Access All Areas in Labs Working Practices Access Guidelines

Version 1.1 (July 2023)

Deane KHO and the Access All Areas in Labs Team

Purpose of Guidelines

These guidelines focus on the key accessibility considerations when creating policies and practices for employees working in a lab environment. Because of the complexity of different legislative requirements this guideline is informed mainly by the UK's Equality Act 2010.

Disclaimer

These guidelines are provided in good faith and are intended as an aid to good practice in accessibility. They cannot replace sound judgement, professional care, or common sense. They should be read and applied in conjunction with appropriate standards, and all relevant local regulations, codes of practice, and laws.

These guidelines constitute a live document and may be subject to change in the future where the authors consider it appropriate in the light of new information or developments in the field of accessibility.

Comments and Corrections.

We welcome comments and corrections on these guidelines that will allow us to enhance the next version's quality and relevancy. If you have suggestions for changes, please email Dr Katherine Deane k.deane@uea.ac.uk

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Our Mission:

To remove the barriers to accessing life, so people can express their brilliance.

University of East Anglia

Contents

1 Key ideas informing these guidelines

Because of the complexity of different legislative requirements this guideline is informed mainly by the UK's Equality Act 2010.

1.1 Principles of disability accommodation

It is important to note that it is <u>not</u> unlawful for an employer to treat a disabled person more favourably compared to a non-disabled person (EHRC 2011).

- All workers deserve the opportunity to realise their full potential (TUC 2019).
- All reasonable steps must be taken to ensure that policies, practices, and culture do not discriminate against disabled people (TUC 2019).
- Some disabled people may not have a formal diagnosis or assessment, and that a lack of diagnostic support can be a barrier in the workplace for both workers and employers (TUC 2019).
- Disabled people face discrimination and stigma in wider society, and they may be unwilling to disclose a diagnosis (TUC 2019).
- Each person is unique and that there can be a high degree of overlap between multiple conditions. Consequently, any support needs must be identified and implemented on the basis of personal evaluation and individual need (TUC 2019).

The employer should commit to:

- Proactively work to eliminate barriers (including prejudice) that disabled people face in the workplace (TUC 2019).
- Raise awareness of the full range of disabilities including those that are often overlooked, for example: mental health conditions, dyslexia or other neurodivergent conditions (TUC 2019).
- Consider changes made in response to requests for reasonable adjustments (TUC 2019).
- Take immediate steps to eliminate potentially discriminatory practices in employment that can arise throughout the course of normal day-to-day workplace activities (TUC 2019).
- Ensuring workers know they have the right to be accompanied by their union rep in discussions about the reasonable adjustments passport (TUC 2019).
- Support paid release for union reps, including union equality reps and disability champions, to attend union education courses on disability and reasonable adjustment disability passports (TUC 2019).
- Promote the reasonable adjustment passports to all staff (TUC 2019).

1.2 The social model of disability

These guidelines are informed by the Social Model of Disability (Oliver 1990, Scope n.d.). This proposes that the majority of disability is caused by a lack of accommodation for impairments and differences. For example, a wheelchair user cannot get into a building because there are steps before the entrance. This is disabling not because the person is using a wheelchair but due to a lack of provision of a ramp. The responsibility for access lies with the owners of the building, not with the disabled person.

> *"Barriers can make it impossible or very difficult to access jobs, buildings or services, but the biggest barrier of all is the problem of people's attitude to disability. Removing the barriers is the best way to include millions of disabled people in our society" (TUC 2019).*

1.3 The duty to make reasonable adjustments

All employers have a legal duty under the Equality Act 2010 to proactively make reasonable adjustments to remove, reduce or prevent any disadvantages that disabled workers face (TUC 2019). In order to achieve equity for disabled people, work may need to be organised differently, support provided, and barriers removed.

1.4 The benefits of accessible labs

Labs are often designed without consideration to disability access due to the historic assumption that disabled scientists could not work safely in such environments. If disabled people's needs are not designed into work and workplaces, then few disabled people will be able to work there. This is part of why there is a significant under representation of disabled people working in science, technology, engineering, and maths (STEM). Whilst approximately 22% of the UK adult population of working age are disabled, only around 3.8% of UK STEM academics are identified as disabled (Joice 2021). The lack of diversity in research participants and scientists is a factor in wasteful research due to serious flaws in prioritisation, design, sampling, analysis and interpretation, etc. (Glasziou 2018; Macleod 2014; JLA 2023). Research that is informed by a diverse multidisciplinary team is better able to ensure practicality, utility, and impact (Deane 2014 and 2019, Schroeder 2022). The opportunity cost of not having disabled scientists with their diversity of experience and expertise is likely to be significant. Additionally, most disabilities are acquired; the loss of highly qualified scientists from the field when they acquire a disability is a substantial loss on the investment in their training.

We start with the assumption that all disabled scientists are able to work in labs, if the labs are designed with their access needs met. Safety issues can be designed "out" of the labs; either in the structural or equipment design or in the protocols used. Accessibility also includes the design of the work processes, staff knowledge and attitudes. Accessible labs will allow a greater proportion of disabled scientists to be trained and work in lab settings in a safe and comfortable manner. We genuinely believe this improved diversity in the

workforce will enhance the quality and potential profitability of the work done in laboratory settings.

1.5 Legislative Framework

The following guidelines are dominated by The Equality Act 2010. The Equality Act 2010 consolidates and replaces most of the previous discrimination legislation for England, Scotland and Wales. The Equality Act covers discrimination because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. These categories are known in the Equality Act as 'protected characteristics' (EHRC 2011).

These guidelines will highlight and summarise disability-relevant sections of the EHRC's code of practice (2011) covering discrimination in employment and work-related activities under Part 5 of the Equality Act. Part 5 is based on the principle that people with the protected characteristics set out in the Equality Act should not be discriminated against in employment, when seeking employment, or when engaged in occupations or activities related to work (EHRC 2011). We recognise that a disabled person could have more than one protected characteristic (intersectionality), e.g., they could be a black, disabled, pregnant woman. However, this is just a basic introduction to the issues and more comprehensive guidance on all of the protected characteristics are available elsewhere (EHRC 2011).

1.6 Defining a Disabled Person

The Equality Act (2010) says that a person has a disability if they have a physical or mental impairment which has a long-term and substantial adverse effect on their ability to carry out normal day-to-day activities. Physical or mental impairment includes sensory impairments such as those affecting sight or hearing (EHRC 2011). Please note a formal medical diagnosis is not required to gain protection for disability under the Equality Act (TUC 2019).

- Long-term means that the impairment has lasted or is likely to last for at least 12 months or for the rest of the affected person's life.
- Substantial means more than minor or trivial.

Where a person is taking measures to treat or correct an impairment (other than by using spectacles or contact lenses) and, but for those measures, the impairment would be likely to have a substantial adverse effect on the ability to carry out normal day to day activities, it is still to be treated as though it does have such an effect. This means that 'hidden' impairments (for example, mental illness or mental health conditions, diabetes and epilepsy) may count as disabilities where they meet the definition in the Equality Act. Cancer, HIV infection, and multiple sclerosis are deemed disabilities under the Equality Act from the point of diagnosis. In some circumstances, people who have a sight impairment are automatically treated under the Equality Act as being disabled. Progressive conditions and those with fluctuating or recurring effects will amount to disabilities in certain circumstances (EHRC 2011).

1.7 Spoon Theory

Energy limiting conditions are particularly poorly recognised and supported by current legislative and benefit frameworks (Hale 2021). There is frequent misunderstanding of the impact of energy limitations on people's ability to conduct activities consistently (Hale 2021). Spoon Theory is a metaphor to help disabled people describe the amount of energy (physical or mental) that they have available for daily activities and how that can become limited (Miserandio 2003).

In summary, Miserandio was trying to explain to a friend how she had to manage her daily energy "budget" resulting from having a chronic energy limiting condition (systemic lupus erythematosus). She was in a café, so she grabbed all the spoons she could and gave them to her friend. She said "That is your energy to get through the whole day. You get up and have a shower – I need to take one spoon. Do you want to wash your hair? Yes, well that will be another spoon. Eating breakfast, another spoon. And once you've used up your spoons for the day, you're pretty useless until you get some rest and sleep to replenish your spoons." As she described her day, and the choices she had to make to manage her energy levels (spoons), Miserandio realised she had a useful metaphor. Her friend realised that unlike herself, who had relatively unlimited energy, Miserandio had to make multiple choices about how to budget her limited energy quota every day. There are many variants of this original metaphor proposed (Peterson 2020), however we include this theory as we have found it a helpful initial metaphor to explain the energy limitations that accompany many disabilities, including Long Covid.

1.8 Defining Direct Discrimination

Direct discrimination occurs when a person treats another less favourably than they treat or would treat others because of a protected characteristic (EHRC 2011).

Direct discrimination is generally unlawful. However, in relation to the protected characteristic of disability, it is lawful for a disabled person to be treated more favourably than a non-disabled person. It is also lawful where the Equality Act provides an express exception which permits directly discriminatory treatment that would otherwise be unlawful. It is not unlawful for an employer to treat a disabled person more favourably compared to a non-disabled person (EHRC 2011).

A worker experiencing less favourable treatment 'because of' disability does not have to be disabled themselves. For example, the person might be associated with a disabled person ('discrimination by association'); or the person might be wrongly perceived as being disabled ('discrimination by perception'). Discrimination by association can occur in various ways – for example, where the worker has a relationship of parent, son or daughter, partner, carer or friend of a disabled person. The association with the disabled person need not be a permanent one (EHRC 2011).

