GUIDANCE

What equality law means for you as an employer: working hours, flexible working and time off

Equality Act 2010
Guidance for employers

Vol. 2 of 7

Equality and Human Rights Commission

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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 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

Each of these guides is self-contained. In other words, everything you need to know in the situation you are interested in finding out about is in this guide. However, this means that some of the information is repeated in each guide. If you would find it useful, you can print off a full version of these guides without any repeated information from the Equality and Human Rights Commission website.

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 and may help you avoid an adverse decision by a court or Employment Tribunal in proceedings brought under the Equality Act 2010.

This guide is based on equality law as it is at 6 April 2014. Any future changes in the law will be reflected in further editions.

1 | What equality law means for you as an employer: working hours, flexible working and time off

What's in this guide

If you are an employer and are making decisions about your workers' hours, whether they can work flexibly or have time off, 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 ten or hundreds or thousands
- whether or not you use any formal processes or forms to help you make decisions.

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.

It covers the following situations and subjects (we tell you what any unusual words mean as we go along):

- Making a decision about a person's hours of work or request for flexible working:
  - Avoiding direct and indirect discrimination
  - Making reasonable adjustments to remove **barriers** for disabled people and avoiding discrimination arising from disability

  - Considering requests for changes to hours of work or flexible working on the basis of association with a protected characteristic
  - Considering requests for changes to hours of work or flexible working relating to a worker's religion or belief
  - Considering requests for changes to hours of work or flexible working relating to a worker's gender reassignment
- Making a decision relating to time off:
  - Avoiding direct and indirect discrimination
    - The specific age exception allowing different levels of annual leave based on length of service of up to five years
  - Making reasonable adjustments to remove **barriers** for disabled people and avoiding discrimination arising from disability
  - Considering requests for time off relating to a worker's religion or belief
  - Considering requests for time off relating to a worker's gender reassignment
  - Pregnancy-related absences
    - Sickness absence
    - Ante-natal care
  - Maternity, paternity and adoption leave.

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 working hours, flexibility and time off:

- 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.
- A Glossary containing 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 and sometimes on subsequent occasions. These words are explained further in the glossary.
- Advice on what to do if someone says they've been discriminated against.
- 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 a **worker** directly employed by you. Other types of worker such as trainees, apprentices and business partners are also covered. 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 worker worse than another worker because of a protected characteristic (this is called **direct discrimination**).

  For example: An employer is considering two requests for flexible working, from workers who do not qualify for the statutory employment **right to request flexible working.** One worker is a Christian and the other is not. The employer decides to agree only to the Christian's request, believing they will use the time in a more worthwhile way. This will probably be direct discrimination against the non-Christian because of religion or belief. The correct approach is for the employer to consider the requests by looking at the impact of the proposed working pattern on the organisation, and not at the protected characteristics of the person making the request. This may or may not lead to the same result, but the decision would not have been made because of the protected characteristic of religion or belief, so neither worker would have a claim for unlawful discrimination because of their religion or belief.

- 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 which has (or would have) a worse impact on a worker and on other people who share a particular protected characteristic than on people who do not have that 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.
- You must not treat a disabled worker **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 worker 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: An employer insists that all workers have to be in the office by 9am or face disciplinary action. A worker has a mobility impairment that makes travelling in the rush hour difficult. Unless the employer can objectively justify the requirement to be in at that time, this may be discrimination arising from disability, because the disabled worker would be treated unfavourably (being disciplined) for something connected to their disability (the inability to travel in the rush hour). This may also be a failure to make reasonable adjustments.

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

  For example: An employer allows all staff with children to leave work early one afternoon before Christmas to attend their children's school play or show. They assume that a worker with a disabled child will not need this time off so do not give them the same concession. This is likely to be direct discrimination because of disability on the basis of the worker's association with their disabled child.

You must not treat a worker worse than another worker because you incorrectly think they have a protected characteristic **(perception)**. **You must not treat a worker 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: When a worker asks to work flexibly, their employer refuses because the worker helped a colleague with a complaint about discrimination. This is victimisation.

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

For example: A worker is given permission by their manager to take annual leave but only after offensive questioning related to their sexual orientation which has made them feel humiliated. This is likely to be harassment.

- In addition, to make sure that a disabled worker has the same access as a non-disabled worker to everything that is involved in doing a job (including flexible working and time off), you must make **reasonable adjustments**.

  For example: An employer has a written policy which covers all types of leave, including what to do if workers are too ill to come to work, how decisions will be made about when annual leave is taken, and on flexible working. As a reasonable adjustment for a disabled worker who has a visual impairment, the employer reads the policy onto a CD and gives it to the worker.

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

  For example: A worker who has a learning disability has a contract to work from 9am to 5.30pm but wishes to change these hours. This is because the friend who accompanies the worker to work is no longer available before 9am. Allowing the worker to start later is likely to be a reasonable adjustment for that employer to make.

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

You must not directly discriminate against a person or harass or victimise in the ways described above 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 had with them.

Situations where equality law is different

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

There are two exceptions which are relevant to decisions about working hours, flexible work and time off. These apply to all employers:

- The possibility that direct age discrimination can be **objectively justified**.
- Special treatment for women in connection with pregnancy and maternity.

We only list the exceptions that apply to the situations covered in this guide. There are more exceptions which apply in other situations, for example, when you are recruiting someone to do a job. These are explained in the relevant guide in the series.

