

For example:

An employer arranges for a colleague to read hard copy post to a person with a visual impairment at particular times during the working day. Alternatively, the employer might hire a reader.

- Providing supervision or other support.

For example:

An employer provides a support worker or arranges help from a colleague, in appropriate circumstances, for someone whose disability leads to uncertainty or lack of confidence.

- Allowing a disabled worker to take a period of disability leave.

For example:

A worker who has cancer needs to undergo treatment and rehabilitation. Their employer allows a period of disability leave and permits them to return to their job at the end of this period.

- Participating in supported employment schemes, such as **Work Choice**

For example:

A person applies for a job as an office assistant after several years of not working because of depression. They have been participating in a supported employment scheme where they saw the job advertised. As a reasonable adjustment the person asks the employer to let them make private phone calls during the working day to a support worker at the scheme.

- Employing a support worker to assist a disabled worker.

For example:

An adviser with a visual impairment is sometimes required to make home visits to clients. The employer employs a support worker to assist them on these visits.

- Modifying disciplinary or grievance procedures.

For example:

A person with a learning disability is allowed to take a friend (who does not work with them) to act as an advocate at a meeting with the person's employer about a grievance. The employer also makes sure that the meeting is conducted in a way that does not disadvantage or patronise the disabled person.

- Adjusting redundancy selection criteria.

For example:

A person with an autoimmune disease has taken several short periods of absence during the year because of the condition. When their employer is taking the absences into account as a criterion for selecting people for redundancy, they discount these periods of disability-related absence.

- Modifying performance-related pay arrangements.

For example:

A disabled person who is paid purely on their output needs frequent short additional breaks during their working day – something their employer agrees to as a reasonable adjustment. It is likely to be a reasonable adjustment for their employer to pay them at an agreed rate (for example, their average hourly rate) for these breaks.

- It may sometimes be necessary for an employer to take a combination of steps.

For example:

A woman who is blind is given a new job with her employer in an unfamiliar part of the building. The employer

- arranges facilities for her assistance dog in the new area
- arranges for her new instructions to be in Braille, and
- provides disability equality training to all staff.

In some situations, a reasonable adjustment will not work without the co-operation of other workers. Your other staff may therefore have an important role in helping make sure that a reasonable adjustment is carried out in practice. You must make sure that this happens. It is unlikely to be a valid 'defence' to a claim under equality law for a failure to make reasonable adjustments to argue that an adjustment was unreasonable because your other staff were obstructive or unhelpful when you tried to make an adjustment happen.

You would at least need to be able to show that you took all reasonable steps to try and resolve the problem of the attitude of your other staff.

For example:

An employer makes sure that a worker with autism has a structured working day as a reasonable adjustment. As part of the reasonable adjustment, it is the responsibility of the employer to make sure that other workers cooperate with this arrangement.

If the worker does not agree to your involving other workers, you must not breach their confidentiality by telling the other workers about the disabled person's situation.

If a worker is reluctant for other staff to know, and you believe that a reasonable adjustment requires the co-operation of the worker's colleagues, explain that you cannot make the adjustment unless they are prepared for some information to be shared. It does not have to be detailed information about their condition, just enough to explain to other staff what they need to do.

Specific situations

Employment services

An employment service provider must not unlawfully discriminate against people who are using or want to use its services. There is more information about what this means in the list of words and key ideas.

In addition, an employment service provider has a duty to make reasonable adjustments, except when providing a **vocational service**.

For employment service providers, unlike for employers, the duty is ‘anticipatory’. If you are an employment service provider, this means you cannot wait until a disabled person wants to use your services, but must think in advance (and on an ongoing basis) about what disabled people with a range of impairments might reasonably need, such as people who have a visual impairment, a hearing impairment, a mobility impairment, or a learning disability.

For example:

An employment agency makes sure its website is accessible to disabled people and that it can provide information about job opportunities in a range of alternative formats. It also makes sure its staff are trained to assist disabled people who approach it to find out about job opportunities.

Occupational pensions

Occupational pension schemes must not unlawfully discriminate against people. There is more information about what this means in the Equality and Human Rights Commission guide: *What equality law means for you as an employer: pay and benefits.*

In addition, an occupational pension scheme must make reasonable adjustments to any provision, criterion or practice in relation to the scheme which puts a disabled person at a substantial disadvantage in comparison with people who are not disabled.

For example:

The rules of an employer's final salary scheme provide that the maximum pension receivable is based on the member's salary in the last year of work. Having worked full-time for 20 years, a worker develops a condition which leads them to reduce their working hours two years before their pension age. The scheme's rules put them at a disadvantage as a result of their disability, because their pension will only be calculated on their part-time salary. The trustees decide to convert the worker's part-time salary to its full-time equivalent and make a corresponding reduction in the period of their part-time employment which counts as pensionable. In this way, their full-time earnings will be taken into account. This is likely to be a reasonable adjustment to make.

Questions about health or disability

Except in very restricted circumstances or for very restricted purposes, you are not allowed to ask any job applicant about their health or any disability until the person has been:

- offered a job either outright or on conditions, or
- included in a pool of successful candidates to be offered a job when a position becomes available (for example, if an employer is opening a new workplace or expects to have multiple vacancies for the same role but doesn't want to recruit separately for each one).

This includes asking such a question as part of the application process or during an interview. Questions relating to previous sickness absence count as questions that relate to health or disability.

No-one else can ask these questions on your behalf either. So you cannot refer an applicant to an **occupational health practitioner** or ask an applicant to fill in a questionnaire provided by an occupational health practitioner before the offer of a job is made (or before inclusion in a pool of successful applicants) except in very limited circumstances, which are explained next.

The point of stopping employers asking questions about health or disability is to make sure that all job applicants are looked at properly to see if they can do the job in question, and not ruled out just because of issues related to or arising from their health or disability, such as sickness absence, which may well say nothing about whether they can do the job now.

You can ask questions once you have made a job offer or included someone in a group of successful candidates. At that stage, you could make sure that someone's health or disability would not prevent them from doing the job. But you must consider whether there are reasonable adjustments that would enable them to do the job.

What happens if I ask questions about health or disability?

A job applicant can bring a claim against you if:

- you asked health- or disability-related questions of a kind that are not allowed, and
- they believe there has been unlawful discrimination as a result of the information that they gave (or failed to give) when answering such questions.

The Equality and Human Rights Commission can take legal action against you if you ask job applicants any health- or disability-related questions that are not allowed by equality law. This includes sending them a questionnaire about their health for them to fill in before you have offered them a job.

When you are allowed to ask questions about health or disability

You can ask questions about health or disability when:

- You are asking the questions to find out if any applicant needs reasonable adjustments for the recruitment process, such as for an assessment or an interview.

For example:

An application form states: 'Please contact us if you need the application form in an alternative format or if you need any adjustments for the interview'.

This is allowed.

- You are asking the questions to find out if a person (whether they are a disabled person or not) can take part in an assessment as part of the recruitment process, including questions about reasonable adjustments for this purpose.

For example:

An employer is recruiting play workers for an outdoor activity centre and wants to hold a practical test for applicants as part of the recruitment process. It asks a question about health in order to ensure that applicants who are not able to undertake the test (for example, because they are pregnant or have an injury) are not required to take the test. This is allowed.

- You are asking the questions for **monitoring** purposes to check the **diversity** of applicants.
- You want to make sure that an applicant who is a disabled person can benefit from any measures aimed at improving disabled people's employment rates. For example, the **guaranteed interview scheme**. Make it clear to job applicants that this is why you are asking the question.
- You are asking the question because having a specific impairment is an **occupational requirement** for a particular job.

For example:

An employer wants to recruit a Deafblind project worker who has personal experience of Deafblindness. This is an occupational requirement of the job and the job advert states this. The employer can ask on the application form or at interview about the applicant's disability.

- Where the questions relate to a requirement to vet applicants for the purposes of **national security**.

Where the question relates to a person's ability to carry out a function that is intrinsic (or absolutely fundamental) to that job. Where a health- or disability-related question would mean you would know if a person can carry out that function with reasonable adjustments in place, then you can ask the question.