Direct discrimination because of disability could also occur if a worker is treated less favourably because they campaigned to help a disabled person or refused to act in a way that would disadvantage a disabled person (EHRC 2011).

In most circumstances direct discrimination requires that the employer's treatment of the worker is less favourable than the way the employer treats, has treated or would treat another worker to whom the protected characteristic does not apply. This other person is referred to as a 'comparator'. The comparator for direct disability discrimination is the same as for other types of direct discrimination. However, for disability, the relevant circumstances of the comparator and the disabled person, including their abilities, must not be materially different. An appropriate comparator will be a person who does not have the disabled person's impairment but who has the same abilities or skills as the disabled person (regardless of whether those abilities or skills arise from the disability itself) (EHRC 2011).

However, the Equality Act creates a general exception to the prohibition on direct discrimination in employment for occupational requirements that are genuinely needed for the job (EHRC 2011).

- **Example.** It is reasonable to ask a paramedic working in an ambulance response role, to be able to climb two flights of stairs, carrying heavy bags of medical equipment, and be able to perform cardiopulmonary resuscitation on a patient at the top of the stairs. We struggled to find a similar exemplar in lab settings because most individual tasks that genuinely require a certain level of mobility, vision etc. could be allocated to another member of the lab team as a reasonable accommodation.

1.9 Defining Indirect Discrimination

Indirect discrimination may occur when an employer applies an apparently neutral provision, criterion or practice which puts disabled workers at a particular disadvantage (EHRC 2011).

For indirect discrimination to take place, four requirements must be met:

- the employer applies (or would apply) the provision, criterion or practice equally to everyone within the relevant group including a particular worker.
- the provision, criterion or practice puts, or would put, people who share the worker's protected characteristic at a particular disadvantage when compared with people who do not have that characteristic.
- the provision, criterion or practice puts, or would put, the worker at that disadvantage; and
- the employer cannot show that the provision, criterion or practice is a proportionate means of achieving a legitimate aim.

The phrase 'provision, criterion or practice' should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions. 'Disadvantage' could include denial of an

opportunity or choice, deterrence, rejection or exclusion i.e., something that a reasonable person would complain about (EHRC 2011).

Once it is clear that there is a provision, criterion or practice which puts (or would put) people sharing a protected characteristic at a particular disadvantage, then the next stage is to consider a comparison between workers with the protected characteristic and those without it. The circumstances of the two groups must be sufficiently similar for a comparison to be made and there must be no material differences in circumstances. In relation to disability, this would not be disabled people as a whole but people with a particular disability – for example, with an equivalent level of visual impairment (EHRC 2011).

2 Discrimination arising from disability

This section explains the duty of employers not to treat disabled people unfavourably because of something connected with their disability. Protection from this type of discrimination, which is known as 'discrimination arising from disability', only applies to disabled people (EHRC 2011).

2.1 What the Equality Act says

The Equality Act says that treatment of a disabled person amounts to discrimination where:

- an employer treats the disabled person unfavourably.
- this treatment is because of something arising in consequence of the disabled person's disability; and
- the employer cannot show that this treatment is a proportionate means of achieving a legitimate aim,
- unless the employer does not know, and could not reasonably be expected to know, that the person has the disability (EHRC 2011).

2.2 How does it differ from direct discrimination?

Direct discrimination occurs when the employer treats someone less favourably because of disability itself (see above). By contrast, in discrimination arising from disability, the question is whether the disabled person has been treated unfavourably because of something arising in consequence of their disability (EHRC 2011).

- **Example:** An employer dismisses a worker because she has had three months' sick leave. The employer is aware that the worker has multiple sclerosis and most of her sick leave is disability related. The employer's decision to dismiss is not because of the worker's disability itself. However, the worker has been treated unfavourably because of something arising in consequence of her disability (namely, the need to take a period of disability-related sick leave).

2.3 How does it differ from indirect discrimination?

Indirect discrimination occurs when a disabled person is (or would be) disadvantaged by an unjustifiable provision, criterion or practice applied to everyone, which puts (or would put) people sharing the disabled person’s disability at a particular disadvantage compared to others and puts (or would put) the disabled person at that disadvantage (EHRC 2011).

In contrast, discrimination arising from disability only requires the disabled person to show they have experienced unfavourable treatment because of something connected with their disability. If the employer can show that they did not know and could not reasonably have been expected to know that the disabled person had the disability, it will not be discrimination arising from disability. However, as with indirect discrimination, the employer

may avoid discrimination arising from disability if the treatment can be objectively justified as a proportionate means of achieving a legitimate aim (EHRC 2011).

2.4 Is a comparator required?

Both direct and indirect discrimination require a comparative exercise. But in considering discrimination arising from disability, there is no need to compare a disabled person's treatment with that of another person. It is only necessary to demonstrate that the unfavourable treatment is because of something arising in consequence of the disability (EHRC 2011).

- **Example:** In considering whether the example of the disabled worker dismissed for disability-related sickness absence (see paragraph 3.2) amounts to discrimination arising from disability, it is irrelevant whether or not other workers would have been dismissed for having the same or similar length of absence. It is not necessary to compare the treatment of the disabled worker with that of her colleagues or any hypothetical comparator. The decision to dismiss her will be discrimination arising from disability if the employer cannot objectively justify it.

2.5 What is unfavourable treatment?

For discrimination arising from disability to occur, a disabled person must have been treated 'unfavourably'. This means that he or she must have been put at a disadvantage. Often, the disadvantage will be obvious, and it will be clear that the treatment has been unfavourable; for example, a person may have been refused a job, denied a work opportunity or dismissed from their employment. But sometimes unfavourable treatment may be less obvious. Even if an employer thinks that they are acting in the best interests of a disabled person, they may still treat that person unfavourably (EHRC 2011).

2.6 What does 'something arising in consequence of disability' mean?

The unfavourable treatment must be because of something that arises in consequence of the disability. This means that there must be a connection between whatever led to the unfavourable treatment and the disability (EHRC 2011).

The consequences of a disability include anything which is the result, effect or outcome of a disabled person's disability. The consequences will be varied and will depend on the individual effect upon a disabled person of their disability. Some consequences may be obvious, such as an inability to walk unaided or inability to use certain work equipment. Others may not be obvious, for example, having to follow a restricted diet (EHRC 2011)

So long as the unfavourable treatment is because of something arising in consequence of the disability, it will be unlawful unless it can be objectively justified, or unless the employer did not know or could not reasonably have been expected to know that the person was disabled (EHRC 2011).

2.7 When can discrimination arising from disability be justified?

Unfavourable treatment will not amount to discrimination arising from disability if the employer can show that the treatment is a 'proportionate means of achieving a legitimate aim'. It is for the employer to justify the treatment. They must produce evidence to support their assertion that it is justified and not rely on mere generalisations (EHRC 2011).

2.8 What if the employer does not know that the person is disabled?

If the employer can show that they:

- did not know that the disabled person had the disability in question; and
- could not reasonably have been expected to know that the disabled person had the disability,

then the unfavourable treatment does not amount to discrimination arising from disability (EHRC 2011).

If an employer's agent or employee (such as an occupational health adviser or a HR officer) knows, in that capacity, of a worker's or applicant's or potential applicant's disability, the employer will not usually be able to claim that they do not know of the disability (EHRC 2011).

2.9 Relevance of reasonable adjustments

Employers can often prevent unfavourable treatment which would amount to discrimination arising from disability by taking prompt action to identify and implement reasonable adjustments (see section 4 for more detail) (EHRC 2011)

If an employer has failed to make a reasonable adjustment which would have prevented or minimised the unfavourable treatment, it will be very difficult for them to show that the treatment was objectively justified (EHRC 2011).

Even where an employer has complied with a duty to make reasonable adjustments in relation to the disabled person, they may still subject a disabled person to unlawful discrimination arising from disability. This is likely to apply where, for example, the adjustment is unrelated to the particular treatment complained of (EHRC 2011).

3 Duty to make reasonable adjustments

The duty to make reasonable adjustments is a cornerstone of the Equality Act 2010 and requires employers to take positive steps to ensure that disabled people can access and progress in employment. This goes beyond simply avoiding treating disabled workers, job applicants and potential job applicants unfavourably and means taking additional steps to which non-disabled workers and applicants are not entitled (EHRC 2011).

3.1 What the Equality Act says

Discrimination against a disabled person occurs where an employer fails to comply with a duty to make reasonable adjustments imposed on them in relation to that disabled person (EHRC 2011).

3.2 What is the duty to make reasonable adjustments?

The duty to make reasonable adjustments comprises three requirements. Employers are required to take reasonable steps to:

- Avoid the substantial disadvantage where a provision, criterion or practice applied by or on behalf of the employer puts a disabled person at a substantial disadvantage compared to those who are not disabled.
- Remove or alter a physical feature or provide a reasonable means of avoiding such a feature where it puts a disabled person at a substantial disadvantage compared to those who are not disabled.
- Provide an auxiliary aid (which includes an auxiliary service) where a disabled person would, but for the provision of that auxiliary aid, be put at a substantial disadvantage compared to those who are not disabled (EHRC 2011).