In addition to these exceptions, equality law allows you to:

- Treat disabled people better than non-disabled people.
- Use voluntary **positive action** in the way workers are managed. While positive action is most often seen as applying in recruitment, promotion and training, it can also be helpful in addressing workers' different needs when you are managing them.

Age

Age is treated differently from other protected characteristics. If you can show that it is **objectively justified,** you can make a decision based on someone's age, even if this would otherwise be direct discrimination. However, there are only limited situations 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**.

There is a specific age exception allowing different levels of benefits, eg annual leave, based on length of service of up to five years. This is explained at page 31.

Since the abolition of the default retirement age of 65 in 2011, employers seeking to impose a retirement age for their employees must now objectively justify their decision to do so. You can find advice on managing retirement in our guidance on *What equality law means for you as an employer: dismissal, redundancy, retirement and after a worker has left*.

Special treatment in connection with pregnancy and maternity

It is not sex discrimination against a man to provide special treatment for a woman in connection with pregnancy or childbirth.

For example: An employer allows a pregnant worker to have time off not just for ante-natal appointments (which is a legal requirement) but also to attend fitness classes for pregnant women at a nearby gym. The worker makes up the lost hours at another time, which she would not have to do for an ante-natal appointment. It would not be sex discrimination to refuse a man's request to go to a fitness class during working hours.

However, when granting special treatment to a woman who has already given birth you must be sure that the treatment is a proportionate means of compensating a woman for the disadvantages occasioned by her being pregnant or having given birth. In other words, any special treatment cannot be too remote from the fact that the woman has had a baby. It will usually be proportionate to continue any benefits that the woman has received as part of her employment for the whole of the maternity leave period, and other steps may be required to ensure that she is not disadvantaged because of absence due to pregnancy or maternity leave. If it is possible this should be done in a way that does not disadvantage another worker, though, sometimes, preferential treatment, even where this results in a disadvantage to another worker, will be necessary. As long as any special treatment does not go beyond what is necessary to rectify her disadvantage, it will not be sex discrimination against a man.

Positive action

'Positive action' means the steps that you can take as an employer to address the different needs or past track record of disadvantage or low participation of people who share a particular protected characteristic.

Although most often thought of in the context of recruitment, promotion or training, positive action is available to you in all employment situations, although you have to go through a number of tests to show that positive action is needed.

Taking positive action is voluntary. You do not have to take positive action. However:

- Meeting the different needs of your workforce can help make your staff more productive.

- If you are a **public authority**, positive action may help you meet the **public sector equality duty**.

If you want to know more about taking voluntary positive action in relation to how you manage your workers, read the Equality and Human Rights Commission's guide: *What equality law means for you as an employer: managing workers*.

Treating disabled workers better than non-disabled workers

As well as these exceptions, equality law allows you to treat a disabled worker better – or **more favourably** – than a non-disabled worker. This can be done even if the disabled worker is not at a specific disadvantage because of their disability in the particular situation. The reason the law was designed this way is to recognise that in general disabled people face a lot of **barriers** to participating in work and other activities.

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.

Some public authorities are also subject to what are known as specific equality duties. These require specific steps which are designed to assist relevant authorities in the performance of the public sector equality duty. These specific duties are different in England, Scotland and Wales.

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:

- Making a decision about a person's hours of work or request for flexible working:
  - Avoiding direct and indirect discrimination
  - Making reasonable adjustments to remove barriers for disabled people and avoiding discrimination arising from disability
  - Considering requests for changes to hours of work or flexible working on the basis of association with a protected characteristic
  - Considering requests for changes to hours of work or flexible working relating to a worker's religion or belief
  - Considering requests for changes to hours of work or flexible working relating to a worker's gender reassignment
- Making a decision relating to time off:
  - Avoiding direct and indirect discrimination
    - The specific age exception allowing different levels of annual leave based on length of service of up to five years
  - Making reasonable adjustments to remove **barriers** for disabled people and avoiding discrimination arising from disability
  - Considering requests for time off relating to a worker's religion or belief
  - Considering requests for time off relating to a worker's gender reassignment
  - Pregnancy-related absences
    - sickness absence
    - ante-natal care
  - Maternity, paternity and adoption leave.

Decisions about hours of work and flexible working

Flexible working and the 'right to request'

What is 'flexible working'?

By 'flexible working', this guide means any change from the usual working week of 35 or more hours worked between set times and at a set place. In practice, this might mean a worker:

- working part-time, working only during term time, or working from home some of the time
- adjusting their start and finish times
- adopting a particular shift pattern or working extended hours on some days with time off on others.

For more information on how flexible working can benefit employers and workers, see the Equality and Human Rights Commission's *Working Better* report.

What is 'the right to request'?

This guide is only about equality law. There is other legislation governing the 'right to request' flexible working which currently gives many employees with caring responsibilities for children, or adults in some cases, the right to have a request for flexible working considered according to set procedures. From 30 June 2014, new legislation will come into force which will mean that **all** workers with more than 26 weeks service will have the right to request flexible working for any reason.

Both under the old rules and those which apply from June 2014, if an employee qualifies for the right to request flexible working, you can refuse only on one of the business-related grounds set out in the statutory rules.

Currently, if you do not follow the set procedures, you risk being taken to an Employment Tribunal and possibly having to pay compensation to the employee. From 30 June 2014, employers who receive a request under the right to request scheme will no longer have to deal with requests for flexible working under the set procedures but will be under a duty to consider the request in a 'reasonable' manner.

Acas has produced some non-statutory guidance on handling requests for flexible working under the new regime: www.acas.org.uk/media/pdf/p/6/Handling-requests-to-work-flexibly-in-a-reasonable-manner-an-Acas-guide.pdf

Contact details for Acas are in 'Further sources of information and advice'.