For example:

A construction company is recruiting scaffolders. The company can ask about health or disability on the application form or an interview if the questions relate specifically to an applicant's ability to climb ladders to a significant height. The ability to climb ladders to access scaffolding is intrinsic or fundamental to the job.

In practice, even if a function is intrinsic to the job, you should ask a question about a disabled person's ability to do the job with reasonable adjustments in place. There will therefore be very few situations where a question about a person's health or disability needs to be asked.

Most of the time, whether on an application form or during an interview, you can ask a question about whether someone has the relevant skills, qualities or experience to do the job, not about their health or about any disability they may have.

For example:

An employer is recruiting a person as a cycle courier. They ask applicants to send in a CV setting out their relevant experience and a covering letter saying why they would be suitable for the job. The employer will score candidates on their experience of and enthusiasm for cycling. It is not necessary to ask applicants questions about health or disability. If the employer considers a health check is necessary, for example, for insurance purposes, this can be carried out once an applicant has been offered the job, and the job offer can be made conditional on the health check.

4 | What to do if someone says they've been discriminated against

If a **worker** says that you or another worker employed by you or your **agent** have **unlawfully discriminated** against them in a work situation, your responsibility is to deal with the complaint in a way that finds out if there has been unlawful discrimination and, if there has been, to put the situation right.

A worker may:

- complain to you
- make a claim in the Employment Tribunal

Claims about equal pay can be brought in other courts – this is explained in the section on 'Where claims are brought' below.

These are not alternatives, since the person complaining still has a right to make a claim in the Employment Tribunal even if they first complained to you.

This part of this guide covers:

- If a worker complains to you
- What you can do if you find that there has been unlawful discrimination
- Monitoring the outcome
- The questions procedure, which someone can use to find out more information from you if they think they may have been unlawfully discriminated against, harassed or victimised. The questions procedure will be abolished on 6 April 2014. However, it will still apply to events that happened before that date and a worker can ask you questions about events that happened on or after that date.
- Key points about discrimination cases in a recruitment situation
  - Where claims are brought
  - Time limits for bringing a claim
  - The standard and burden of proof

  - What the Employment Tribunal can order you to do
- More information about defending an Employment Tribunal case.

Good practice tips for avoiding and sorting out claims about discrimination at work

A worker who believes they have experienced unlawful discrimination has a right to make an Employment Tribunal claim.

Defending an Employment Tribunal claim can be lengthy, expensive and draining, and it can have a damaging impact on the reputation of your organisation.

It is likely to be in everyone's interest to try to put things right before a claim is made to an Employment Tribunal.

If you have good procedures for sorting out complaints about discrimination, you may be able to avoid the person feeling it is necessary to bring a claim against you.

An important factor will be for all your workers to be sure that complaints about unlawful discrimination will be taken seriously, and that something will happen to put the situation right if someone has discriminated unlawfully.

Make it clear what will happen if, after investigating, you find out that someone has discriminated unlawfully against someone else:

- that if necessary you will take any disciplinary action you decide is appropriate
- that if necessary you will change the way you do things so the same thing does not happen again, then make sure you do this.

Also:

- consider **equality training** for yourself and/or people working for you
- think about having an **equality policy**.

If a worker complains to you

You have two ways of sorting out the situation:

- trying to deal with the complaint informally
- using your grievance procedures.

You may also want to use other people to help you sort the situation out through something like conciliation or mediation. This is often called 'alternative dispute

resolution' and this guide tells you where you can find out more about it.

Make sure that in the way you respond to a complaint, you do not unlawfully discriminate against anyone.

For example:

An employer takes what a disabled person who has a learning disability says less seriously than what the person they say has unlawfully discriminated against them says. If the employer's attitude is because of the disabled person's learning disability, this is likely to be unlawful discrimination.

If anyone involved in a complaint is a disabled person who needs **reasonable adjustments** to remove barriers they would otherwise face in taking part in the complaints process, you must make these. You can read more about reasonable adjustments in Chapter 3.

Dealing with the complaint informally

It may be that you can look into the complaint and decide what to do without it being necessary for your worker to make a formal complaint.

If the complaint is about the way you or your organisation does something, think about getting it changed.

If it is about how the person's manager or colleagues are behaving towards them, it may help to speak informally to the person or people involved before getting into formal procedures.

This will only be possible if the person who has complained agrees that you should speak to the other person informally.

Make sure you tell the worker what the result of their informal complaint is, otherwise they may make a formal complaint or bring an Employment Tribunal claim.

If a worker makes a formal complaint

If a worker makes a formal complaint, this is often referred to as a 'grievance'.

You can find out about investigating and handling grievances (whether they relate to discrimination or to other workplace issues) from Acas. Contact details for Acas are in 'Further sources of information and advice'.

If your worker is not happy about the outcome of a grievance procedure, then they have a right to appeal.

Alternative dispute resolution

If you want to get help in sorting out a complaint about discrimination, you could see if the person complaining will agree to what is usually called ‘alternative dispute resolution’ or ADR. ADR involves finding a way of sorting out the complaint without a formal tribunal hearing. ADR techniques include mediation and conciliation. For more information see the section on ‘Settling a dispute’ below.

What you can do if you find that there has been unlawful discrimination

The action you take will depend on the specific details of the case and its seriousness. You should take into consideration any underlying circumstances and the outcome of previous similar cases. The actions you could take include:

- Some form of alternative dispute resolution (which is explained above).
- **Equality training** for the person who discriminated.
- Appropriate disciplinary action (you can find out more about disciplinary procedures from Acas).

What you can do if you find that there wasn’t any unlawful discrimination

If your investigation and any appeal find that there was no unlawful discrimination, then you need to find a way for everyone to continue to work together.

You may be able to do this yourself, or it may be helpful to bring in help from outside as with alternative dispute resolution.

Monitoring the outcome

Whether you decide that there had been unlawful discrimination or not, make sure that you do not treat badly the person who complained or anyone who helped them. For example, forcing the person who complained to transfer to another part of your organisation (if it is big enough) may be **victimisation**. However, if they ask to be transferred, you should do this if you are sure this is what they really want, and it is not a sign that you have not dealt with their complaint properly.

Monitor the situation to ensure that the unlawful discrimination (if you found there was discrimination) has stopped and that there is no victimisation of the person who complained or anyone who helped them.

If your worker is not satisfied with what has happened, they may decide to bring a claim in the Employment Tribunal.

The questions procedure

It is good practice for a worker who thinks that they may have experienced unlawful discrimination, harassment or victimisation under equality law to seek relevant information from you before issuing a formal claim. This can help them to decide if they have a valid claim or not.

How they can do this will depend on whether or not the claim is about events that happened before 6 April 2014.

Claims about events which happened before 6 April 2014

If the claim is about events that happened before 6 April 2014, there is a set procedure which the worker can use to obtain information from you. It includes a set form called 'the questionnaire' or 'questions procedure' available at: https://www.gov.uk/government/publications/discrimination-and-other-prohibited-conduct-complaints-questionnaire

The questionnaire form does not need to be used, provided the worker uses the specified questions used in the form.

If you receive questions from someone, you are not legally required to reply to the request, or to answer the questions, but it may harm your case if you do not.

The questions and the answers can form part of the evidence in a case brought under the Equality Act 2010.

A worker can send you the questions before a claim is made to the Employment Tribunal, or at the same time, or after the claim has been sent.

If it is before, then you must receive the questions within three months of what the worker says was the unlawful discrimination. If a claim has already been made to the Employment Tribunal, then you must receive the questions within 28 days of the claim being sent to the Employment Tribunal.

If you do not respond to the questions within eight weeks of them being sent to you, the Employment Tribunal can take that into account when making its decision. The Employment Tribunal can also take into account answers which are evasive or unclear.