The Equality Act states that where the provision, criterion or practice or the need for an auxiliary aid relates to the provision of information, the steps which it is reasonable for the employer to take include steps to ensure that the information is provided in an accessible format; for example, providing letters, training materials or recruitment forms in Braille or on audiotape (EHRC 2011).

The Equality Act says that avoiding a substantial disadvantage caused by a physical feature includes:

- removing the physical feature in question.
- altering it; or
- providing a reasonable means of avoiding it (EHRC 2011).

The Equality Act says that the following are to be treated as a physical feature of the premises occupied by the employer:

- any feature of the design or construction of a building
- any feature of an approach to exit from or entrance to a building

- a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels (moveable property in Scotland) in or on the premises
- any other physical element or quality of the premises (EHRC 2011).

All these features are covered, whether temporary or permanent (EHRC 2011).

An auxiliary aid is something which provides support or assistance to a disabled person. It can include provision of a specialist piece of equipment such as an adapted keyboard or text to speech software. Auxiliary aids include auxiliary services; for example, provision of a sign language interpreter or a support worker for a disabled worker (EHRC 2011).

3.3 What disadvantage gives rise to the duty?

The duty to make adjustments arises where a provision, criterion, or practice, any physical feature of work premises or the absence of an auxiliary aid puts a disabled person at a substantial disadvantage compared with people who are not disabled (EHRC 2011)

The purpose of the comparison with people who are not disabled is to establish whether it is because of disability that a particular provision, criterion, practice or physical feature or the absence of an auxiliary aid disadvantages the disabled person in question. Accordingly – and unlike direct or indirect discrimination – under the duty to make adjustments there is no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person's (EHRC 2011).

3.4 What if the employer does not know the worker is disabled?

For disabled workers already in employment, an employer only has a duty to make an adjustment if they know, or could reasonably be expected to know, that a worker has a disability and is, or is likely to be, placed at a substantial disadvantage. The employer must, however, do all they can reasonably be expected to do to find out whether this is the case. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially (EHRC 2011).

The Equality Act does not prevent a disabled person keeping a disability confidential from an employer. But keeping a disability confidential is likely to mean that unless the employer could reasonably be expected to know about it anyway, the employer will not be under a duty to make a reasonable adjustment. If a disabled person expects an employer to make a reasonable adjustment, they will need to provide the employer – or someone acting on their behalf – with sufficient information to carry out that adjustment (EHRC 2011). This is why a shift in lab culture is so essential. Disabled staff should feel confident that disclosure of a disability will have positive impact in terms of provision of reasonable adjustments and no negative impact e.g., discriminatory behaviours.

3.5 What is meant by 'reasonable steps'?

The duty to make adjustments requires employers to take such steps as it is reasonable to have to take, in all the circumstances of the case, in order to make adjustments. The Equality Act does not specify any particular factors that should be taken into account. What is a reasonable step for an employer to take will depend on all the circumstances of each individual case (EHRC 2011).

There is no onus on the disabled worker to suggest what adjustments should be made (although it is good practice for employers to ask). However, where the disabled person does so, the employer should consider whether such adjustments would help overcome the substantial disadvantage, and whether they are reasonable (EHRC 2011).

Effective and practicable adjustments for disabled workers often involve little or no cost or disruption and are therefore very likely to be reasonable for an employer to have to make. Even if an adjustment has a significant cost associated with it, it may still be cost-effective in overall terms – for example, compared with the costs of recruiting and training a new member of staff – and so may still be a reasonable adjustment to have to make (EHRC 2011).

Many adjustments do not involve making physical changes to premises. However, where such changes need to be made and an employer occupies premises under a lease or other binding obligation, the employer may have to obtain consent to the making of reasonable adjustments (EHRC 2011).

If making a particular adjustment would increase the risk to health and safety of any person (including the disabled worker in question) then this is a relevant factor in deciding whether it is reasonable to make that adjustment. Suitable and sufficient risk assessments should be used to help determine whether such risk is likely to arise (EHRC 2011).

The following are some of the factors which might be taken into account when deciding what is a reasonable step for an employer to have to take:

- whether taking any particular steps would be effective in preventing the substantial disadvantage.
- the practicability of the step.
- the financial and other costs of making the adjustment and the extent of any disruption caused.
- the extent of the employer's financial or other resources.
- the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work (ATW 2022)); and
- the type and size of the employer (EHRC 2011).

3.6 Reasonable adjustments in practice

It is a good starting point for an employer to conduct a proper assessment, in consultation with the disabled person concerned, of what reasonable adjustments may be required. Any necessary adjustments should be implemented in a timely fashion, and it may also be necessary for an employer to make more than one adjustment. It is advisable to agree any proposed adjustments with the disabled worker in question before they are made (EHRC 2011). However please do not expect the disabled worker to be able to identify all adjustments necessary, particularly if it is a new role, or their specific impairments are new or have changed recently. Bringing in consultants with specific expertise of advising on adjustments in collaboration with the disabled worker may be required to identify optimum solutions.

It is important to ensure that all of these accommodations are implemented as fast as possible. If a new employee declares a disability before they start their role, then it would be helpful to hold a meeting to discuss what adjustments are needed and the timeframe over which the employee can expect them to be implemented. Changes in policies or how work is organised e.g., allowing working from home, changes in sick leave policies etc. should be implemented immediately. Other adjustments may take some time to implement e.g., it can take a while to gain approval from Access to Work for a support worker (ATW 2022). Whilst the new employee is waiting on this the employer should ensure their expenses are covered as Access to Work will backdate expenses to the start of the application. It is accepted that it may take time to acquire a new piece of equipment or for staff to be fully trained in disability awareness, but effort should be put in place to ensure this time is as short as possible. Remember your employee will at best be working under non-optimum conditions that could cause stress and risk their wellbeing, at worst they may not be able to access their place of work and start their role in full (e.g., if they are a wheelchair user waiting on a ramp to be installed so as to allow them to work in the lab. They may be able to start some administrative tasks working from home, but until the ramp is installed, they cannot undertake the role they were employed for).

3.7 Reasonable adjustment passport (TUC 2019)

The TUC have created a reasonable adjustments disability passport. This provides a record of an individual's needs in order for them to work at their full potential. A full set of supporting policies guidance and template documents are available from the TUC (https://www.tuc.org.uk/research-analysis/reports/reasonable-adjustments-disability-passports).

> *"A worker may require reasonable adjustments to remove workplace barriers because of environmental, attitudinal, or organisational issues."*
> *(TUC 2019)*

These accommodations should be revisited whenever someone has new protocols to undertake, moves roles, changes line manager, or has changes in their disability. The

ensures that everyone relevant is aware of the required adjustments and information related to them rather than having to repeat potentially difficult conversations and situations. Completion of the reasonable adjustments disability passport is voluntary, but it should be offered to every worker.

3.8 Making adjustments to premises

Our Structural Access Guideline (Deane 2023a) provides descriptions of changes that can be made to the structures of buildings that house disabled workers. It is sensible to consider improving disability access in general anytime renovations or new builds are planned so as to pre-empt access adjustments needed by individual workers. Structural access changes are always substantially cheaper when built in from the start compared to the retrofitting of access solutions.

This can include accommodations in the use of structures.

- **Example:** Senior staff are usually the only staff provided with parking spaces on site. A disabled worker with mobility impairments may be provided with a designated parking space close to the building irrespective of their seniority. If they use a wheelchair or other mobility equipment, then a larger accessible parking bay should be provided.

3.9 Providing information in accessible formats

Our Dissemination Access Guideline (Deane 2023b) provides detailed descriptions of how to provide information on documents and web pages in accessible formats. Accommodations may also require changes in how other employees work.

- **Example:** Voice messages may be left for someone with dyslexia in preference to (or in addition to) e-mail messages.

3.10 Allocating some of the disabled person's duties to another worker

An employer might reallocate minor or subsidiary duties to another worker as a disabled worker has difficulty doing them because of his disability.

- **Example:** 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 (EHRC 2011).

3.11 Transferring the disabled worker to fill an existing vacancy

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. Such a post might also involve retraining or other reasonable adjustments such as equipment for the new post or transfer to a position on a higher grade (EHRC 2011).

3.12 Altering the disabled worker's hours of work

An employer should consider if allowing a disabled person to work flexible hours might mitigate some of their impairment. For example, enabling a worker 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 creates 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 (EHRC 2011).

3.13 Assigning the disabled worker to a different place of work or arranging home or hybrid working

This accommodation can be hugely important to allow a disabled worker to optimise the management of their symptoms, particularly fatigue. Travelling in and out of work and moving around a workplace can create excessive fatigue in people with energy limiting conditions (Hale 2021).

- **Example:** An employer relocates the workstation of a newly disabled worker (who now uses a wheelchair) from an inaccessible third floor office to an accessible one on the ground floor. It may be reasonable to move his place of work to other premises of the same employer if the first building is inaccessible (EHRC 2011).
- **Example:** Allowing the worker to work from home for some or all of their role might also be a reasonable adjustment for the employer to make (EHRC 2011). Consideration should be made to ensure online, or hybrid meetings have appropriate access arranged (e.g., sign language interpreters). Hybrid meetings need to be appropriately facilitated to ensure equality of contribution of those online and in person (Dissemination Access Guidelines, Deane 2023b).

3.14 Allowing the disabled worker to be absent during working hours for rehabilitation, assessment, or treatment

Absence for rehabilitation, assessment or treatment should not be regarded as the same as standard sick leave. Policies should be in place to identify that this leave is disability-related and comes under specific policies that ensure equity.