You must avoid unlawful discrimination when you make decisions about what hours someone should work and whether to allow them to work flexibly.

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 of the guide covers the following:

- Avoiding direct and indirect discrimination
- Making reasonable adjustments to remove **barriers** for disabled people and avoiding discrimination arising from disability
- Considering requests for changes to hours of work or flexible working on the basis of association with a protected characteristic
- Considering requests for changes to hours of work or flexible working relating to a worker's religion or belief
- Considering requests for changes to hours of work or flexible working relating to a worker's gender reassignment.

Avoiding direct and indirect discrimination

Unless the situation comes into one of the exceptions where you are specifically allowed to take someone's protected characteristic into account, do not allow your decision about working hours or flexible working to be influenced by someone's protected characteristic.

If you do, it is likely to be direct discrimination, which cannot be justified (unless the protected characteristic is **age** – this is explained at page 13.

For example: An employer bases their decision whether to agree to a request to work flexibly on the worker's sex. The employer agrees a mother's request to work flexibly but refuses a father's request just because he is a man and the employer believes it is less important for him. This is probably direct sex discrimination and it would also be a breach of the right to request flexible working if the father had applied under that procedure.

Do not make a decision that has, or would have, a worse impact on a worker with a particular protected characteristic and other people who share that characteristic than it has on people who do not share it. Unless you can show that what you have done is **objectively justified**, this will be indirect discrimination.

For example:

- A woman returns from maternity leave and asks to work part-time using the right to request flexible working, for which she qualifies. Her employer turns down the request because none of the jobs similar to hers at the organisation are done part-time. The employer must:
  - follow the procedures set out in the law on the right to request flexible working or , if the request is made after 30 June 2014, consider the request in a 'reasonable' manner
  - base the decision on one or more of the business reasons for refusing such a request set out in the statutory rules, and
  - be able to **objectively justify** the refusal, as the decision to require that the jobs be done full-time has a worse impact on her and on other women compared with men, as women are more likely to have to combine paid work with caring responsibilities. If the employer cannot objectively justify the refusal and the application of the rule (about no part-time work in that job), this is likely to be indirect sex discrimination.
- A woman who is caring for her young child applies to work flexibly using the right to request, for which she qualifies. She is turned down.

  She makes another request six months later, suggesting a different working pattern that could easily be accommodated. Her employer does not have to use the procedures set out under the right to request, because these requests only have to be considered at 12 month intervals. However, if the employer refuses to look at her request altogether or if they refuse her again, this may be indirect sex discrimination, unless the employer can objectively justify what they have done. This is because a refusal to consider a change in the woman's working arrangements would have a worse impact on both the individual woman and on women generally compared with men, as they are more likely to have to combine paid work with caring responsibilities.
- A woman who works part-time is required by her employer to change to full-time hours when her job-share partner resigns. She is told that if she does not agree to this she will be dismissed. The employer does not consider recruiting another job-share partner and argues that there are business reasons for no longer allowing her to work part-time. This may be indirect sex discrimination if there is not a very strong reason for refusing to allow the woman to continue working part-time, because the requirement to work full-time has a worse impact on women than on men.

These rules apply to existing workers, whether or not they qualify for the 'right to request' under the flexible working procedure. They also apply to job applicants and new starters.

If a rule about working hours prevents more women than men from *applying* for a job, this may be unlawful sex discrimination, unless you can **objectively justify** the rule. This may result in your having to agree to a request to work flexibly from the time a woman starts working for you.

For example:

- A woman is unable to apply for a job for which she is well-qualified because the employer requires all staff to work a rotating shift pattern. The woman is unable to work during all the shift patterns because she needs to look after her 80-year- old mother at particular times of the day. No allowances are made because of this need. Such a requirement would put the woman and other women at a disadvantage because women are more likely than men to need to combine paid work with caring responsibilities. The employer will have indirectly discriminated against the woman because of her sex unless the requirement can be **objectively justified**.
- A woman is put off applying for a job to work in a small newsagent's and convenience store because the job requires working hours of 7am to 3pm, and she cannot combine the early start with her childcare responsibilities. Because it is essential to the very nature of the business is to open early, it is likely that the employer would be able to **objectively justify** the requirement for the early start.

  However, the woman and a friend in a similar situation apply to do the job between them. One will take on the early morning childcare for both of them one week while the other works, and then they will swap over. In this situation, if they are between them the best person for the job, it may be indirect discrimination to refuse to allow this arrangement unless the employer can objectively justify the refusal. Of course, as a matter of good practice, the employer themselves could open the job up to flexible working of this kind.

Although it is more likely that women rather than men will be combining paid work with caring responsibilities, avoid making assumptions about who has responsibilities for caring for children or adults. If you act on an assumption based on a person's protected characteristics, for example, that a gay man's request for particular working hours is less important than a straight woman's, this may result in direct or indirect discrimination.

Making reasonable adjustments to remove barriers for disabled workers and avoiding discrimination arising from disability

It may be a reasonable adjustment for you to allow a disabled worker to work flexibly if this removes a barrier to their being able to do the job. If the change in hours is a reasonable adjustment, you must agree to it.

You must make the change from the first point at which the duty to make reasonable adjustments arises, in other words, either when the worker starts working for you or (if they already work for you) when they become a disabled person. This applies if you know or ought reasonably to have known that the worker 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.