There is an exception to this. The court cannot take the failure to answer into account if a person or organisation states that to give an answer could prejudice criminal proceedings and if it is reasonable to claim that it would. Most of the time, breaking equality law only leads to a claim in a civil court. Occasionally, breaking equality law can be punished by the criminal courts. In that situation, the person or organisation may be able to refuse to answer the questions if in answering they might incriminate

themselves and if it is reasonable for them not to answer. If you think this might apply to you, you should get legal advice on what to do.

Claims about events which happened on or after 6 April 2014

The questions procedure and the questionnaire form were abolished on 6 April 2014. For claims about events which took place on or after that date it will remain good practice for a worker who thinks that they may have experienced unlawful discrimination, harassment or victimisation under equality law to seek relevant information from you before issuing a formal claim.

Acas has produced non-statutory guidance for employers and workers asking and answering questions after 6 April 2014. It is available at http://www.acas.org.uk/media/pdf/m/p/Asking-and-responding-to-questions-of-discrimination-in-the-workplace.pdf

That guidance makes it clear that you should treat any such questions seriously and promptly and not ignore them. Any such questions and answers can form part of the evidence in a case brought under the Equality Act 2010.

Whether the claim is about events that happened before 6 April 2014 or on or after that date, you must not treat a worker badly because they have sent you questions about a claim. If you do, it will almost certainly be unlawful victimisation under the Equality Act 2010.

Key points about discrimination cases in a work situation

The key points this guide explains are:

- Where claims are brought
- Time limits for bringing a claim
- The standard and burden of proof
- What the Employment Tribunal can order you to do
- Settling a dispute

Where claims are brought

An Employment Tribunal can decide a complaint involving unlawful discrimination in a work situation.

Employment Tribunals can also decide cases about:

- Collective agreements, which can cover any terms of employment, such as pay or other benefits or working conditions.
- Equal pay and occupational pensions cases, which you can read more about in the Equality and Human Rights Commission guide: *What equality law means for you as an employer: pay and benefits*.
- Requirements an employer places on someone to discriminate against people as part of their job, for example, if someone works in a shop, telling them not to serve customers with a particular protected characteristic.

Claims about equal pay between men and women can also be decided by the County Court or High Court (in England and Wales) and the sheriff court or Court of Session (in Scotland). This is explained in the Equality and Human Rights Commission guide: *What equality law means for you as an employer: pay and benefits*.

An Employment Tribunal can only hear a case from a member of the **armed forces** if their **service complaint** has been decided.

A person making a claim to an Employment Tribunal on or after 29 July 2013 has to pay a fee to make a claim and another fee to have their case heard. Remission arrangements are in place, which mean that if a worker's income is below a certain level (and this varies depending upon, for example, family size), the fees will be reduced or waived entirely.

The Government has published online guidance on fees: https://www.gov.uk/employment-tribunals/apply-to-the-tribunal

The Tribunal is likely to order you to pay the fees back to the person making the claim if you are unsuccessful in defending the claim.

Time limits for bringing a claim

A person must bring their claim within three months (less one day) of the claimed unlawful discrimination taking place.

There are two situations where this is slightly different:

- in equal pay cases, different time limits apply – see the Equality and Human Rights Commission guide: *What equality law means for you as an employer: pay and benefits*, and
- for cases involving the armed forces, the time limit is six months (less one day).

If a person brings a claim after this, it is up to the Employment Tribunal to decide whether it is fair to everyone concerned, including both the employer and the worker, to allow a claim to be brought later than this.

When a claim concerns behaviour over a length of time, the time limit starts when the behaviour has ended.

For example:

An employer has a policy of only providing company cars to employees aged 35 years or over. Unless the policy can be objectively justified, someone aged 30 would be able to make a claim to the tribunal for age discrimination at any time while the policy continues to operate in favour of those aged 35. If the policy ceased to operate in favour of this age group, claims would have to be made within three months of this happening.

If the person is complaining about a failure to do something, for example, a failure to make **reasonable adjustments**, then the three months begins when the decision was made not to do it. If there is no solid evidence of a decision, then the decision is assumed to have been made either:

- when the person who failed to do the thing does something else which shows they don't intend to do it, or
- at the end of the time when they might reasonably have been expected to do the thing.

For example:

A wheelchair-user asks their employer to install a ramp to enable them to get over the kerb between the car park and the office entrance more easily. The employer indicates that it will do so but no work at all is carried out. After a period in which it would have been reasonable for the employer to commission the work, even though the employer has not made a positive decision not to install a ramp, it may be treated as having made that decision. A court can hear a claim if it is brought outside this time limit if the court thinks that it would be 'just and equitable' (fair to both sides) for it to do this.

Where a person has to contact Acas before making a claim because the early conciliation procedure applies, there are special rules about time limits. The normal three month time limit is extended to allow conciliation to take place. There is more information on the early conciliation procedure in the section of this guidance called *'Settling a dispute'*.

For more information see the Acas guidance on the early conciliation procedure: http://www.acas.org.uk/media/pdf/h/o/Early-Conciliation-explained.pdf

The rules are not straightforward and legal advice should be taken where there is any doubt about how the rules apply.

The standard and burden of proof

The standard of proof in discrimination cases is the usual one in civil (non-criminal) cases. Each side must try to prove the facts of their case are true on the balance of probabilities, in other words, that it is more likely than not in the view of the tribunal that their version of events is true.

If a worker is claiming unlawful discrimination, harassment or victimisation against you, then the **burden of proof** begins with them. There are two situations in which the burden of proof will shift onto you:

1. If they prove enough facts from which the tribunal can decide, without any other explanation, that the discrimination, harassment or victimisation has taken place, or
2. If their complaint is that they have not been offered a job because you found out about their disability having asked questions which you were not allowed to ask under the rules against **pre-employment health or disability enquiries.**

In any of these situations, the burden then shifts onto you to show that you or someone whose actions or omissions you were responsible for did not discriminate, harass or victimise the person making the claim.

What the Employment Tribunal can order you to do

If the worker wins their case, the tribunal can order what is called a remedy. The main remedies available to the Employment Tribunal are to:

- Make a declaration that you have discriminated.
- Award compensation to be paid for the financial loss the claimant has suffered (for example, loss of earnings), and damages for injury to the claimant's feelings. There is no legal upper limit on the amount of compensation.
- Make a recommendation, requiring the employer to do something specific within a certain time to remove or reduce the bad effects which the claim has shown to exist on the individual.

For example:

Providing a reference or reinstating the person to their job, if the tribunal thinks this would work despite the previous history.

- At present, the Employment Tribunal can make a recommendation requiring the employer to do something specific within a certain time to remove or reduce the bad effects, which the claim has shown to exist, on the wider workforce (although not in equal pay cases). The Employment Tribunal can make this kind of recommendation even if the person who has won their case no longer works for the employer. The Government has said it will abolish the Employment Tribunals' power to make these kind of wider recommendations. If it may be relevant to a case in which you are involved, you will need to check whether it still exists.

For example:

- introducing an equal opportunities policy
- ensuring its harassment policy is more effectively implemented
- setting up a review panel to deal with equal opportunities and harassment/grievance procedures
- retraining staff, or
- making public the selection criteria used for transfer or promotion of staff.

If the recommendation relates to an individual and if an employer does not do what they have been told to do, the tribunal may order them to pay compensation, or an increased amount of compensation, to the claimant instead.

In cases of **indirect discrimination**, if you can prove that you did not intend what you did to be discriminatory, the tribunal must consider all of the remedies before looking at damages.

The Employment Tribunal can also order an employer to pay the claimant's legal costs and expenses, although this does not often happen in Employment Tribunal cases. However, the Tribunal is now likely to order you to reimburse any fees the person had to pay the tribunal to bring their claim if you are unsuccessful in defending the claim.

From 6 April 2014, the Tribunal may also impose financial penalties of between £100 – £5,000 (payable to the Government) on an employer if they are unsuccessful in defending a claim and the case has 'aggravating features'. These awards are only

likely to be imposed sparingly in cases where the employer's conduct has been particularly reprehensible.

The Government also intends to introduce legislation in October 2014, which will require an Employment Tribunal to order, subject to certain exceptions, an employer to undertake an equal pay audit where the Tribunal finds that the employer has breached an equality clause and/or discriminated because of sex in relation to pay.