- **Example:** An employer allows a person who has become disabled more time off work than would be allowed to non-disabled workers to enable him to have rehabilitation training. A similar adjustment may be appropriate if a disability worsens or if a disabled person needs occasional treatment anyway (EHRC 2011).

3.15 Giving, or arranging for, training or mentoring (whether for the disabled person or any other worker)

This could be training in particular pieces of equipment which the disabled person uses, or an alteration to the standard workplace training to reflect the worker's particular disability

(EHRC 2011). Research has identified that employees with protected characteristics are at highest risk of suffering discriminatory or bullying behaviour (Wellcome 2020; Deane 2023c). Therefore, it is strongly recommended that employers provide training aimed at raising awareness and changing the workplace culture e.g., training in preventing disability discrimination and promoting allyship.

- **Example:** All workers are trained in the use of a particular machine, but an employer provides slightly different or longer training for a worker with restricted hand or arm movements (EHRC 2011).
- **Example:** An employer might also provide training in additional software for a visually impaired worker so that he can use a computer with speech output (EHRC 2011).
- **Example:** A disabled employee needs to use an Evacuation Chair in the event of fire. The disabled employee should be given an opportunity to try using the Evacuation Chair with no time pressure. Fire wardens and anyone else who it is reasonable to assume might be required to aid in an evacuation (e.g., security team) should be trained on how to use the chair.

3.16 Acquiring or modifying equipment

Detailed guidance on the design, adaptation, and use of equipment by disabled workers is provided in our Equipment Access Guideline (Deane 2023). h

3.17 Modifying procedures

This could include procedures for testing or assessment:

- **Example:** A worker with restricted manual dexterity would be disadvantaged by a written test, so the employer gives that person an oral test instead (EHRC 2011).

This could include usual practice within the lab. Detailed guidance on how to adapt lab protocols is provided in our Protocol Access Guidelines (Deane 2023e).

- **Example:** A worker needs to sit to conduct lab protocols in order to manage their pain and fatigue from a musculoskeletal condition. The employer provides them with an ergonomic adjustable seat that is high enough to allow them to conduct the protocol seated. They also provide them with a PPE apron to wear in addition to their lab coat so as to mitigate the risk of spills.
- **Example:** Lone working protocols are adapted to ensure that a worker who is at risk of low blood pressure (and subsequent fainting) never works alone in the lab.

3.18 Providing a reader, interpreter, or note taker

The Access to Work scheme (ATW 2022) can assist with the cost of providing this type of assistance. However, the scheme now has a cap on the maximum amount that can be claimed by a single disabled employee. This can have particular impact on Deaf employees

who need sign language interpreters, who are relatively expensive to procure. So, in addition to the provision of a sign language interpreter, an employer may need to organise meetings to run concurrently or on certain days of the week. Consideration should also be given to the organisation of these assistants if the employee has to travel for work e.g., to attend a conference (Dissemination Access Guidelines, Deane 2023b).

- **Example:** An employer arranges for a colleague to read mail to a worker with a visual impairment at particular times during the working day. Alternatively, the employer might hire a reader (EHRC 2011).
- **Example:** A employee has cerebral palsy which means they are unable to type at an effective speed. Additionally, their area of work requires a substantial amount of computer coding and mathematical equations which is not well supported by voice to text software. Their speech is disordered and so not well understood people unfamiliar with them, nor by voice to text software. The solution is to employ a note taker who has spent enough time to become expert at understanding the employee's speech. These notes are displayed on a computer screen to support everyone's communication and aid in the creation of a record of the meeting.

3.19 Providing supervision or other support

- **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 in unfamiliar situations, such as on a training course (EHRC 2011).
- **Example:** An employer provides support from an administrator to a disabled staff support group. The administrator books rooms, ensures visiting speakers have their expenses paid, and organises the Christmas meal.
- **Example:** An employer ensures all staff are aware of relevant unions that they could join. A union can provide independent support and advice to a disabled worker to ensure they understand their rights and are supported in meetings etc. to achieve the best outcomes. The Disability Union is open to all disabled workers https://disabilityunion.co.uk/.
- **Example:** An employer recognises the additional emotional, administrative and time load represented by applying for disability benefits and grants. These monies and support can mitigate the structural ableism present in modern society and ensure the disabled employee is in the best position to work well for them. The employer organises and pays for administrative support and independent advice on completing applications e.g., for Personal Independent Payments (PIP), Blue Badges, grants from the council for structural adjustments to the employee's home. This can be provided by independent advocacy groups such as Fightback for Justice (https://www.fightback4justice.co.uk/).

3.20 Allowing a disabled worker to take a period of disability leave

- **Example:** A worker who has cancer needs to undergo treatment and rehabilitation. His employer allows a period of disability leave and permits him to return to his job at the end of this period (EHRC 2011).

3.21 Participating in supported employment schemes, such as Workstep

- **Example:** A man applies for a job as an office assistant after several years of not working because of depression. He has been participating in a supported employment scheme where he saw the post advertised. He asks the employer to let him make private phone calls during the working day to a support worker at the scheme and the employer allows him to do so as a reasonable adjustment (EHRC 2011).

3.22 Employing a support worker to assist a disabled worker

- **Example:** An adviser with a visual impairment is sometimes required to make home visits to clients. The employer employs a support worker to assist her on these visits (EHRC 2011).

3.23 Ensuring that assistance dog policies are supportive

There has been an increase in the use of assistance dogs. They are used to address an increasingly diverse range of assistance needs. Whilst assistance dogs are traditionally viewed as being used by people with low or no vision to aid safe navigation, increasingly they are used to alert for medical conditions e.g., low blood sugar, epilepsy, or panic attacks. They may provide practical support e.g., pick items up from the floor on command, or fetch medication from a bag. Assistance dogs can sometimes be the only way to make working in a lab practical and safe for disabled people.

Policies should make it clear that the use of assistance dogs is supported by the employer. More detailed advice on how to adapt lab protocols to accommodate assistance dogs is provided in our Protocol Access Guidelines (Deane 2023e).

The employer should support the training needed to ensure use of an assistance dog by a disabled person is successful. The dog, the owner, and the staff interacting with them will all need training. Structural changes required such as the provision of a safe area for the dog to rest in whilst working in the lab, a spend pound etc. are detailed in our Structural Access Guidelines (Deane 2023a).

3.24 Modifying disciplinary or grievance procedures for a disabled worker

- **Example:** A worker with a learning disability is allowed to take a friend (who does not work with her) to act as an advocate at a meeting with her employer about a grievance. The employer also ensures that the meeting is conducted in a way that does not disadvantage or patronise the disabled worker (EHRC 2011).

3.25 Adjusting redundancy selection criteria for a disabled worker

- **Example:** Because of his condition, a man with an autoimmune disease has taken several short periods of absence during the year. When his employer is taking the absences into account as a criterion for selecting people for redundancy, they discount these periods of disability-related absence (EHRC 2011).

3.26 Modifying performance-related pay arrangements for a disabled worker

- **Example:** A disabled worker who is paid purely on her output needs frequent short additional breaks during her working day – something her employer agrees to as a reasonable adjustment. It may be a reasonable adjustment for her employer to pay her at an agreed rate (for example, her average hourly rate) for these breaks (EHRC 2011).

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

- **Example:** A worker 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 (EHRC 2011).

In some cases, a reasonable adjustment will not succeed without the co-operation of other workers. Colleagues as well as managers may therefore have an important role in helping ensure that a reasonable adjustment is carried out in practice. Subject to considerations about confidentiality, employers must ensure that this happens. It is unlikely to be a valid defence to a claim under the Equality Act to argue that an adjustment was unreasonable because staff were obstructive or unhelpful when the employer tried to implement it. An employer would at least need to be able to show that they took such behaviour seriously and dealt with it appropriately. Employers will be more likely to be able to do this if they establish and implement the type of policies and practices described later (EHRC 2011).

- **Example:** An employer ensures that an autistic worker has a structured working day as a reasonable adjustment. As part of this adjustment, it is the responsibility of the employer to ensure that other workers co-operate with this arrangement (EHRC 2011).

4 Access to work

The Access to Work scheme (ATW 2022) may assist an employer to decide what steps to take. If financial assistance is available from the scheme, it may also make it reasonable for an employer to take certain steps which would otherwise be unreasonably expensive (EHRC 2011).

However, Access to Work does not diminish any of an employer's duties under the Equality Act. In particular:

- The legal responsibility for making a reasonable adjustment remains with the employer – even where Access to Work is involved in the provision of advice or funding in relation to the adjustment (EHRC 2011).
- It is best practice for the employer to help a disabled person in making an application for assistance from Access to Work and to provide on-going administrative support (by completing claim forms, for example). The Access to Work scheme has become increasingly adversarial and it is highly recommended that an employer pay for independent expert advice so that the application ensures the best support is achieved e.g. from the independent advocacy group Fightback for Justice (https://www.fightback4justice.co.uk/).

It may be unreasonable for an employer to decide not to make an adjustment based on its cost before finding out whether financial assistance for the adjustment is available from Access to Work or another source (EHRC 2011).

5 Harassment

The Equality Act prohibits harassment related to a person's disability. This is a summary of the provisions; detailed guidance is available from EHRC (2011).