For example: A disabled worker has to eat at set times to manage their blood sugar for their diabetes, which is only possible by taking their breaks at slightly different times (and therefore working slightly different hours) from those that usually apply within an organisation. This does not have a negative impact on the worker's ability to do the job; quite the opposite, it removes a barrier which would otherwise stop them doing the job. If this is a reasonable adjustment, the employer must allow the change in hours.

Whether or not you would allow a non-disabled person to work flexibly in the particular job is not relevant, as:

- you are under a duty to make reasonable adjustments, and
- you are allowed to treat a disabled person better than a non-disabled person.

To avoid discrimination arising from disability, you must also avoid treating a disabled person **unfavourably** when making a decision about their working hours or considering their request to work flexibly if:

- this is because of something connected to their disability, and

- you cannot show that what you are doing is **objectively justified**, and
- you know or could reasonably be expected to know that the worker is a disabled person.

Considering requests for changes to hours of work or flexible working on the basis of association with a protected characteristic

The duty to make reasonable adjustments to remove **barriers** for disabled people does not apply to non-disabled workers who require adjustments to take care of a disabled person with whom they are associated. People in this position, and those assisting children or older relatives (whether or not disabled) with their day-to-day care needs, are often referred to as carers.

Most carers will qualify for the right to request flexible working once they have worked for their employer for at least 26 weeks. From 30 June 2014, all workers with more than 26 weeks service will have the right to request flexible working.

You also need to think about whether refusing a request for flexible working may be direct or indirect sex discrimination, as explained earlier.

The protected characteristic of the person with whom a worker is associated may be relevant if you make a decision based on that protected characteristic.

For example: An employer offers flexible working to all staff. Requests are supposed to be considered on the basis of the business needs of the organisation, but a manager decides that a man's request to work flexibly to care for his 90-year-old father is more important than another man's to care for his 50-year-old wife. If the manager's decision is based on the age of the person being cared for, this is almost certainly discrimination because of age by association. (It would not be unlawful if the decision was objectively justified, since direct discrimination because of age, unlike because of other protected characteristics, is allowed if justified.)

If the manager made their decision based on the fact the person with whom the worker was associated was a disabled person rather than an older person, that too might be direct discrimination by association. The manager should base any decision on the business needs of the organisation, not on the protected characteristics of the people making the requests.

Considering requests for changes to hours of work or flexible working relating to a worker's religion or belief

Some religions or beliefs may require their followers to pray at certain times of day, or to have finished work by a particular time.

For example: Some Jews will finish work before sunset on Friday in order to avoid working on the Jewish Sabbath, and will not work again until after sunset on Saturday.

If you apply a rule, such as refusing to allow a worker to take particular rest breaks or to finish work by a particular time, you need to **objectively justify** what you are doing, as otherwise this may be indirect discrimination because of religion or belief.

For example:

- An employer imposes a permanent work rota requiring occasional Sunday working. One employee is an active Christian. When the woman accepted the job six months earlier she had told her company that she was unable to work on a Sunday because of her faith. This was accepted at the time. She resigns when told that the change to working Sundays is non-negotiable. This rule has a worse impact on the woman and other Christians for whom Sunday observance is a manifestation of their religion. Applying the rule will be indirect discrimination because of religion or belief unless the employer can objectively justify it.
- A small manufacturing company needs its staff to take their breaks at set times because of the manufacturing process which requires that a process has to be complete before equipment can be left. A worker for whom praying at particular times of the day is a requirement of their religion asks if they can take their breaks at the times when they need to pray, making up the time over the course of the rest of the day. The company considers the request by looking at the impact on the business. Refusing the request may be indirect discrimination because of religion or belief unless the employer can objectively justify it, which it may be able to do if, for example, there is no alternative way of doing the work.

Some religions require extended periods of fasting. If you choose to make special arrangements to support workers through a fasting period, this would be a matter of good practice and may in some circumstances be required.

For example: A large catering company employs a large number of Muslim workers. During Ramadan, when the Muslim workers are fasting as an integral part of their religion, the employer allows them to take extra breaks to help out generally.

Considering requests for changes to hours of work or flexible working relating to a worker's gender reassignment

If a worker's request to work flexibly is because they propose to undergo, are undergoing or have undergone gender reassignment, you should consider their request on the same basis as you would consider any similar request which was not made under the right to request flexible working.

Don't refuse a request or treat it less seriously because it is being made by a **transsexual** person.

For example: A transsexual person asks their employer if they can compress their working hours into 9 days out of every 10. This is so that on the tenth day they can attend an appointment related to the process of gender reassignment. The employer decides to agree to the request. This is because they have looked at their organisation's needs and would have agreed such a request if it had been made by someone who was not undergoing gender reassignment. If they had refused because the worker is a transsexual person, this would be direct discrimination because of gender reassignment.

Equality good practice: what you can do if you want to do more than equality law requires

The benefits of flexible working

Some employers allow all staff to request flexible working subject to the needs of their organisation, even though the law does not require them to do this.

Doing this helps employees balance the demands of their work and their life outside work, and employers who offer it report benefits including:

- greater employee satisfaction and loyalty
- higher staff retention
- lower recruitment and training costs, and
- reduced absenteeism and workplace stress.

Think about how the following steps will help you and your organisation benefit from flexible working and avoid unlawful discrimination:

- Develop a policy on flexible working so that all employees understand what it is, who can apply for it and under what circumstances, whether this is:
  - those people who qualify under employment law for the right to request flexible working, and anyone with a protected characteristic which might require you to consider or allow flexible working, or
  - everyone in your organisation.