Settling a dispute

Legal proceedings can be a stressful and time consuming experience. It may be in the best interest of everyone to try to agree to settle a dispute to avoid going to an Employment Tribunal or court hearing. There are three ways in which a dispute can be settled:

- Agreement between you and the worker
- Acas conciliation service
- Qualifying settlement agreement

Agreement between you and the worker

Before a claim is issued by your worker in the Employment Tribunal, you can agree to settle a dispute directly with them. An agreement to settle a dispute can include any terms that you agree with the worker and can cover compensation, future actions by you and the worker and other lawful matters.

Example

A worker raises a grievance with her employers alleging a failure to make reasonable adjustments. The employer investigates the worker's complaint and upholds her grievance. The employer agrees with the worker to put the reasonable adjustments in place and offers her a written apology, which she accepts.

Acas

You may also seek assistance from Acas which offers a conciliation service for parties in dispute, whether or not a claim has been made to an employment tribunal.

From 6 May 2014, all claimants (with very limited exceptions) will have to comply with the Early Conciliation Procedure before they can make a claim to the Employment Tribunal. Under the procedure, a person wanting to bring a claim has to present a completed early conciliation form to Acasor telephone Acas giving their details and those of their employer. Acas will then offer a free conciliation service to try and help the parties resolve their dispute.

The time limit for bringing a claim will usually be extended to allow the conciliation to take place.

Early conciliation can be started by employers as well as individuals so you can contact Acas if you think someone might make a Tribunal claim against you.

The prescribed notification form and guidance on the early conciliation procedure are available from the Acas website: http://www.acas.org.uk/index.aspx?articleid=4028

Example

A worker raises a grievance with her employer alleging sex discrimination. The employer dismisses her grievance. She decides to make a claim to the tribunal but before she does so she contacts Acas to comply with the early conciliation procedure. Acas helps her and her employer to conciliate the dispute. As a result of the conciliation, the worker and her employer agree to settle the claim on terms which are agreeable to both of them.

Qualifying settlement agreement

You and the worker can also settle a claim or potential claim to the Employment Tribunal by way of a 'qualifying settlement agreement'. There are specific conditions which must be satisfied if a claim is settled in this way:

- the agreement must be in writing
- the conditions in the agreement must be tailored to the circumstances of the claim
- the worker must have received legal advice about the terms of the agreement from an independent adviser who is insured against the risk of a claim arising from that advice
- the person who provides the worker with independent legal advice on the settlement agreement must be a lawyer, a trade union representative with written authority from the trade union or an advice centre worker with written authority from the centre to give this advice.

More information about defending an Employment Tribunal case

- You can find out more about what to do if someone brings an Employment Tribunal case against you from Acas – see in *'Further sources of information and advice'* for contact details.

5 | Further sources of information and advice

General advice and information

Equality and Human Rights Commission:

The Equality and Human Rights Commission is the independent advocate for equality and human rights in Britain. It aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights. If you need expert information, advice and support on discrimination and human rights issues and the applicable law, especially if you need more help than advice agencies and other local organisations can provide, please contact the Equality Advisory and Support Service (EASS), below. EASS was commissioned by Government in 2012 to replace the EHRC Helpline, which is now closed. EASS is completely independent of the Commission.

Equality Advisory Support Service (EASS)

The Helpline advises and assists individuals on issues relating to equality and human rights, across England, Scotland and Wales. They can also accept referrals from organisations which, due to capacity or funding issues, are unable to provide face to face advice to local users of their services.

- Website: www.equalityadvisoryservice.com/
- Telephone: 0808 800 0082 (Mon–Fri: 9am to 8pm; Sat 10am to 2pm)
- Text phone: 0808 800 0084 (Mon–Fri: 9am to 8pm; Sat 10am to 2pm)

Acas – The Independent Advisory, Conciliation and Arbitration Service

Acas aims to improve organisations and working life through better employment relations. It provides impartial advice, training, information and a range of problem resolution services.

- Website: www.acas.org.uk
- Telephone: 08457 47 47 47 (Mon–Fri: 08:00–20:00; Sat: 09:00–13:00)

GOV.UK (Employing people)

Guidance from the government's website for employers.

- Website: https://www.gov.uk/browse/employing-people

Access to Work

Access to Work can help disabled people or their employers if their condition or disability affects the ease by which they can carry out their job or gain employment. It gives advice and support with extra costs which may arise because of certain needs.

- Website: https://www.gov.uk/access-to-work

London, East England and South East England

- Email: atwosu.london@jobcentreplus.gsi.gov.uk
- Telephone: 020 8426 3110
- Textphone: 020 8426 3133

Wales, South West England, West Midlands and East Midlands:

- Telephone: 02920 423 291
- Textphone: 0845 602 5850
- Email: atwosu.cardiff@dwp.gsi.gov.uk

Scotland, North West England, North East England and Yorkshire and Humberside:

- Telephone: 0141 950 5327
- Email: atwosu.glasgow@jobcentreplus.gsi.gov.uk

Advicenow

An independent, not-for-profit website providing accurate, up-to-date information on rights and legal issues.

- Website: www.advicenow.org.uk

Advice UK

A UK network of advice-providing organisations. They do not give out advice themselves, but the website has a directory of advice-giving agencies.

- Website: www.adviceuk.org.uk
- Email: mail@adviceuk.org.uk
- Telephone: 0300 777 0107 **or** 0300 777 0108

Age UK

Age UK aims to improve later life for everyone by providing information and advice, campaigns, products, training and research.

- Website: www.ageuk.org.uk
- Telephone: 0800 169 6565
- Email: contact@ageuk.org.uk

Association of Disabled Professionals (ADP)

The ADP website offers advice, support, resources and general information for disabled professionals, entrepreneurs and employers.

- Website: www.adp.org.uk
- Telephone: 01204 431638 (answerphone only service)
- Fax: 01204 431638
- Email: info@adp.org.uk

British Chambers of Commerce (BCC)

The BCC is the national body for a network of accredited Chambers of Commerce across the UK; each Chamber provides representation, services, information and guidance to its members.

- Website: www.britishchambers.org.uk
- Telephone: 020 7654 5800
- Fax: 020 7654 5819
- Email: info@britishchambers.org.uk

British Retail Consortium (BRC)

The BRC is a trade association representing a broad range of retailers. It provides advice and information for its members.

- Website: www.brc.org.uk
- Telephone: 020 7854 8900
- Fax: 020 7854 8901

Business Gateway

Business Gateway provides practical help, advice and support for new and growing businesses in Scotland.

- Website: www.bgateway.com
- Telephone: 0845 609 6611

Business in the Community

Business in the Community mobilises businesses for good, working to improve businesses in terms of their responsibilities to both the local and global community, helping to work towards a sustainable future.

- Website: www.bitc.org.uk
- Telephone: 020 7566 8650
- Email: informationn@bitc.org.uk
- Twitter: @BITC1

Business Disability Forum (BFD)

BFD replaces the EFD and is the world's leading employers' organisation focused on disability as it affects business.

- Website: www.businessdisabilityforum.org.uk/
- Telephone: 020 7403 3020
- Fax: 020 7403 0404
- Textphone: 020 7403 0040
- Email: enquiries@businessdisabilityforum.org.uk

Citizens Advice Bureau

Citizens Advice Bureaux offer free, confidential, impartial and independent advice from over 3,500 locations. These include high streets, community centres, doctors' surgeries, courts and prisons. It is available to everyone.

Advice may be given face-to-face or by phone. Most bureaux can arrange home visits and some also provide email advice. A growing number are piloting the use of text, online chat and webcams.

- Website: www.citizensadvice.org.uk/getadvice.ihtml
- Telephone (England): 08444 111 444
- Telephone (Wales): 08444 77 20 20

Citizens Advice Scotland

- Website: www.cas.org.uk
- Telephone: 0808 800 9060.

Chartered Institute of Personnel and Development (CIPD)

The CIPD is Europe's largest human resources development professional body, with over 135,000 members. It supports and develops those responsible for the management and development of people within organisations.