Disability harassment of a worker occurs when another person engages in unwanted conduct which is related to the worker's disability, and which has the purpose or the effect of:

- violating the worker's dignity; or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for that worker (EHRC 2011)

Unwanted conduct covers a wide range of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour (EHRC 2011).

The word 'unwanted' means essentially the same as 'unwelcome' or 'uninvited'. 'Unwanted' does not mean that express objection must be made to the conduct before it is deemed to be unwanted. A serious one-off incident can also amount to harassment (EHRC 2011).

6 Victimisation

The Equality Act prohibits victimisation. It is victimisation for an employer to subject a worker to a detriment because the worker has done a 'protected act' or because the employer believes that the worker has done or may do a protected act in the future. This is a summary of the provisions; detailed guidance is available from EHRC (2011).

A worker need not have a particular protected characteristic in order to be protected against victimisation under the Equality Act; to be unlawful, victimisation must be linked to a 'protected act' (EHRC 2011).

A protected act is any of the following:

- bringing proceedings under the Equality Act
- giving evidence or information in connection with proceedings brought under the Equality Act
- doing anything which is related to the provisions of the Equality Act.
- making an allegation (whether or not express) that another person has done something in breach of the Equality Act; or
- making or seeking a 'relevant pay disclosure' to or from a colleague (including a former colleague). (EHRC 2011)

7 Instructing, causing, or inducing discrimination

This is a summary of the provisions; detailed guidance is available from EHRC (2011). This applies to employment relationships and the provision of services.

It is unlawful to instruct someone to discriminate against, harass or victimise another person because of their disability or to instruct a person to help another person to do an unlawful act. Such an instruction would be unlawful even if it is not acted on (EHRC 2011).

The Equality Act also makes it unlawful to cause or induce, or to attempt to cause or induce, someone to discriminate against or harass a third person because of their disability or to victimise a third person because they have done a protected act (EHRC 2011).

An inducement may amount to no more than persuasion and need not involve a benefit or loss. Nor does the inducement have to be applied directly: it may be indirect. It is enough if it is applied in such a way that the other person is likely to come to know about the inducement (EHRC 2011).

The Equality Act also prohibits a person from instructing, causing or inducing someone to help another person to do an unlawful act (EHRC 2011).

It does not matter whether the person who is instructed, caused or induced to commit an unlawful act carries it out. This is because instructing, causing or inducing an unlawful act is in itself unlawful. However, if the person does commit the unlawful act, they may be liable. The person who instructed, caused or induced them to carry it out will also be liable for it (EHRC 2011).

8 Obligations and Liabilities under The Equality Act

This section summarises the obligations of employers to job applicants and employees; liability of employers, principals, employees, and agents for breaches of the Equality Act in relation to disability; and the statutory defences available. Detailed guidance on all aspects is available from the EHRC (2011).

8.1 Obligations of employers to job applicants and employees

An employer has obligations not to discriminate against, victimise or harass job applicants and employees. These obligations also apply to a person who is seeking to recruit employees even if they are not yet an employer (EHRC 2011).

Employers must not discriminate against or victimise job applicants in:

- the arrangements they make for deciding who should be offered employment.
- in the terms on which they offer employment; or
- by not offering employment to the applicant (EHRC 2011).

Arrangements refer to the policies, criteria and practices used in the recruitment process including the decision-making process. 'Arrangements' for the purposes of the Equality Act are not confined to those which an employer makes in deciding who should be offered a specific job. They also include arrangements for deciding who should be offered employment more generally. Arrangements include such things as advertisements for jobs, the application process and the interview stage (EHRC 2011).

The terms on which an employer might offer employment include such things as pay, bonuses and other benefits (EHRC 2011).

Employers' obligations to job applicants extend to them not making enquiries about disability or health before the offer of a job is made (EHRC 2011).

Employers must not discriminate against or victimise an employee:

- as to the terms of employment.
- in the way they make access to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service.
- by dismissing the employee; or
- subjecting them to any other detriment (EHRC 2011).

The terms of employment include such things as pay, working hours, bonuses, occupational pensions, sickness or maternity and paternity leave and pay (EHRC 2011).

8.2 Dismissals

A dismissal for the purposes of the Equality Act includes:

- direct termination of employment by the employer (with or without notice).

- termination of employment through the expiry of a fixed term contract (including a period defined by reference to an event or circumstance) unless the contract is immediately renewed; and
- constructive dismissal – that is, where because of the employer's conduct the employee treats, the employment as having come to an immediate end by resigning (whether or not the employee gives notice) (EHRC 2011).

An employee who is dismissed in breach of the Equality Act does not have to complete a qualifying period of service to bring a claim in the Employment Tribunal (EHRC 2011).

8.2.1 Discrimination and unfair dismissal

Unfair dismissal claims can generally only be brought by employees who have one year or more continuous employment – but many categories of 'automatically unfair' dismissal have no minimum service requirement (EHRC 2011).

Provided that the employee had one year or more continuous employment at the date of termination, a dismissal that amounts to a breach of the Equality Act will almost inevitably be an unfair dismissal as well. In such cases, a person can make a claim for unfair dismissal at the same time as a discrimination claim (EHRC 2011).

8.3 Detriment

A detriment is anything which might cause an employee to change their position for the worse or put them at a disadvantage; for example, being excluded from opportunities to progress within their career (EHRC 2011).

8.4 Employers' duty to make reasonable adjustments

Employers have a duty to make reasonable adjustments in the recruitment and selection process and during employment. Making reasonable adjustments in recruitment might mean providing and accepting information in accessible formats. During recruitment, making reasonable adjustments could entail amending employment policies and procedures to ensure disabled employees are not put at a substantial disadvantage compared to non-disabled employees (EHRC 2011).

8.5 Harassment of job applicants and employees

Employers have a duty not to harass job applicants or their employees. This duty extends to harassment by third parties of job applicants and employees in the course of employment (EHRC 2011).

8.5.1 Harassment by third parties

Employers may be liable for harassment of job applicants and employees by third parties. A third party is anyone who is not the employer or another employee. It refers to those over whom the employer does not have direct control, such as customers or clients. The duty on employers to prevent third party harassment arises where the employee or job applicant

has been harassed by a third party on at least two previous occasions, and the employer is aware of the harassment but fails to take 'reasonably practical steps' to prevent harassment by a third party happening again (EHRC 2011).

The employer will be liable for harassment by a third party whether or not it is committed by the same third party or another third party.

- **Example:** An employer is aware that a female employee working in her bar has been harassed about their facial scars on two separate occasions by different customers. The employer fails to take any action and the employee experiences further harassment by yet another customer. The employer is likely to be liable for the further act of harassment (EHRC 2011).

It may be difficult to determine whether an employee or job applicant has been subjected to third party harassment. Employers should not wait for harassment by a third party to have occurred on at least two occasions before taking action (EHRC 2011).

Employers will be able to avoid liability for third party harassment of their employees if they can show they took reasonably practical steps to prevent it happening (EHRC 2011).

Depending on the size and resources of an employer, reasonably practical steps might include:

- having a policy on harassment.
- notifying third parties that harassment of employees is unlawful and will not be tolerated, for example by the display of a public notice.
- inclusion of a term in all contracts with third parties notifying them of the employer's policy on harassment and requiring them to adhere to it.
- encouraging employees to report any acts of harassment by third parties to enable the employer to support the employee and take appropriate action.
- taking action on every complaint of harassment by a third party (EHRC 2011).

8.6 Pre-employment enquiries about disability and health

Except in the specific circumstances set out below, it is unlawful for an employer to ask **any** job applicant about their disability or health until the applicant has been offered a job (on a conditional or unconditional basis) or has been included in a pool of successful candidates to be offered a job when a position becomes available. This includes asking such a question as part of the application process or during an interview. Questions relating to previous sickness absence are questions that relate to disability or health (EHRC 2011).

It is also unlawful for an agent or employee of an employer to ask questions about disability or health. This means that an employer cannot refer an applicant to an occupational health practitioner or ask an applicant to fill in a questionnaire provided by an occupational health practitioner before the offer of a job is made (or before acceptance into a pool of successful applicants) except in the circumstances set out below (EHRC 2011).

This provision of the Equality Act is designed to ensure that disabled applicants are assessed objectively for their ability to do the job in question, and that they are not rejected because of their disability. There are some limited exceptions to this general rule, which mean that there are specified situations where such questions would be lawful (EHRC 2011).

8.7 Exceptions to the general rule prohibiting disability or health-related questions

There are six situations when it will be lawful for an employer to ask questions related to disability or health (EHRC 2011).

8.7.1 Reasonable adjustment needed for the recruitment process

It is lawful for an employer to ask questions relating to reasonable adjustments that would be needed for an assessment such as an interview or other process designed to assess a person's suitability for a job. This means in practice that any information on disability or health obtained by an employer for the purpose of making adjustments to recruitment arrangements should, as far as possible, be held separately. Also, it should not form any part of the decision-making process about an offer of employment, whether or not conditional (EHRC 2011).

Questions about reasonable adjustments needed for the job itself should not be asked until after the offer of a job has been made (unless these questions relate to a function that is intrinsic to the job). When questions are asked about reasonable adjustments, it is good practice to make clear the purpose of asking the question (EHRC 2011).

- **Example:** An application form states: 'Please contact us if you are disabled and need any adjustments for the interview'. This would be lawful under the Equality Act.