Tell your workers what the process is for making a request and how it will be decided.

- Make sure you (and anyone else who is making a decision about a right to request flexible working) understand who has a legal right to request flexible working and what you or they need to do in such circumstances. If, for example, you employ a manager and they do not understand this, and refuse to consider or, in some situations, allow a request, you may be liable for the manager's failure. You can read more about when you are responsible for what other people do in Chapter 2.

Going beyond the right to request

- Think about offering everyone who works for you flexibility from the day they start work, provided this fits in with the requirements of your organisation to achieve its aims.

  For example:

  - An employer advertises all jobs as being open to flexible working arrangements, unless they have worked out a good reason why a particular job is unsuitable. They offer to discuss this once a job offer has been made.

- Don't assume that certain jobs are not suitable for flexible working. Reasons employers may think this are:
  - the job is a senior role and therefore needs someone to be present at all times
  - introducing flexible working for one person would mean that everyone would want to work flexibly
  - managing someone who works flexibly would be too hard
  - customers would not like it.

However, many employers who have introduced flexible working have not found these to be obstacles and have found that there are advantages.

For example:

- An employer allows employees the flexibility to swap shifts amongst themselves. This helps the organisation to cover for unforeseen emergencies and at particularly busy times.

For more information on how flexible working can benefit employers and workers, see the *Equality and Human Rights Commission's Working Better* report.

The importance of using the right process

One important way you can avoid discrimination when deciding who can change their working hours or work flexibly is to set up a process which does not start by looking at the reason for the worker's request, but first considers whether your organisation would still be able to carry out its purpose if you agreed the request.

For example:

- An employer does not need to know that it is important to a worker to accompany a relative to kidney dialysis sessions on a Wednesday afternoon, just that they wish to adjust their hours to avoid working at that time.

So look at the impact on the person's work and on your organisation, not at the impact on the individual worker's personal circumstances. Once you look into the matter with an open mind, you may well find that the request causes fewer problems than you initially feared.

In some situations, however, you cannot avoid considering the worker's reasons for the request – for example, if a worker requests a reasonable adjustment because they have a disability.

You must also consider the worker's reasons for the request if you are thinking about refusing it in a situation which might be **indirect discrimination**. In other words, if you are applying a rule to the worker which would disadvantage them and also tend to disadvantage others with the same protected characteristic, for example, other women or other workers of the same religion.

To avoid **indirect discrimination**, the employer must be able to objectively justify what they are doing. This means that the rule they are applying must be **proportionate**. The impact on a worker of the employer saying 'no' is weighed up against the employer's needs. The greater the problems caused for the worker (and other workers with the same protected characteristic), the better justification the employer needs for refusing the worker's flexible working request.

This is the approach you *must* take if the worker who makes the request uses the right to request flexible working under employment law.

But it is also a helpful approach to take if you decide to offer flexible working to a wider range of workers.

If you make sure that all your workers understand how you will be making the decisions, this will:

- help you avoid making decisions based on a protected characteristic where doing this might result in unlawful discrimination
- help your workers make their request in a way that answers questions you may have about the impact on your organisation if you agreed their request, rather than having to tell you about their personal circumstances, and
- help avoid situations where one worker feels less valued than another because you have made a judgement about it being more important for one person to be able to work flexibly based on their personal circumstances.

Making a decision relating to time off

How employment law and equality law interact

Employment law (rather than the equality law which is explained in this guide) sets out people's rights to:

- A minimum number of days of paid time off
- Paid and unpaid maternity leave
- Paid paternity leave
- Paid and unpaid adoption leave
- Unpaid parental leave
- Unpaid family emergency leave in certain circumstances (for example, if a worker's usual childcare or care for other family members who depend on them is not available at short notice)
- Paid or unpaid time off for public duties and trade union responsibilities.

You can find out more about these rights at Acas.

Contact details for Acas can be found in 'Further sources of information and advice'.

In general, equality law applies not to whether people have a right to time off, but how you make your decisions about:

- who gets to take time off, when and how much
- whether the time off should be paid or unpaid
- how you record different types of absence.

Exceptions to this, where equality law does affect whether someone has a right to time off, are:

- Time off as a reasonable adjustment to remove barriers for disabled people
- Gender reassignment leave
- Pregnancy-related absence

These situations are explained in the next section of this guide.

Avoiding unlawful discrimination when you make a decision relating to workers' time off

You must avoid unlawful discrimination when you make a decision about a worker's time off. Decisions about time off might range from who takes their holiday when to how you record workers' absences.

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 of the guide covers the following:

- Avoiding direct and indirect discrimination
  - The specific age exception allowing different levels of annual leave based on length of service of up to five years
- Making reasonable adjustments to remove barriers for disabled people and avoiding discrimination arising from disability
- Considering requests for time off relating to a worker's religion or belief
- Considering requests for time off relating to a worker's gender reassignment
- Pregnancy-related absences
  - sickness absence
  - ante-natal care
- Maternity, paternity and adoption leave.

Some types of leave, such as holiday, count as a benefit and are treated in the same way as pay. You can read more about what this means in the Equality and Human Rights Commission guide: *What equality law means for you as an employer: pay and benefits*.

Avoiding direct and indirect discrimination

If you:

- refuse someone's request for leave because of a protected characteristic, or
- pay some people more than others during their time off because of a protected characteristic, or
- give some people more leave than others because of a protected characteristic

this is likely to be direct discrimination, unless employment law or equality law specifically allows you to do this (as it does with maternity leave, for example).