- Website: www.cipd.co.uk
- Telephone: 020 8612 6208

ChildcareLink

ChildcareLink provides details of local childcare providers for employees and employers, as well as general information about childcare.

- Website: www.childcare.co.uk
- Telephone: 0800 2346 346

Close the Gap Scotland

Close the Gap Scotland works to close the gender pay gap by working with companies and trade unions as well as carrying out research to illustrate the gender pay gap.

- Website: www.closethegap.org.uk
- Telephone: 0141 337 8131

The Confederation of British Industry (CBI)

The CBI is the UK's leading business organisation, speaking for some 240,000 businesses that together employ around a third of the private sector workforce.

- Website: www.cbi.org.uk
- Telephone: 020 7379 7400

Department for Business, Innovation and Skills (BIS)

BIS is the UK government department with responsibility for trade, business growth, employment and company law and regional economic development.

- Website: www.gov.uk/government/organisations/department-for-business-innovation-skills
- Telephone: 020 7215 5000

Disability Law Service (DLS)

The DLS is a national charity providing information and advice to disabled and Deaf people. It covers a wide range of topics including discrimination, consumer issues, education and employment.

- Website: www.dls.org.uk
- Telephone: 020 7791 9800
- Minicom: 020 7791 980

EEF

EEF is a membership organisation which provides business services to help members manage people, processes, environment and more, so that members can meet their regulatory commitments.

- Website: www.eef.org.uk
- Telephone: 0845 250 1333

Employers Forum on Age (EFA)

EFA is an independent network of leading employers who recognise the value of an age diverse workforce. In addition to supporting employers, the EFA influences Government, business and trade unions, campaigning for real practical change in preventing age discrimination at work and in the job market.

- Website: www.efa.org.uk
- Telephone: 020 7922 7790
- Email: efa@efa.org.uk

Employers Forum on Belief (EFB)

EFB offers employers practical guidance and shares good practice around issues such as dress codes, religious holidays, the inter-relationship between religious belief and other diversity strands and conflict in the workplace. The forum is not affiliated to any religious group or philosophical belief.

- Website: www.efbelief.org.uk
- Telephone: 0 020 7922 7790
- Email: info@efbelief.org.uk

Equality Britain

Equality Britain aims to promote opportunities in employment, education, housing and sport to people from ethnic minorities.

- Website: www.equalityuk.org

Federation of Small Businesses (FSB)

The FSB works to protect, promote, and further the interests of the self-employed and small business sector. It provides a range of member services.

- Website: www.fsb.org.uk
- Telephone: 02075928100

Gender Identity Research and Education Society (GIRES)

GIRES provides a wide range of information and training for Trans people, their families and professionals who care for them.

- Website: www.gires.org.uk
- Telephone: 01372 801 554
- Fax: 01372 272 297
- Email: info@gires.org.uk

The Gender Trust

The Gender Trust is the UK's largest charity working to support Transsexual, Gender Dysphoric and Transgender people or those who are affected by gender identity issues. It has a helpline and provides training and information for employers and organisations.

- Website: www.gendertrust.org.uk
- Telephone: 01273 234024

GOV.UK

GOV.UK is the UK government's digital service for people in England and Wales. It delivers information and practical advice about public services, bringing them all together in one place.

- Website: www.gov.uk

Government Equalities Office (GEO)

The GEO is the Government department responsible for equalities legislation and policy in the UK.

- Website: www.gov.uk/government/organisations/government-equalities-office
- Telephone: 020 7211 6000

Health and Safety Executive (HSE)

The HSE provides information and guidance on health and safety.

- Website: www.hse.gov.uk
- Telephone: 08701 545 500
- Email: hseinformationservices@natbrit.com

Healthy Minds at Work

Healthy Minds at Work is a Wales-based initiative to help prevent absence from work due to stress-related illnesses through improving the welfare of employees.

- Website: www.healthymindsatwork.org.uk
- Email: info@healthymindsatwork.org.uk

Investors in People (IiP)

IiP offers a business improvement tool designed to help all kinds of organisations develop performance through their people. It provides tailored assessments designed to support organisations in planning, implementing and evaluating effective strategies and is relevant for organisations of all sizes and sectors.

- Website: www.investorsinpeople.co.uk
- Telephone: 020 7467 1900
- Email: info@investorsinpeople.co.uk

Law Centres Network

The Law Centres Federation is the national co-ordinating organisation for a network of community-based law centres. Law centres provide free and independent specialist legal advice and representation to people who live or work in their catchment areas. The Federation does not itself provide legal advice, but can provide details of your nearest law centre.

- Website: www.lawcentres.org.uk
- Telephone: 0203 637 1330

The Law Society

The Law Society is the representative organisation for solicitors in England and Wales. Their website has an online directory of law firms and solicitors. You can also call their enquiry line for help in finding a solicitor. They do not provide legal advice.

- Website: www.lawsociety.org.uk
- Telephone: 020 7242 1222 (general enquiries)

They also have a Wales office

- Telephone: 029 2064 5254
- Fax: 029 2022 5944
- Email: wales@lawsociety.org.uk

Scottish Association of Law Centres (SALC)

SALC represents law centres across Scotland.

- Website: www.scotlawcentres.blogspot.com
- Telephone: 0141 561 7266

Mindful Employer

Mindful Employer provides information, advice and practical support for people whose mental health affects their ability to find or remain in employment, training, education and voluntary work.

- Website: www.mindfulemployer.net
- Telephone: 01392 208 833
- Email: info@mindfulemployer.net

Opportunity Now

Opportunity Now is a membership organisation representing employers who want to ensure inclusiveness for women, supporting their potential to be as economically active as men. Opportunity Now is part of Business in the Community.

- Website: www.opportunity.bitc.org.uk
- Telephone: 0207 566 8650

Press for Change (PfC)

PfC is a political lobbying and educational organisation. It campaigns to achieve equality and human rights for all trans people in the UK through legislation and social change. It provides legal advice, training and consultancy for employers and organisations as well as undertaking commissioned research.

- Website: www.pfc.org.uk
- Telephone: 08448 708165
- Email: office@pfc.org.uk

Race for Opportunity (RfO)

RfO is a network of private and public sector organisations working across the UK to promote the business case for race and diversity. It is part of Business in the Community.

- Website: www.raceforopportunity.org.uk
- Telephone: 0207 566 8716

Small Business UK

Small Business UK provides resources, products and services for small business owners and start-ups. It offers free online advice in the form of news articles, guides, tips and features to help people set up and run small businesses.

- Website: www.smallbusiness.co.uk
- Telephone: 020 7250 7010

Stonewall

Stonewall is the UK's leading lesbian, gay and bisexual charity and carries out campaigning, lobbying and research work as well as providing a free information service for individuals, organisations and employers.

- Website: www.stonewall.org.uk
- Telephone: 08000 50 20 20
- Email: info@stonewall.org.uk

The Age and Employment Network (TAEN)

An independent charity whose mission is to promote an effective job market that serves the needs of people in mid- and later life, employers and the economy.

- Website: www.taen.org.uk
- Telephone: 020 7843 1590

TUC – the Trades Union Congress (England and Wales)

With 59 member unions representing over six and a half million working people, the TUC campaigns for a fair deal at work and for social justice at home and abroad.

- Website: www.tuc.org.uk
- Telephone: 020 7636 4030

Scottish Trades Union Congress (STUC)

- Website: www.stuc.org.uk
- Telephone: 0141 337 8100
- Email: info@stuc.org.uk

Train to Gain

Advice and resources for businesses looking for support in training their staff.

- Website: www.traintogain.gov.uk
- Telephone: 0845 600 9006

Working Families

Working Families is a work–life balance organisation, helping children, working parents and carers and their employers find a better balance between responsibilities at home and work.

- Website: www.workingfamilies.org.uk
- Telephone: 0800 013 0313
- Email: office@workingfamilies.org.uk

Workwise

Workwise aims to make the UK one of the most progressive economies in the world by encouraging the widespread adoption of smarter working practices in order to gain better productivity and to balance work–life pressures.