It is lawful to ask questions about disability or health that are needed to establish whether a person (whether disabled or not) can undertake an assessment as part of the recruitment process, including questions about reasonable adjustments for this purpose (EHRC 2011).

- **Example:** An employer is recruiting play workers for an outdoor activity centre and wants to hold a practical test for applicants as part of the recruitment process. He asks a question about health in order to ensure that applicants who are not able to undertake the test (for example, because they have a particular mobility impairment or have an injury) are not required to take the test. This would be lawful under the Equality Act.

8.7.2 Monitoring purposes

Questions about disability and health can be asked for the purposes of monitoring the diversity of applicants (EHRC 2011).

8.7.3 Implementing positive action measures

It is also lawful for an employer to ask if a person is disabled so they can benefit from any measures aimed at improving disabled people's employment rates. This could include the guaranteed interview scheme whereby any disabled person who meets the essential requirements of the job is offered an interview. When asking questions about, for example, eligibility for a guaranteed interview scheme, an employer should make clear that this is the purpose of the question (EHRC 2011).

8.7.4 Occupational requirements

There would be a need to demonstrate an occupational requirement if a person with a particular impairment is required for a job. In such a situation, where an employer can demonstrate that a job has an occupational requirement for a person with a specific impairment, then the employer may ask about a person's health or disability to establish that the applicant has that impairment (EHRC 2011).

- **Example**: An employer wants to recruit a Deafblind project worker who has personal experience of Deaf blindness. This is an occupational requirement of the job, and the job advert states that this is the case. It would be lawful under the Equality Act for the employer to ask on the application form or at interview about the applicant's disability

8.7.5 National security

Questions about disability or health can be asked where there is a requirement to vet applicants for the purposes of national security (EHRC 2011).

8.7.6 Function intrinsic to the job

Apart from the situations explained above, an employer may only ask about disability or health (before the offer of a job is made or before the person is in a pool of candidates to be offered vacancies when they arise) where the question relates to a person's ability to carry out a function that is intrinsic to that job. Only functions that can be justified as necessary to a job should be included in a job description. Where a disability or health-related question would determine whether a person can carry out this function with reasonable adjustments in place, then such a question is permitted (EHRC 2011).

- **Example:** A construction company is recruiting scaffolders. It would be lawful under the Equality Act to ask about disability or health on the application form or at interview if the questions related specifically to an applicant's ability to climb ladders and scaffolding to a significant height. The ability to climb ladders and scaffolding is intrinsic to the job.

Where a disabled applicant voluntarily discloses information about their disability or health, the employer must ensure that in responding to this disclosure they only ask further questions that are permitted, as explained above. So, for example, the employer may

respond by asking further questions about reasonable adjustments that would be required to enable the person to carry out an intrinsic function of the job. The employer must not respond by asking questions about the applicant's disability or health that are irrelevant to the ability to carry out the intrinsic function (EHRC 2011).

- **Example:** At a job interview for a research post, a disabled applicant volunteers the information that as a reasonable adjustment he will need to use voice activated computer software. The employer responds by asking: 'Why can't you use a keyboard? What's wrong with you?' This would be an unlawful disability-related question, because it does not relate to a requirement that is intrinsic to the job – that is, the ability to produce research reports and briefings, not the requirement to use a keyboard.

If the employer wishes to ask any questions arising from the person's disclosure of a disability, they will need to confine them to the permitted circumstances, and this can be explained to the candidate. In this instance, this might include asking about the type of adjustment that might be required to enable him to prepare reports and briefings (EHRC 2011).

This exception to the general rule about pre-employment disability or health enquiries should be applied narrowly because, in practice, there will be very few situations where a question about a person's disability or health needs to be asked – as opposed to a question about a person's ability to do the job in question with reasonable adjustments in place (EHRC 2011).

8.8 Disability and health enquiries after a job offer

Although job offers can be made conditional on satisfactory responses to pre-employment disability or health enquiries or satisfactory health checks, employers must ensure they do not discriminate against a disabled job applicant on the basis of any such response. For example, it will amount to direct discrimination to reject an applicant purely on the grounds that a health check reveals that they have a disability. Employers should also consider at the same time whether there are reasonable adjustments that should be made in relation to any disability disclosed by the enquiries or checks (EHRC 2011).

If an employer is not in a position to offer a job but has accepted applicants into a pool of people to be offered a job when one becomes available, it is lawful for the employer to ask disability or health-related questions at that stage (EHRC 2011).

Where pre-employment health enquiries are made after an applicant has been conditionally offered a job subject to such enquiries, employers must not use the outcome of the enquiries to discriminate against the person to whom a job offer has been made (EHRC 2011).

- **Example:** A woman is offered a job subject to a satisfactory completion of a health questionnaire. When completing this questionnaire, the woman reveals that she has

HIV infection. The employer then decides to withdraw the offer of the job because of this. This would amount to direct discrimination because of disability

An employer can avoid discriminating against applicants to whom they have offered jobs subject to satisfactory health checks by ensuring that any health enquiries are relevant to the job in question and that reasonable adjustments are made for disabled applicants (see section 4). It is particularly important that occupational health practitioners who are employees or agents of the employer understand the duty to make reasonable adjustments. If a disabled person is refused a job because of a negative assessment from an occupational health practitioner during which reasonable adjustments were not adequately considered, this could amount to unlawful discrimination if the refusal was because of disability (EHRC 2011).

- **Example:** An employer requires all successful job applicants to complete a health questionnaire. The questionnaire asks irrelevant questions about mental health and in answering the questions an applicant declares a history of a mental health condition. If the employer then refused to confirm the offer of the job, the unsuccessful disabled applicant would be able to make a claim of direct discrimination because of disability.

It is good practice for employers and occupational health practitioners to focus on any reasonable adjustments needed even if there is doubt about whether the person falls within the Equality Act's definition of disabled person (EHRC 2011).

8.9 Liability of employers and principals under the Equality Act

8.9.1 Employers

Employers will be liable for unlawful acts committed by their employees in the course of employment, whether or not they know about the acts of their employees (EHRC 2011).

The phrase ‘in the course of employment’ has a wide meaning: it includes acts in the workplace and may also extend to circumstances outside such as work-related social functions or business trips abroad. For example, an employer could be liable for an act of discrimination which took place during a social event organised by the employer, such as an after-work drinks party (EHRC 2011).

- **Example:** A senior manager goes abroad for three months and leaves a more junior manager in charge of the lab. This junior manager harasses a colleague with a learning disability, by constantly criticising how she does her work. The colleague leaves the job as a result of this unwanted conduct. This could amount to harassment related to disability and the senior manager could be responsible for the actions of his employee.

However, an employer will not be liable for unlawful acts committed by an employee if they can show that they took 'all reasonable steps' to prevent the employee acting unlawfully. It

could be a reasonable step for an employer to have an equality policy in place and to ensure it is put into practice. It might also be a reasonable step for an employer to provide training on the Equality Act to employees (EHRC 2011).

8.9.2 Principals

Principals are liable for unlawful acts committed by their agents while acting under the principal's authority. It does not matter whether the principal knows about or approves of the acts of their agents. An agent would be considered to be acting with the principal's authority if the principal consents (whether this consent is expressed or implied) to the agent acting on their behalf. Examples of agents include occupational health advisers engaged but not employed by the employer, or recruitment agencies (EHRC 2011).

- **Example:** A research institute engages a recruitment agency to find them a temporary receptionist. The agency only puts forward non-disabled candidates, even though there are suitably qualified disabled candidates on their books. The firm could be liable for the actions of the agency even though they do not know about or approve of the agency's action.

8.10 How employers and principals can avoid liability

An employer will not be liable for unlawful acts committed by their employees where the employer has taken 'all reasonable steps' to prevent such acts (EHRC 2011).

- **Example:** An employer ensures that all their workers are aware of their policy on harassment, and that harassment of workers related to any of the protected characteristics is unacceptable and will lead to disciplinary action. They also ensure that managers receive training in applying this policy. Following implementation of the policy, an employee makes disparaging comments about a disabled colleague's need to sit whilst working in a lab. The disabled colleague is humiliated and offended by the comments. The employer then takes disciplinary action against the employee. In these circumstances the employer may avoid liability because their actions are likely to show that they took all reasonable steps to prevent the unlawful act.

An employer would be considered to have taken all reasonable steps if there were no further steps that they could have been expected to take. In deciding whether a step is reasonable, an employer should consider its likely effect and whether an alternative step could be more effective. However, a step does not have to be effective to be reasonable (EHRC 2011).

Reasonable steps might include:

- implementing an equality policy.
- ensuring workers are aware of the policy.
- providing equal opportunities training.
- reviewing the equality policy as appropriate; and

- dealing effectively with employee complaints (EHRC 2011).

A principal will not be liable for unlawful discrimination carried out by its agents where the agent has acted without the authority of the principal, for example, by acting contrary to the principal's instructions not to discriminate (EHRC 2011).

- **Example:** A research institute (the principal) uses an agency (the agent) to supply catering staff. The research institute's management ensures that the agency is aware of the institute's equality and diversity policy. Despite this, and without the institute management's knowledge, the agency decides never to send for interview anyone whom they believe to be disabled. In this case, the agency has acted without the institute's authority and the institute would not, therefore, be liable for the unlawful discrimination by the agency.