If you:

- say that everyone has to take leave at a particular time of year, or
- set conditions on when someone qualifies for extra leave

this may have a worse impact on a person with a particular protected characteristic and others with that characteristic than it would have on people who do not have the characteristic. Unless you can **objectively justify** what you are doing, this may be indirect discrimination.

The specific age exception allowing different levels of annual leave based on length of service of up to five years

Equality law allows you to make a distinction between workers in pay and benefits based on length of service, including how much annual leave they get.

You can give workers with less than five years' service different holiday entitlements to those with more than five years without having to **objectively justify** this.

For example: To encourage workers to stay with them for more than two years, an employer gives workers an extra day's paid annual leave for each complete year of service, up to five years. The exception allows the employer to do this without having to objectively justify the practice. This applies even though it is harder for younger employees to qualify for the extra leave and is therefore, on the face of it, indirect age discrimination against the younger workers.

You can work out length of service in one of two ways:

- by the length of time that the employee has been working for you at or above a particular level, or
- by the length of time the employee has been working for you in total.

If you use length of service of more than five years to award or increase a benefit, this falls outside the exception.

But there is a further difference: you may still be able to use length of service of more than five years to make decisions about holiday entitlement if you reasonably believe that using length of service in this way fulfils a business need. You may believe it rewards higher levels of experience, encourages loyalty, or increases or maintains your workers' motivation.

This is a less difficult test than the general test for **objective justification** for indirect discrimination. However, you still have to have evidence to support your belief that it does fulfil a business need. Examples of the sort of evidence you could use include:

- monitoring
- staff surveys
- individual or group discussions with staff.

For example: An employer wants to give an extra five days' annual leave to workers after ten years' service. The employer can only do this if they reasonably believe this practice fulfills a business need.

Making reasonable adjustments to remove barriers for disabled workers and avoiding discrimination arising from disability

Employers sometimes use workers' sickness absence records to help them make decisions about things like:

- promotion
- bonuses
- redundancy
- references.

If you treat time off taken by a disabled person which relates to their disability in exactly the same way as you treat sickness absence taken by a worker who is not disabled, this may result in the disabled person being treated worse than another worker because of something arising from their disability.

For example: A worker who is a disabled person requires a day off every month for physiotherapy related to their condition. The employer records these days off as sickness absence. When the employer is deciding which staff to pay an annual bonus to, one of the tests is having had fewer than five days' sickness absence in the year. The disabled person is therefore not eligible for the bonus. They have been treated worse than other workers because of something arising from their disability (the need to take time off for physiotherapy). To avoid this being unlawful, the employer must be able to **objectively justify** it.

Instead of trying to objectively justify the application of the rule in this way, the employer decides to record the absence related to the worker's disability separately from ordinary sickness absence. The employer excludes these days from the worker's sickness absence record when working out eligibility for the bonus.

Recording the leave separately like this would probably be a reasonable adjustment.

Once you know that a worker comes within the definition of a disabled person avoid:

- direct or indirect discrimination because of disability, or
- discrimination arising from disability

and to make sure that you have complied with the duty to make reasonable adjustments you should:

- Record the worker's disability-related time off separately from general sick leave. This will mean that you are not calculating bonuses or making other pay or employment decisions in a way that unlawfully discriminates against them.
- Stay in touch if someone is absent for a long period to find out how they are and to tell them what's happening at work (though make it clear you don't expect them to come back to work before they are ready).
- Think about a plan for their return to work, for example, arranging for them to start work again gradually or to do some work at home before they come into the office, if this is possible in their job.
- Consider reasonable adjustments with them and, if necessary, use expert advice to work out what reasonable adjustments can be made for when the worker is ready to return to work. If a change is reasonable, you must make it.

You do not have to pay sick pay beyond what you normally pay just because the person's time off is disability-related. But it may be a reasonable adjustment to:

- extend their sick pay
- offer unpaid 'disability leave', or
- allow them to take the extra time off as annual leave.

If the reason the worker is absent is because of a delay in implementing a reasonable adjustment that would enable the worker to return to the workplace, maintaining full pay may well be a further reasonable adjustment for the employer to make.

For example: A woman who has a visual impairment needs work documents to be enlarged. Her employer fails to make arrangements to provide her with these. As a result, she has a number of absences from work because of eye-strain. After she has received full sick pay for four months, the employer is considering a reduction to half-pay in line with its sickness policy. It is likely to be a reasonable adjustment to maintain full pay as her absence is caused by the employer's delay in making the original adjustment.

You could also change the targets expected of someone so that they have an equal chance of earning bonuses.

For example: A worker in sales takes every Thursday afternoon as unpaid leave for a disability-related reason. As a reasonable adjustment, their employer reduces their sales target to reflect their absence. Their team's target is also reduced by a proportionate amount.

Considering requests for time off relating to a worker's religion or belief

If a worker's religion or belief has special festival or spiritual observance days, they may ask for time off at a particular time in order to celebrate festivals or attend ceremonies.

If you refuse everyone's request to take time off on a particular day which happens to be a special observance day for workers of a particular religion, this may be indirect discrimination unless you can objectively justify your refusal. Although you may have strong reasons for needing all workers to come into work on a particular day, you should remember that it is often extremely important to workers sharing that religion that they do not work on the relevant day.

General rules regarding when annual leave can be taken or annual shut-downs can indirectly discriminate against workers sharing a particular religion if they coincide with religious holidays and you do not allow them time off on the relevant dates.