- Website: www.workwiseuk.org
- Telephone: 01252 311 557
- Email: enquiries@workwiseuk.org

6 | Glossary

accessible venue — A building designed and/or altered to ensure that people, including disabled people, can enter and move round freely and access its events and facilities.

Act — A law or piece of legislation passed by both Houses of Parliament and agreed to by the Crown, which then becomes part of statutory law (ie is *enacted*).

affirmative action — Positive steps taken to increase the participation of under-represented groups in the workplace. It may encompass such terms as positive action and positive discrimination. The term, which originates from the United States of America, is not used in the Equality Act.

age — This refers to a person belonging to a particular age group, which can mean people of the same age (e.g. 32-year-olds) or range of ages (e.g. 18–30-year-olds, 'middle-aged people' or people over 50).

agent — A person who has authority to act on behalf of another ('the principal') but who is not an employee or worker employed by the employer.

all reasonable steps — In relation to discriminatory actions by an employee, all the things that the employer could reasonably have done to have stopped the discriminatory acts if they are not responsible; in relation to reasonable adjustments, 'reasonable steps' is another term for the things that the employer could reasonably have done to remove the disadvantage.

alternative format — Media formats which are accessible to disabled people with specific impairments, for example Braille, audio description, subtitles and Easy Read.

armed forces	Refers to military service personnel.
associated with	This is used in a situation where the reason a job applicant or worker is discriminated against is not because they have a particular protected characteristic, but because they are 'associated with' another person who has that protected characteristic, eg the other person is their friend or relative. For example, an employer decides not to recruit a non-disabled worker because they have a disabled child. This is sometimes referred to as discrimination 'by association'.
association, by	As in 'discrimination by association'. See **associated with.**
auxiliary aid	Usually a special piece of equipment to improve accessibility.
auxiliary service	A service to improve access to something often involving the provision of a helper/assistant.
barriers	In this guide, this term refers to obstacles which get in the way of equality for disabled workers and other workers put at a disadvantage because of their protected characteristics. Unless explicitly stated, 'barriers' does not exclusively mean physical barriers. For more on barriers in relation to disabled workers, see **duty to make reasonable adjustments.**
Bill	A draft Act, not passed by Parliament.
burden of proof	This refers to whether, in an Employment Tribunal, it is for the worker to prove that discrimination occurred or it is for the employer to disprove it. Broadly speaking, a worker must prove facts which, if unexplained, indicate discrimination. The burden of proof then shifts to the employer to prove there was no discrimination. If the employer cannot then prove that no discrimination was involved, the worker will win their case.
charity	A body (whether corporate or not) which is for a statutory charitable purpose that provides a benefit to the public.

Code of Practice	A statutory guidance document which must be taken into account by courts and tribunals when applying the law and which may assist people to understand and comply with the law.
comparator	A person with whom a claimant compares themselves to establish less favourable treatment or a disadvantage in a discrimination case. If a comparator does not exist it is often possible to rely on how a person would have been treated if they did not have the relevant protected characteristic (known as a 'hypothetical' comparator).
contract worker	Under the Equality Act, this has a special meaning. It means a person who is sent by their employer to do work for someone else (the 'principal'), under a contract between the employer and the principal. For example, a person employed by an agency to work for someone else ('an end-user') or a person employed by a privatised company to work on contracted out services for a public authority, may be a contract worker. The Equality Act makes it unlawful for the principal to discriminate against the contract worker.
data protection	Safeguards concerning personal data are provided for by statute, mainly the Data Protection Act 1998.
direct discrimination	Less favourable treatment of a person compared with another person because of a protected characteristic. This may be their own protected characteristic, or a protected characteristic of someone else, eg someone with whom they are **associated**. It is also direct discrimination to treat someone less favourably because the employer wrongly perceives them to have a protected characteristic.
disability	A person has a disability if they have a physical or mental impairment which has a **substantial** and long-term adverse effect on that person's ability to carry out normal day-to-day activities. Sometimes people are treated as having a disability where they do not meet these criteria (e.g. asymptomatic cancer and HIV).

disabled person	Someone who has a physical or mental impairment that has a **substantial** and long-term adverse effect on their ability to carry out normal day-to-day activities. Sometimes people are treated as having a disability where they do not meet these criteria (e.g. asymptomatic cancer and HIV).
disadvantage	A detriment or impediment – something that the individual affected might reasonably consider changes their position for the worse.
discrimination arising from disability	When a person is treated unfavourably because of something arising in consequence of their disability, eg an employer dismisses a worker because of the length of time they have been on sick leave. The reason the worker has been off sick is because of their disability. If it is **objectively justifiable** to treat a person unfavourably because of something arising from their disability, then the treatment will not be unlawful. It is unlikely to be justifiable if the employer has not first made any **reasonable adjustments**. The required knowledge is of the facts of the worker's disability but an employer does not also need to realise that those particular facts are likely to meet the legal definition of disability.
disproportionately low	Refers to situations where people with a protected characteristic are under-represented compared to their numbers in the population or in the relevant workplace.
diversity	This tends to be used to refer to a group of people with many different types of protected characteristic; for example, people of all ages, religions, ethnic background, etc.

duty to make reasonable adjustments	This duty arises where (1) a physical feature of the workplace or (2) a provision, criterion or practice applied by an employer puts a disabled worker or job applicant at a **substantial** disadvantage in comparison with people who are not disabled. It also applies where a worker or job applicant would be put at a substantial disadvantage but for the provision of an auxiliary aid. The employer has a duty to take reasonable steps to avoid that disadvantage by (i) changing provisions, criteria or practices, (ii) altering, removing or providing a reasonable alternative means of avoiding physical features, and (iii) providing auxiliary aids. In many situations, an employer must treat the disabled worker or job applicant more favourably than others as part of the reasonable adjustment. More detail of the law and examples of reasonable adjustments are set out in Chapter 4 of this guide.
educational establishments	Schools, colleges and higher educational institutions.
employee	A person who carries out work for a person under a contract of service or a contract of apprenticeship or a contract personally to do work; or a person who carries out work for the Crown or a relevant member of the Houses of Parliament staff. This guide refers to someone in these categories as 'workers'. *See* **worker**.
employer	A person who makes work available under a contract of employment, a contract of service, a contract of apprenticeship, the Crown or a relevant member of the Houses of Parliament staff.
employment service provider	A person who provides vocational training and guidance, careers services and may supply employers with workers.
employment services	Vocational training and guidance, finding employment for people, supplying employers with workers.

Employment Tribunal	Cases of discrimination in work situations (as well as unfair dismissal and most other employment law claims) are heard by Employment Tribunals. A full Hearing is usually handled by a three person panel – a Judge and two non-legal members.
equal pay audit	An exercise to compare the pay of women and men who are doing equal work in an organisation, and investigate the causes of any pay gaps identified; also known as an 'equal pay review'. The provisions in the Equality Act directly relating to equal pay refer to sex equality but an equal pay audit could be applied to other protected characteristics to help an employer equality proof their business.
equal work	A woman's work is equal to a man's in the same employment (and vice versa) if it is the same or broadly similar (like work); rated as equivalent to his work under a job evaluation scheme or if she can show that her work is of equal value to his in terms of the demands made of her.
equality clause	A sex equality clause is read into a person's contract of employment so that where there is a term which is less favourable than that enjoyed by someone of the opposite sex doing equal work, that term will be modified to provide equal terms.
equality policy	A statement of an organisation's commitment to the principle of equality of opportunity in the workplace.
equality training	Training on equality law and effective equality practice.
ET	Abbreviation for Employment Tribunal.
exceptions	Where, in specified circumstances, a provision of the Act does not apply.
flexible working	Alternative work patterns, such as working different hours or at home, including to accommodate disability or childcare commitments. See also **right to request flexible working**.