8.11 Employers' and principals' liability for other unlawful acts

Employers and principals will be also liable for aiding, causing, instructing, or inducing their employees or agents to commit an unlawful act. Employers and principals will also be liable for discrimination or harassment of former workers if the discrimination or harassment arises out of and is closely connected to a relationship covered by the Equality Act which has ended (EHRC 2011).

8.12 Liability of employees and agents under the Equality Act

Employees and agents may be personally liable for breaches of the Equality Act where the employer or principal is also liable. Employees may be liable for their actions where the employer is able to rely successfully on the 'reasonable steps' defence. An agent may be personally liable for unlawful acts committed under their principal's authority. The principal may avoid liability if they can show that the agent was not acting with their authority (EHRC 2011).

- **Example:** A line manager fails to make reasonable adjustments for a biomedical scientist with multiple sclerosis, even though the scientist has made the line manager aware that he needs various adjustments. The line manager is not aware that she has acted unlawfully because she failed to attend equality and diversity training, provided by her employer. The line manager could be liable personally for her actions as her employer's action, in providing training, could be enough to meet the statutory defence.

However, if the employee or agent reasonably relies on a statement by the employer or principal that an act is not unlawful, then the employee or agent will not be liable (EHRC 2011).

- **Example:** In the example above, the line manager has asked the company director if she needs to make these adjustments and the director has wrongly said, 'I don't think he's covered by the Equality Act because he isn't in a wheelchair, so don't

bother.' In this situation, the line manager would not be liable, but the employer would be liable.

8.13 Relationships that have ended

The Equality Act makes it unlawful for employers to discriminate against or harass employees after a relationship covered by the Equality Act has ended. An employer will be liable for acts of discrimination or harassment arising out of the work relationship and which are 'closely connected to' it (EHRC 2011).

The expression 'closely connected to' is not defined in the Equality Act but will be a matter of degree to be judged on a case-by-case basis (EHRC 2011).

- **Example:** A worker who receives an inaccurate and negative job reference from her former employer because she is disabled could have a claim against her former employer for direct discrimination because of disability.

This protection includes a duty to make reasonable adjustments for disabled ex-employees who are placed at a substantial disadvantage when dealing with their former employer (EHRC 2011).

- **Example:** A former worker has lifetime membership of a works social club but cannot access it due to a physical impairment. Once the former employer is made aware of the situation, they will need to consider making reasonable adjustments.

An employee will be able to enforce protection against discrimination or harassment as if they were still in the relationship which has ended (EHRC 2011).

If the conduct or treatment which an individual receives after a relationship has ended amounts to victimisation, this will be covered by the victimisation provisions (EHRC 2011).

9 Positive Action

The Equality Act permits employers to take positive action measures to improve equality for people who share a protected characteristic (EHRC 2011).

9.1 Distinguishing positive action and 'positive discrimination'

Positive action is not the same as positive discrimination, which is unlawful. It may be helpful to consider the Equality Act's positive action provisions within the continuum of actions to improve work opportunities for people who share a protected characteristic (EHRC 2011).

First, action taken to benefit those from one particular protected group that does not involve less favourable treatment of those from another protected group, or to eradicate discriminatory policies or practices, will normally be lawful. Examples might include placing a job advertisement in a magazine with a largely disabled readership as well as placing it in a national newspaper; or reviewing recruitment processes to ensure that they do not contain criteria that discriminate because of any protected characteristic. Such actions would not be classed as 'positive action' (EHRC 2011).

Second, there are actions that fall within the framework of the Equality Act's positive action provisions, such as reserving places on a training course for a group sharing a protected characteristic. These actions are only lawful if they meet the statutory conditions for positive action measures and do not exceed the limitations set out in the Equality Act (EHRC 2011).

- **Example:** A large public sector employer monitors the composition of their workforce and identifies that there are more disabled staff in junior grades and low numbers in management grades. In line with their equality policy, the employer considers the following action to address the low numbers of disabled staff in senior grades:
  - Reviewing their policies and practices to establish whether there might be discriminatory criteria which inhibit the progression of disabled staff.
  - Discussing with representatives of the trade union and the disabled staff support group how the employer can improve opportunities for progression for the under-represented group.
  - Devising a positive action programme for addressing under-representation of the target group, which is shared with all staff.
  - Including within the programme shadowing and mentoring sessions with members of management for interested members of the target group. The programme also encourages the target group to take advantage of training opportunities such as training in management, which would improve their chances for promotion.

Third, there are actions – often referred to as 'positive discrimination' – which involve preferential treatment to benefit members of a disadvantaged or under-represented group who share a protected characteristic, in order to address inequality. However, these actions do not meet the statutory requirements for positive action and will be unlawful unless a statutory exception applies (EHRC 2011).

It is important to note that it is not unlawful for an employer to treat a disabled person more favourably compared to a non-disabled person (EHRC 2011).

9.2 Voluntary nature of positive action

Positive action is optional, not a requirement. However, as a matter of good business practice, public and private sector employers may wish to take positive action measures to help alleviate disadvantage experienced in the labour market by groups sharing a protected characteristic; take action to increase their participation in the workforce where this is disproportionately low; or meet their particular needs relating to employment (EHRC 2011).

In addition, employers who use positive action measures may find this brings benefits to their own organisation or business. Benefits could include:

- a wider pool of talented, skilled and experienced people from which to recruit
- a dynamic and challenging workforce able to respond to changes
- a better understanding of foreign/global markets
- a better understanding of the needs of a more diverse range of customers – both nationally and internationally (EHRC 2011)
- greater insight into the challenges faced by disabled people so products and services can be designed to ensure they do not include barriers to their use.

9.3 What the Equality Act says

Where an employer reasonably thinks that people who share a protected characteristic:

- experience a disadvantage connected to that characteristic; or
- have needs that are different from the needs of persons who do not share that characteristic; or
- have disproportionately low participation in an activity compared to others who do not share that protected characteristic

the employer may take any action which is proportionate to meet the 'stated aims' described in the Equality Act (EHRC 2011).

The 'stated aims' are:

- enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage (referred to in this chapter as 'action to remedy disadvantage').
- meeting those needs ('action to meet needs'); or

- enabling or encouraging persons who share the protected characteristic to participate in that activity ('action to encourage participation in activities') (EHRC 2011).

Action may be taken when any one or all of these conditions exist. Sometimes the conditions will overlap – for example, people sharing a protected characteristic may be at a disadvantage which may also give rise to a different need or may be reflected in their low level of participation in particular activities (EHRC 2011).

- **Example:** Research shows that disabled people have low rates of participation in scientific careers. A local university seeks to tackle this low participation by offering open days at the university for disabled students who might be interested in a science degree. This would be a form of positive action to encourage participation.

9.3.1 What does 'reasonably think' mean?

In order to take positive action, an employer must reasonably think that one of the above conditions applies; that is, disadvantage, different needs or disproportionately low participation. This means that some indication or evidence will be required to show that one of these statutory conditions applies. It does not, however, need to be sophisticated statistical data or research. It may simply involve an employer looking at the profiles of their workforce and/or making enquiries of other comparable employers in the area or sector. Additionally, it could involve looking at national data such as labour force surveys for a national or local picture of the work situation for particular groups who share a protected characteristic. A decision could be based on qualitative evidence, such as consultation with workers and trade unions (EHRC 2011).

More than one group with a particular protected characteristic may be targeted by an employer, provided that for each group the employer has an indication or evidence of disadvantage, different needs or disproportionately low participation (EHRC 2011).

9.4 Action to remedy disadvantage

9.4.1 What is a disadvantage for these purposes?

'Disadvantage' is not defined in the Equality Act. It may for example, include exclusion, rejection, lack of opportunity, lack of choice and barriers to accessing employment opportunities. Disadvantage may be obvious in relation to some issues such as legal, social or economic barriers or obstacles which make it difficult for people of a particular protected group to enter into or make progress in an occupation, a trade, a sector or workplace (EHRC 2011).

9.4.2 What action might be taken to overcome or minimise disadvantage?

The Equality Act enables action to be taken to overcome or minimise disadvantage experienced by people who share a protected characteristic. The Equality Act does not limit the action that could be taken, provided it satisfies the statutory conditions and is a

proportionate way of achieving the aim of overcoming a genuine disadvantage. Such action could include identifying through monitoring, consultation or a review of policies and practices any possible causes of the disadvantage and then:

- targeting advertising at specific disadvantaged groups, for example advertising jobs in media outlets which are likely to be accessed by the target group.
- making a statement in recruitment advertisements that the employer welcomes applications from the target group, for example 'disabled people are welcome to apply'.
- providing opportunities exclusively to the target group to learn more about particular types of work opportunities with the employer, for example internships or open days.
- providing training opportunities in work areas or sectors for the target group, for example work placements (EHRC 2011).

- **Example:** Research shows that disabled people in Britain experience significant disadvantage in pursuing careers in STEMs, as reflected in their low participation in these professions and their low status within them. Some of the key contributing factors are stereotyping in careers guidance and a lack of visible role models. A leading equalities organisation, in partnership with employers in the STEM sector, offers opportunities exclusively to disabled teenagers and adults to learn more about the career choices through a careers fair attended by disabled people working in STEM professions.

9.5 Action to meet needs

9.5.1 What are 'different' or 'particular' needs?

A group of people who share a particular protected characteristic have 'different needs' if, due to past or present discrimination or disadvantage or due to factors that especially apply to people who share that characteristic, they have needs that are different to those of other groups. This does not mean that the needs of a group have to be entirely unique from the needs of other groups to be considered 'different'. Needs may also be different because, disproportionately, compared to the needs of other groups, they are not being met or the need is of particular importance to that group (EHRC 2011).