Similarly, a rule that workers cannot take their leave all at one time may indirectly discriminate against a worker who wants to go on a religious pilgrimage. In all cases, to avoid a refusal being indirect discrimination, you need to be able to objectively justify saying no.

Considering requests for time off relating to a worker's gender reassignment

You must not treat someone who is a transsexual person worse for being absent from work because they propose to undergo, are undergoing or have undergone gender reassignment than you would treat them:

- if they were absent because they were ill
- if they were absent for any other reason, and it is unreasonable to treat them worse.

This includes not treating the person worse when you make a decision about what time off they should have. If you would agree to a request for time off for someone to recover from an injury, then don't refuse someone who asks for time off for part of a process of gender reassignment. The request does not have to relate to a medical process. It could, for example, be for electrolysis to remove hair, or for counselling.

Pregnancy-related absences

Sickness absence

Special rules apply to sickness absence which is related to a woman's pregnancy or to her having given birth.

You should record pregnancy-related illness separately from other kinds of illness and should not count it towards someone's total sickness record.

You should not pay a woman who is absent for a pregnancy-related illness less than the contractual sick pay she would receive if she was absent for any other illness with a statement of fitness to work ('fit note').

You must not take into account a period of absence due to pregnancy-related illness, or maternity leave, when making a decision about a woman's employment, for example, for disciplinary purposes or if you're selecting workers for redundancy. Treat sickness absence associated with a miscarriage as pregnancy-related illness.

For example: A worker has been off work because of pregnancy complications since early in her pregnancy. Her employer has now dismissed her in accordance with the sickness policy which allows no more than 20 weeks' continuous absence. This policy is applied regardless of sex or pregnancy and maternity. The dismissal is unfavourable treatment and would be unlawful pregnancy discrimination even if a man would be dismissed for a similar period of sickness absence, because the employer took into account the worker's pregnancy-related sickness absence in deciding to dismiss.

You can find out more about what to do in this situation using the Equality and Human Rights Commission's Guidance on managing new and expectant parents.

You can read more about pay during a woman's pregnancy and maternity leave in the Equality and Human Rights Commission guide: *What equality law means for you as an employer: pay and benefits*.

Ante-natal care

You must give a pregnant employee time off for ante-natal care. Ante-natal care can include medical examinations, relaxation and parenting classes.

For example: A pregnant employee has booked time off to attend a medical appointment related to her pregnancy. Her employer insists this time must be made up for through flexi-time arrangements or her pay will be reduced to reflect the time off. This is unlawful: a pregnant employee is under no obligation to make up time taken off for ante-natal appointments and an employer cannot unreasonably refuse paid time off to attend such appointments.

The right for paid time off does not currently extend to the partners of pregnant women, or to prospective fathers although you could choose, as a matter of good practice, to allow someone to take annual leave or unpaid leave or to work flexibly to support their partner. However, from 1 October 2014, prospective fathers or a mother's partner will be able to take time off to attend up to 2 ante-natal appointments.

If you allow time off for the partners of pregnant women, or to prospective fathers make sure that you do not discriminate unlawfully in your approach.

For example: An employer allows a man whose female partner is pregnant to take annual leave to attend ante-natal appointments with her. The employer refuses a similar request from a woman whose female partner is pregnant. This is likely to be direct discrimination because of sexual orientation.

Good practice tip

Even if the test you use is whether the business needs of your organisation can still be met if you grant a particular person's request for time off, it is a good idea to keep a note of when requests are made, by which employee, and what your decision was.

You could then review your organisation's decisions over a particular period. If you **monitor** your workers' protected characteristics, you could use this information to check if any particular group is more likely to have its requests turned down.

If you find it is, look again at the criteria you are using to decide which requests to allow.

Maternity, paternity, adoption and parental leave

When you are dealing with workers who request or take maternity, paternity, adoption or parental leave, make sure you do not discriminate against a person because of a protected characteristic.

For example: A lesbian has asked her employer for unpaid parental leave. She and her partner adopted a child two years ago and she wants to be able to look after her child for part of the summer holidays. The worker made sure the time she has requested does not conflict with parental leave being taken by other workers. In exercising their discretion whether to grant parental leave, the woman’s line manager refuses her request because they do not agree with same-sex couples being allowed to adopt children. This is likely to be direct discrimination because of sexual orientation.

You should also be aware that the Government has passed legislation which means that from April 2015, mothers, fathers, partners and adopters can opt to share parental leave after their child’s birth or placement. Fathers and mothers’ partners can take up to a year individually, or parents will be able to take several months at the same time.

It is also expected that from April 2015 parents in surrogacy and 'foster to adopt' arrangements will also qualify for adoption leave and pay.

You can find practical guidance on dealing with maternity, paternity, parental and adoption leave in the Equality and Human Rights Commission's *Guidance on managing new and expectant parents.*

Equality good practice: what you can do if you want to do more than equality law requires

- Tell your workers when they start working for you what the process is for requesting time off and how decisions are made.
- Include annual leave and other sorts of time off such as maternity, paternity and adoption leave, parental leave and time off for emergencies. You could include this information in an employee's written terms of employment or contract and/or put it in a staff handbook if your organisation has one.
- Try to be flexible about when annual holidays are taken and make sure your workers know how much notice you require to be able to work out how to meet as many people's needs as possible (for example, if you have to ask other people to cover their work).
- There may be some jobs where it is not possible to be flexible but explanation and discussion may enable a compromise to be achieved. You do not have to accept unreasonable disruption to your organisation's activities.
- While it may be practical for one person or even a small number to be absent, it might be difficult for you if lots of people ask for the same time off. If this happens, you should discuss this with the people making the request (and with a recognised trade union if there is one) with the aim of balancing the needs of the organisation and of your workers.

