

# Disability Discrimination Revisited



## Introduction

Latest statistics reveal that claims against employers for disability discrimination are rising year on year. Protection against discrimination on the grounds of disability is afforded to workers from the minute they make a job application so, unlike claims for unfair dismissal, there is no 'minimum service' requirement before a claim can be made. If successful, a tribunal can award a Claimant unlimited compensation and recent awards have been as high as £227,000, with the average around £19,000.

## What Counts As A 'Disability'?

This is a tricky question and ultimately, for the Employment Tribunal to decide, with the help of expert medical evidence. However, the employee must usually have been suffering (or will be likely to suffer) from the condition for at least 12 months', although cancer and other 'progressive conditions' are exempt from this rule. Conditions such as severe dyslexia, diabetes, asthma and even obesity (if resulting from depression) are all potential 'disabilities' and may be covered. However, conditions including alcohol or nicotine addiction, hay fever and similar conditions are specifically excluded. In a nutshell, the law requires employers to:

- Not treat disabled people 'less favourably' than non-disabled people;
- Not to harass or victimise on grounds of disability (or permit other employees to do so);
- To make 'reasonable adjustments' at work to accommodate a person's disability.

## Recent Developments

Last year, following a landmark case, it became easier for employers to dismiss a disabled employee with a poor absence record, even if the absence was disability-related, providing they could show they would treat a non-disabled employee in the same way. This also supports the view that the employer must have had some knowledge of the disability to be guilty of discrimination. However, a more recent case confirms that if an employer dismisses a disabled person without having considered any 'reasonable adjustments' (such as a transfer to an alternative role), then the dismissal will amount to unlawful discrimination. Employers also need to be careful of disability discrimination by association, where 'able-bodied' employees have disabled dependents.

## In The Pipeline

Although not yet law, the new Equality Bill sets out a range of proposals to harmonise all areas of existing discrimination law and will undoubtedly extend the rights of disabled people in the workplace.

## Can We Help?

If you would like further advice on any of the above or you have other employment issues you would like to discuss, please do call us. Simply telephone us on 01708 758958 or visit us at [www.hrinsight.co.uk](http://www.hrinsight.co.uk). We look forward to hearing from you!

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