gender reassignment	The process of changing or transitioning from one gender to another. The Equality Act prohibits discrimination against a person who is proposing to undergo, is undergoing or has undergone a process, or part of a process, for the purpose of reassigning their sex. See also **transsexual** person.
gender recognition certificate	A certificate issued under the Gender Recognition Act to a transsexual person who seeks such a certificate and who has, or has had gender dysphoria, has lived in the acquired gender throughout the preceding two years, and intends to continue to live in the acquired gender until death.
guaranteed interview scheme	This is a scheme for disabled people which means that an applicant will be invited for interview if they meet the essential specified requirements of the job.
harass	To behave towards someone in a way that violates their dignity, or creates a degrading, humiliating, hostile, intimidating or offensive environment for them.
harassment	Unwanted behaviour that has the purpose or effect of violating a person's dignity or creates a degrading, humiliating, hostile, intimidating or offensive environment for them. *See also* **sexual harassment**.
impairment	A functional limitation which may lead to a person being defined as disabled according to the definition under the Act. *See also* **disability**.
indirect discrimination	Where an employer applies (or would apply) an apparently neutral practice, provision or criterion which puts people with a particular protected characteristic at a disadvantage compared with others who do not share that characteristic, unless applying the practice, provision or criterion can be **objectively justified** by the employer.

instruction to discriminate	When someone who is in a position to do so instructs another to discriminate against a third party. For example, if a GP instructed their receptionist not to register anyone who might need help from an interpreter, this would amount to an instruction to discriminate.
job evaluation scheme	See job evaluation study.
job evaluation study	This is a study undertaken to assess the relative value of different jobs in an organisation, using factors such as effort, skill and decision-making. This can establish whether the work done by a woman and a man is equal, for equal pay purposes. *See also* **equal work**.
judicial review	A procedure by which the High Court supervises the exercise of public authority power to ensure that it remains within the bounds of what is lawful.
knowledge	This refers to knowledge of a person's disability which, in some circumstances, is needed for discrimination to occur. The required knowledge is of the facts of the worker's disability but an employer does not also need to realise that those particular facts are likely to meet the legal definition of disability.
less favourably	Worse – so 'less favourable treatment' means the same as 'worse treatment'.
liability	Legal responsibility. An employer is legally responsible for discrimination carried out by workers employed by you or by your agents, unless you have taken all reasonable preventative steps.
like work	See equal work.

marriage and civil partnership

In England and Wales marriage is no longer restricted to a union between a man and a woman but now includes a marriage between two people of the same sex.[1] This will also be true in Scotland when the relevant legislation is brought into force.[2]

Same-sex couples can also have their relationships legally recognised as 'civil partnerships'. Civil partners must not be treated less favourably than married couples (except where permitted by the Equality Act).

maternity

See pregnancy and maternity.

maternity leave

Leave which a woman can take whilst she is pregnant and after the birth of her child. Statutory maternity leave is divided into compulsory, ordinary and additional maternity leave. How much leave a woman is entitled to, and how much of it is paid, will vary, but all women employees are entitled to 52 weeks.

monitoring

Monitoring for equality data to check if people with protected characteristics are participating and being treated equally. For example, monitoring the representation of women, or disabled people, in the workforce or at senior levels within organisations.

monitoring form

A form which organisations use to collect equality monitoring data – from, for example, job applicants or employees. It records information about a person's protected characteristics. It is kept separately from any identifying information about the person.

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1 Section 1, Marriage (Same Sex Couples) Act 2013.

2 Marriage and Civil Partnership (Scotland) Act 2014.

more favourably	To treat somebody better than someone else. This is unlawful under the Act if it is because of a protected characteristic except in very limited circumstances. The law requires an employer to make reasonable adjustments for a disabled person to remove any disadvantage caused by their disability, and this often *requires* treating them more favourably. An employer can also *chose* to treat a disabled worker more favourably in other ways, eg by automatically shortlisting them for a job, even if they are not at a particular disadvantage on the relevant occasion. The law can also require pregnant workers to be treated more favourably in some circumstances.
national security	The security of the nation and its protection from external and internal threats, particularly from activities such as terrorism and threats from other nations.
normal retirement age	This is the retirement age at which, in practice, employees in a particular job and workplace would normally expect to retire. Normal retirement age can differ from the contractual retirement age. Regardless of age, it must be objectively justified.
objective justification	See objectively justified.
objectively justified	When something can be shown to be a proportionate means of achieving a legitimate aim – that is, the way of achieving the aim is appropriate and necessary. See also **proportionate**.
occupational health	Occupational health has no legal meaning in the context of the Equality Act, but it can be used to refer to the ongoing maintenance and promotion of physical, mental and social wellbeing for all workers. The phrase is often used as a shorthand way of referring to **occupational health services** provided by the employer.
occupational health practitioner	A health professional providing occupational health services.

occupational health service	This usually refers to doctors or nurses employed in-house by an employer or through an external provider who the employer may ask to see workers and give medical advice on their health when workplace issues arise.
occupational pension	A pension which an employee may receive after retirement as a contractual benefit.
occupational requirement	An employer can discriminate against a worker in very limited circumstances where it is an 'occupational requirement' to have a particular protected characteristic and the application of the requirement is **objectively justified**. There are two particular occupational requirement exceptions where employment is for the purposes of an organised religion or the employer has an ethos based on religion or belief, but very specific requirements need to be fulfilled.
office-holders	There are personal and public offices. A personal office is a remunerated office or post to which a person is appointed personally under the direction of someone else. A person is appointed to a public office by a member of the government, or the appointment is recommended by them, or the appointment can be made on the recommendation or with the approval of both Houses of Parliament, the Scottish Parliament or the National Assembly for Wales.
palantypist	Also known as 'Speech to Text Reporter'. A palantypist reproduces speech into a text format onto a computer screen at verbatim speeds for Deaf or hard of hearing people to read.
past disability	A person who has had a disability as defined by the Equality Act.

perception	This refers to a belief that someone has a protected characteristic, whether or not they do have it. Discrimination because of a perceived protected characteristic is unlawful. The idea of discrimination because of perception is not explicitly referred to in the Equality Act, but it is incorporated because of the way the definition of **direct discrimination** is worded.
physical barriers	A physical feature of a building or premises which places disabled people at a **substantial** disadvantage compared to non-disabled people when accessing goods, facilities and services or employment. *See also* **physical features**.
physical features	Anything that forms part of the design or construction of a place of work, including any fixtures, such as doors, stairs etc.
positive action	If an employer reasonably thinks that people sharing a certain protected characteristic suffer a disadvantage connected to that characteristic or have different needs, or if their participation in work or other activity is disproportionately low, an employer can take any action (which would otherwise be discrimination against other people) which is a proportionate means of enabling or encouraging those people to overcome or minimise their disadvantage or to participate in work or other activities or meeting their needs. For example, an employer can put on training courses exclusively for workers with a particular protected characteristic. An employer is not allowed to give preference to a worker in recruitment or promotion because they have a protected characteristic.

positive discrimination Treating someone with a protected characteristic more favourably to counteract the effects of past discrimination. It is generally not lawful, although more favourable treatment of workers because of their disability is permitted if the employer so wishes.