Your questions answered

Q. Is it unlawful sex discrimination if I don't allow a woman time off to have fertility treatment?

A. Neither equality law nor employment law gives a woman a right to time off for in vitro fertilisation (IVF) or other fertility treatment. But in responding to any request, you must not treat a woman worse than you would treat a man making an equivalent request for time off.

For example: A female worker who is undergoing IVF treatment has to take time off sick because of its side effects. Her employer treats this as ordinary sickness absence and pays her contractual sick pay that is due to her. Had contractual sick pay been refused, this could amount to sex discrimination.

Of course, after a fertilised embryo has been implanted, a woman is legally pregnant and from that point is protected from unfavourable treatment because of pregnancy, including pregnancy-related sickness. She would also be entitled to time off for ante-natal care.

It is good practice (though not a legal requirement) for you to treat sympathetically any request for time off for IVF or other fertility treatment, and consider working out a procedure to cover this situation. This could include allowing women to take annual leave or unpaid leave when receiving treatment and designating a member of staff whom they can inform on a confidential basis that that they are undergoing treatment.

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 workers employed by you or your 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 workers who are employed by you 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 employed by you. It does not matter whether you have a formal contract with them.

As long as:

- the worker 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 the worker or agent did.

For example:

- A shopkeeper goes abroad for three months and leaves a worker employed by him in charge of the shop. This worker 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 the worker.
- An employer engages a financial consultant to act on their behalf in dealing with their finances internally and with external bodies, using the employer's headed notepaper. While working on the accounts, the consultant sexually harasses an accounts assistant. The consultant would probably be considered an agent of the employer and the employer is likely to be responsible for the harassment.

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

- you took all reasonable steps to prevent a worker employed by you 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 workers 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 workers and agents know how equality law applies to what they are doing.

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

Tell your workers 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 workers 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. However, you will have to do more than this to actively prevent discrimination.

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, provide training or even dismiss them; the action you take will obviously vary according to the nature of the breach and how serious it was.

If you do find that a worker employed by you 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 workers or agents may be personally liable

A worker employed by you or your 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 worker 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. A worker 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 an employer will not be responsible for discrimination, harassment or victimisation by someone other than their employee or agent. However, case law indicates that it is possible that they could be found to be legally responsible for failing to take action where they have some degree of control over a situation where there is a continuing course of offensive conduct, but they do not take action to prevent its recurrence even though they are aware of it happening.

For example:

- A woman is employed 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 a worker employed by them or an agent to discriminate against, harass or victimise another worker, 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 victimisation

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 they reasonably believe this to be true, they 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 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 worker has the same access to everything that is involved in doing and keeping 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.

You only have to make adjustments where you are aware – or should reasonably be aware – that a worker 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.

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 worker 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:

- must not be a reason not to promote a worker 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 worker'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.

It is advisable for you to discuss the adjustments with the disabled worker, otherwise the adjustments 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.

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 is a disabled person and is – or is likely to be – at a substantial disadvantage as a result. . 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. However, you must do everything you can reasonably be expected to do to find out if a person is disabled.

For example: A worker'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 worker says that they are experiencing a recurrence of depression and are not sleeping well which is making them late. Together, the employer and the worker agree to change the worker's hours slightly while they are in this situation and that the worker 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.

Good practice tip: be prepared for making reasonable adjustments

Equality law says that you must make reasonable adjustments if you know that a worker 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 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).
- Put in place a process for working out reasonable adjustments in the event of an existing worker 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 means you may be able to avoid losing the skills of a worker 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 talks about where the disabled job worker is put at a substantial disadvantage by a **provision, criterion or practice** of their employer).

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 talks about where the disabled job worker is put at a substantial disadvantage by a **provision, criterion or practice** of their employer).

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 stopping them being fully involved at work.

This includes your 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.
- 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.

- A physical feature 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 worker does not know what to suggest, you must still consider what adjustments may be needed.

For example: A disabled worker has been absent from work as a result of depression. Neither the worker 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. 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 knows about Access to Work. Although the advice and support are given to the worker 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. The test of what is reasonable is ultimately an objective test and not simply a matter of what you may personally think is reasonable.

When deciding whether an adjustment is reasonable you can consider:

- how effective the change will be in avoiding the disadvantage the disabled worker 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.

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 worker 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 worker 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. You should not make assumptions about risks which may face certain disabled workers.

If, taking all of the relevant issues into account, 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 manual worker asks for the health and safety rules to be read onto an audio CD and given 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 worker's duties to another worker.

  For example: An employer reallocates minor or subsidiary duties to another worker as a disabled worker 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 a worker whose disability involves severe vertigo.

- Transferring the worker 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 worker'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 worker to a different place of work or training.

For example: An employer relocates the work station of a newly disabled worker (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 worker'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 worker 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 worker needs occasional treatment anyway.

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

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 workers 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 workers (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 worker with restricted manual dexterity who was applying for promotion 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 worker 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 worker 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. Normally the employer allows workers to be accompanied only by work colleagues. The employer also makes sure that the meeting is conducted in a way that does not disadvantage or patronise the disabled worker.

- Adjusting redundancy selection criteria.

  For example: A worker 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 worker 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 co-operate 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 Glossary.

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.

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 also 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 under 35 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
- re-training 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.

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 Acas or 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

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 advisor 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.

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.

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