

Disability Discrimination Act 1995

The Disability Discrimination Act 1995 (DDA) has two major impacts on business owners. It affects employment policy in that it governs the rights of disabled people in the workplace and has property implications because it aims to give disabled people equality of access to products and services.

Employment issues



In a nutshell

The DDA makes it unlawful for any employer in Great Britain to discriminate against an employee who has a disability. This covers all employment issues, including recruitment, terms and conditions, benefits, training, promotions and dismissals.

Who qualifies as an 'employee'?

For the purposes of the DDA an employee includes all full time, part time, temporary, casual or permanent employees as well as contract workers.

What is the meaning of 'disability'?

The DDA defines a disabled person as someone who has a physical or mental impairment which has a substantial and long term adverse effect on the person's ability to carry out normal day to day activities.

Further legislation has ensured that people who have been diagnosed with cancer, multiple sclerosis or HIV/AIDS will automatically be protected by the DDA.

How can discrimination arise?

The DDA sets out five ways in which discrimination can arise in the workplace:

1. Direct discrimination

To show direct discrimination a disabled person would have to prove that they were treated less favourably than a non disabled person and that this was because of their disability.

2. Disability related discrimination

Here the discrimination does not have to be

directly because of the disability itself. The disabled person has to show that people without a disability have been treated differently under the same circumstances. For example there would be discrimination if a disabled person was dismissed after prolonged absence but a non disabled person was not.

3. Failure to make reasonable adjustments

The DDA imposes a duty upon employers to make reasonable adjustments in or around the workplace to accommodate a disabled employee. These adjustments may include:

- structural alterations to buildings
- supplying special equipment
- a transfer to a different workplace
- altering hours of work or giving extra time off

In deciding what is a reasonable adjustment several factors are taken into account including the potential benefits of the adjustment, the cost and the available resources of the employer.

4. Victimisation

It is unlawful to victimise a person who takes or assists in legal action because of disability discrimination or raises or assists in a grievance procedure relating to disability discrimination.

5. Harassment

Harassment on the grounds of disability is any unwarranted conduct relating to a disability that has the effect of violating the disabled person's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment.

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Equality of access

In a nutshell

The DDA makes it unlawful for any provider of services to treat disabled people less favourably than a non disabled person. This includes the duty to make reasonable adjustments to practices, policies and procedures and to physical obstacles to allow access to the services.

What is a 'provider of services'?

A business that offers services (other than education or transport which have their own provisions within DDA) or products to the public is a provider of services. This is the case whether the services and products are charged for or free.

What does the DDA require me to do?

If you are a provider of services you must:

- not treat disabled people less favourably for any reason relating to their disability
- make reasonable adjustments for disabled people
- make your services accessible to disabled people. If a physical feature makes it difficult or impossible for a disabled person to access your services you must take reasonable steps to resolve the access problem.

If my premises has an access problem what steps am I expected to make?

The Disability Rights Commission has produced a code of practice to help guide service providers on compliance with their duties. It is available to download in various formats from their website @ http://83.137.212.42/sitearchive/drc/the_law/legislation_codes_regulation/codes_of_practice.html.

In brief, if a physical feature makes access

impossible or reasonably difficult a service provider has to take reasonable steps to:

- remove the feature; or
- alter it so that it no longer has that effect; or
- provide a reasonable means of avoiding it; or
- provide a reasonable alternative method of making the service available

What are 'reasonable steps'?

What is judged reasonable will depend on the circumstances of each case. In defining what is reasonable factors that will be taken into account are:

- how effective the proposed adjustment will be in improving access
- the financial and other costs of making the adjustment
- the resources available to the service provider

My premises are leased. Do I need to get the landlord's consent to alterations?

If your lease requires the landlord's consent then you must obtain it. The landlord cannot unreasonably withhold consent but can impose reasonable conditions. If your lease does not allow alterations the provisions of the DDA override it and consent cannot be unreasonably withheld.

Note that you may also require consent from:

- lenders, if the property is subject to a charge
- anyone with the benefit of a restrictive covenant over the property
- planning authority
- listed building authority

This is just a very brief summary of the provisions of the DDA. If you feel you have any issues arising out of the DDA you should seek further, more detailed advice at www.gardandco.com.

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