Moreover, the duty to make reasonable adjustments may require an employer to treat a worker more favourably if that is needed to avoid a disadvantage.

pre-employment disability and health enquiries Generally**,** an employer must not ask about disabilities or the health of a job applicant before they have been offered the job. If the employer does ask such questions and then fails to offer the applicant the job, the fact that the employer made such enquiries will shift the **burden of proof** if the applicant brings a claim for disability discrimination. The Equality and Human Rights Commission can also take legal action against the employer if such enquiries are wrongly made. More detail is set out in the guide, 'What equality law means for you as an employer: when you recruit someone to work for you'.

pregnancy and maternity Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context where special protections apply.

principal In the context of a **contract worker**, this is someone who makes work available for a worker who is employed by someone else and supplied by that employer under a contract between the employer and the principal. See **contract worker**.

procurement The term used in relation to the range of goods and services a public body or authority commissions and delivers. It includes sourcing and appointment of a service provider and the subsequent management of the goods and services being provided.

proportionate	This refers to measures or actions that are appropriate and necessary. Whether something is proportionate in the circumstances will be a question of fact and will involve weighing up the discriminatory impact of the action against the reasons for it, and asking if there is any other way of achieving the aim.
protected characteristics	These are the grounds upon which discrimination is unlawful. The characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
protected period	This refers to the time in a work context when the specific prohibition against unfavourable treatment of expectant and new mothers applies. The period begins at the start of a woman's pregnancy and continues until the end of her maternity leave.
provision, criterion or practice	Identifying a provision, criterion or practice is key to establishing **indirect discrimination**. It can include, for example, any formal or informal policies, decisions, rules, practices, arrangements, criteria, conditions, prerequisites or qualifications.
public authority	For the purposes of this Guidance a 'public authority' means: government departments, local authorities, courts and tribunals, health authorities and hospitals, schools, prisons, and police.
public bodies	For the purpose of this Guidance 'public bodies' includes public authorities (as above) as well as organisations which have a role in the processes of national governments but are not a government department or part of one. They operate to a greater or lesser extent at arm's length from Ministers, departmental government body or an inspectorate. This is not an exhaustive list.

public functions	A 'public function' for the purposes of this Guidance is any act or activities of a public nature carried out by a public authority or public body or by the private or voluntary sectors which is not already covered by the other sections of the Act dealing with services, housing, education and employment. Specifically, in relation to the private and voluntary sectors it will cover certain acts or activities carried out on behalf of the state. Examples of public functions include: determining frameworks for entitlement to benefits or services; law enforcement; receiving someone into prison or immigration detention facility; planning control; licensing; parking controls; trading standards; environmental health; regulatory functions; investigation of complaints; child protection. This is not an exhaustive list. Any act or activity undertaken by a public authority in relation to delivery of a public service or carrying out duties or functions of a public nature e.g. the provision of policing and prison services, including, government policy-making or local authority planning services.
public sector equality duty	The duty on a public authority when carrying out its functions to have due regard to the need to eliminate unlawful discrimination and harassment, foster good relations and advance equality of opportunity.
questions procedure	A discrimination law procedure whereby written pre-action questions are issued to the respondent, i.e. the person or organisation against whom a discrimination claim may be made. The questions are usually put onto a standard written form which is often called a ‘questionnaire’. This procedure will be abolished on 6 April 2014 (see, section in the Guidance on ‘questions procedure’ for details).
race	Refers to the protected characteristic of race. It refers to a group of people defined by their colour, nationality (including citizenship), ethnic or national origins.
rated as equivalent	An equal pay concept – see **equal work**

reasonable adjustment	See the duty to make reasonable adjustments.
regulations	Secondary legislation made under an Act of Parliament (or European legislation) setting out subsidiary matters which assist in the Act's implementation.
religion or belief	Religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief (e.g. atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition.
religion or belief organisations	An organisation founded on an ethos based on a religion or belief. Faith schools are one example of a religion or belief organisation. See also **religion or belief**.
religious organisation	See religion or belief organisations.
retirement age	The age at which an employee retires or is expected to retire. This may be an age which is set in the employee's contract of employment or the **normal retirement age** in that employment. Employers must objectively justify any retirement age imposed, following the abolition of the default retirement age in 2011. The employer may also impose a retirement age on workers who are not employees, but this must also be objectively justified.
right to request flexible working	Employees with at least 26 weeks' service have the right to request flexible working under a formal procedure for any reason. This is simply an entitlement to go through a formal procedure to have the request considered in a meeting and to receive written reasons for any refusal. A right to be allowed to work flexibly for care reasons applies more widely to workers and is covered by indirect sex discrimination law under the Equality Act.
same employment	An equal pay concept (see **equal work**). Generally, women and men can compare their pay and other conditions with those employed by the same or an associated employer.

service complaint	Where the discrimination occurred while the worker was serving as a member of the armed forces, an employment tribunal cannot decide the claim unless the worker has made a service complaint about the matter which has not been withdrawn.
service provider	Someone (including an organisation) who provides services, goods or facilities to the general public or a section of it.
sex	This is a protected characteristic. It refers to whether a person is a man or a woman (of any age).
sexual harassment	Any conduct of a sexual nature that is unwanted by the recipient, including verbal, non-verbal and physical behaviour, and which violates the victim's dignity or creates an intimidating, hostile, degrading or offensive environment for them.
sexual orientation	Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.
single-sex facilities	Facilities which are only available to men or to women, the provision of which may be lawful under the Equality Act.
specific equality duties	These are duties imposed on certain public authorities. They are designed to ensure that the better performance by a public authority of the public sector equality duty. See also **public sector equality duty**.
stakeholders	People with an interest in a subject or issue who are likely to be affected by any decision relating to it and/or have responsibilities relating to it.
substantial	This word tends to come up most in connection with the definition of disability and the duty to make reasonable adjustments for disabled workers. The Equality Act says only that ‘substantial’ means more than minor or trivial.

terms of employment	The provisions of a person's contract of employment, whether provided for expressly in the contract itself or incorporated by statute, custom and practice or common law etc.
textphone	A type of telephone for Deaf or hard of hearing people which is attached to a keyboard and a screen on which the messages sent and received are displayed.
trade unions	These are organisations formed to represent workers' rights and interests to their employers, for example in order to improve working conditions, wages or benefits. They also advocate more widely on behalf of their members' interests and make recommendations to government, industry bodies and other policy makers.
transsexual person	Refers to a person who has the protected characteristic of **gender reassignment**. This may be a woman who has transitioned or is transitioning to be a man, or a man who has transitioned or is transitioning to be a woman. The law does not require a person to undergo a medical procedure to be recognised as a transsexual person. Once a transsexual person has acquired a **gender recognition certificate**, it is probably the case that they should be treated entirely as their acquired gender.
tribunal	See **Employment Tribunal**
two ticks symbol	A sign awarded by Jobcentre Plus to employers who are positive about employing disabled people and are committed to employing, keeping and developing disabled staff.
UK Text Relay Service	Text Relay is a national telephone relay service for deaf, deafened, hard of hearing, deafblind and speech-impaired people. It lets them use a textphone to access any services that are available on standard telephone systems.

unfavourably	The term is used (instead of less favourable) where a comparator is not required to show that someone has been subjected to a detriment or disadvantage because of a protected characteristic – for example in relation to pregnancy and maternity discrimination, or discrimination arising from disability.
vicarious liability	This term is sometimes used to describe the fact that an employer is legally responsible for discrimination carried out by its employees. See also **liability**.
victimisation	Subjecting a person to a detriment because they have done a protected act or there is a belief that they have done a protected act i.e. bringing proceedings under the Equality Act; giving evidence or information in connection with proceedings under the Act; doing any other thing for the purposes or in connection with the Act; making an allegation that a person has contravened the Act; or making a relevant pay disclosure.
victimise	The act of victimisation.
vocational service	A range of services to enable people to retain and gain paid employment and mainstream education.
vocational training	Training to do a particular job or task.
Work Choice	Work Choice provides support to disabled people in helping them get and keep a job. The type of support varies according to the help needed but can include training and developing skills; building confidence and interview coaching.
work of equal value	See **equal work**.

worker

In this guide, ‘worker’ is used to refer to any person working for an employer, whether they are employed on a contract of employment (ie an ‘**employee’**) or on a contract personally to do work, or more generally as a **contract worker**. In employment law, the term ‘worker’ has a similar meaning to those people covered by the Equality Act. However, it is not quite identical to that and has its own definition; the term is used, for example, to people covered by the Working Time Regulations and the law on the minimum wage.

Contacts

This publication and related equality and human rights resources are available from the Commission's website: www.equalityhumanrights.com

For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

Website	www.equalityadvisoryservice.com
Telephone	0808 800 0082
Textphone	0808 800 0084
Hours	09:00 to 20:00 (Monday to Friday)
	10:00 to 14:00 (Saturday)
Post	FREEPOST Equality Advisory Support Service FPN4431

Questions and comments regarding this publication may be addressed to: correspondence@equalityhumanrights.com. The Commission welcomes your feedback

Alternative formats

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