- **Example:** An employer's monitoring data on training shows that their disabled workers are more likely to request training in advanced IT skills compared to non-disabled workers. The employer could provide training sessions primarily targeted at this group of workers.

9.5.2 What action might be taken to meet those needs?

The Equality Act does not limit the action that employers can take to meet different needs, provided the action satisfies the statutory conditions and is a proportionate means of achieving the aim of meeting genuinely different needs. Such action could include:

- providing exclusive training to the target group specifically aimed at meeting particular needs, for example, public speaking training for disabled staff with a speech impairment.
- the provision of support and mentoring, for example, to a disabled member of staff who has recently had an increase in their impairment level.
- the creation of a work-based support group for disabled members of staff as they may have workplace experiences or needs that are different from non-disabled staff (EHRC 2011).

9.6 Action to encourage participation in activities

9.6.1 What activities does this apply to?

This provision applies to participation in any activity where the participation of those who share a protected characteristic is disproportionately low; this can include employment and training. Action to increase participation might include making available training opportunities, open days or mentoring and shadowing schemes (EHRC 2011).

9.6.2 What does 'disproportionately low' mean?

The Equality Act says that action can only be taken where the employer reasonably thinks that participation in an activity by people sharing a particular protected characteristic is 'disproportionately low.' This means that the employer will need to have some reliable indication or evidence that participation is low compared with that of other groups or compared with the level of participation that could reasonably be expected for people from that protected group (EHRC 2011).

Participation may be low compared with:

- the proportion of people with that protected characteristic nationally.
- the proportion of people with that protected characteristic locally.
- the proportion of people with that protected characteristic in the workforce.

Employers will need to have some indication or evidence to show low participation. This might be by means of statistics or, where these are not available, by evidence based on monitoring, consultation or national surveys (EHRC 2011).

9.6.3 What action could be taken?

The Equality Act permits action to be taken to enable or encourage people who share the protected characteristic to participate in that activity. Provided that the action is a

proportionate means of achieving the aim of enabling or encouraging participation, the Equality Act does not limit what action could be taken. It could include:

- setting targets for increasing participation of the targeted group.
- providing bursaries to obtain qualifications in a profession for members of the group whose participation in that profession might be disproportionately low.
- outreach work such as raising awareness of scientific careers for disabled people within the community.
- reserving places on training courses for people with the protected characteristic, for example, in management.
- targeted networking opportunities.
- working with local schools and FE colleges, inviting students from groups whose participation in the workplace is disproportionately low to spend a day at the company.
- providing mentoring (EHRC 2011).

9.6.4 What does 'proportionate' mean?

To be lawful, any action which is taken under the positive action provisions must be a proportionate means of achieving one of the 'stated aims' (EHRC 2011).

'Proportionate' refers to the balancing of competing relevant factors. These factors will vary depending on the basis for the positive action – whether it is to overcome a disadvantage, meet different needs or address under-representation of a particular group. Other relevant factors will include the objective of the action taken, or to be taken, including the cost of the action (EHRC 2011).

The seriousness of the relevant disadvantage, the degree to which the need is different and the extent of the low participation in the particular activity will need to be balanced against the impact of the action on other protected groups, and the relative disadvantage, need or participation of these groups (EHRC 2011).

Organisations need to consider:

- Is the action an appropriate way to achieve the stated aim?
- If so, is the proposed action reasonably necessary to achieve the aim; that is, in all of the circumstances, would it be possible to achieve the aim as effectively by other actions that are less likely to result in less favourable treatment of others? (EHRC 2011)

9.6.5 Time-limited positive action

If positive action continues indefinitely, without any review, it may no longer be proportionate, as the action taken may have already remedied the situation which had been a precondition for positive action. This could make it unlawful to continue to take the action (EHRC 2011).

Therefore, when undertaking measures under the positive action provisions, it would be advisable for employers to indicate that they intend to take the action only so long as the relevant conditions apply, rather than indefinitely. During that period, they should monitor the impact of their action and review progress towards their aim (EHRC 2011).

9.7 Positive action and disability

It is not unlawful direct disability discrimination to treat a disabled person more favourably than a non-disabled person. This means that an employer, if they wish, can for example restrict recruitment, training and promotion to disabled people and this will be lawful (EHRC 2011).

- **Example:** An employer which has a policy of interviewing all disabled candidates who meet the minimum selection criteria for a job would not be acting unlawfully (EHRC 2011).

However, the positive action provisions may still be appropriate to achieve equality of opportunity between disabled people with different impairments. This means that an employer can implement positive action measures to overcome disadvantage, meet different needs or increase participation of people with one impairment but not those with other impairments (EHRC 2011).

9.8 Implementing positive action lawfully

An employer does not have to take positive action but if they do, they will need to ensure they comply with the requirements of the Equality Act to avoid unlawful discrimination. To establish whether there is any basis to implement a positive action programme, employers should collate evidence, for example through their monitoring data, and analyse that evidence to decide on the most appropriate course of action to take (EHRC 2011).

In considering positive action measures, employers might consider drawing up an action plan which:

- sets out evidence of the disadvantage, particular need and/or disproportionately low levels of participation, as appropriate, and an analysis of the causes.
- sets out specific outcomes which the employer is aiming to achieve.
- identifies possible action to achieve those outcomes.
- shows an assessment of the proportionality of proposed action.
- sets out the steps the employer decides to take to achieve these aims.
- sets out the measurable indicators of progress towards those aims, set against a timetable.
- explains how they will consult with relevant groups such as all staff, including staff support groups and members of the protected group for whom the programme is being established.
- specifies the time period for the programme.

- sets out periods for review of progress of the measures towards the aim to ensure it remains proportionate (EHRC 2011).

10 Pay and Benefits

Employers must not discriminate directly or indirectly in setting rates of pay or offering benefits to workers. Likewise, they must avoid discrimination arising from disability and, in certain circumstances, may need to consider the duty to make reasonable adjustments to pay or to certain benefits that they provide. The Equality Act also contains a number of specific provisions relating to pay and benefits, including certain exceptions to the general prohibition on discrimination in employment (EHRC 2011).

10.1 Pay

An employer must not discriminate in setting terms of employment relating to pay, or in awarding pay increases. Pay includes basic pay; non-discretionary bonuses; overtime rates and allowances; performance related benefits; severance and redundancy pay; access to pension schemes; benefits under pension schemes; hours of work; company cars; sick pay; and fringe benefits such as travel allowances (EHRC 2011).

Where workers work less than full time hours, employers should ensure that pay and benefits are in direct proportion to the hours worked. This will avoid the risk of the employer putting part-time workers who share a protected characteristic at a disadvantage that could amount to unjustifiable indirect discrimination or that could be unlawful under the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000.

10.1.1 Performance related pay and bonuses

Where an employer operates a pay policy and/or bonus scheme with elements related to individual performance, they must ensure that the policy and/or scheme does not unlawfully discriminate against a worker because of a protected characteristic (EHRC 2011).

- **Example:** A trade union equality representative obtains statistics which show that the worst scores for appraisals are disproportionately awarded to disabled workers. As a result, this group is less likely to receive an increase in pay and annual bonuses. The statistics suggest that the policy could be indirectly discriminatory, either through the criteria that have been selected, or the way that these criteria are applied.

If a worker has a disability which adversely affects their rate of output, the effect may be that they receive less under a performance related pay scheme than other workers. The employer must consider whether there are reasonable adjustments which would overcome this substantial disadvantage (EHRC 2011).

- **Example:** A disabled man with arthritis works in scientific writing. His impairment gets worse, and he is advised to change his computer equipment. He takes some time to get used to the new equipment and, as a consequence, the number of publications he produces fall, which impacts on his eligibility for a pay increment. It is likely to be a reasonable adjustment for his employer to discount this period when

assessing his eligibility for the pay increment for the period he needs to get used to the new equipment.

10.2 Benefits

Employment-related benefits might include canteens, meal vouchers, social clubs and other recreational activities, dedicated car parking spaces, discounts on products, bonuses, share options, hairdressing, clothes allowances, financial services, healthcare, medical assistance/insurance, transport to work, company car, education assistance, workplace nurseries, and rights to special leave. This is not an exhaustive list. Such benefits may be contractual or discretionary (EHRC 2011).

Employers must ensure that they do not deny workers access to benefits because of a protected characteristic. Where denying access to a benefit or offering it on less favourable terms either:

- directly discriminates because of the protected characteristic; or
- indirectly discriminates by putting a group of workers sharing a protected characteristic at a disadvantage when compared with other workers (EHRC 2011)

the employer must be able to objectively justify the rule or practice as a proportionate means of achieving a legitimate aim. But cost alone is not sufficient to objectively justify the discriminatory rule or practice. Financial cost may be taken into account only if there are other good reasons for denying or restricting access to the benefit. (EHRC 2011).

In addition, where a disabled worker is put at a substantial disadvantage in the way that a particular benefit is provided, an employer must take reasonable steps to adjust the way the benefit is provided in order to avoid that disadvantage.

- **Example:** An employer provides dedicated car parking spaces close to the workplace which are generally used by senior managers. A disabled worker finds it very difficult to get to and from the public car park further away. It is likely to be a reasonable adjustment for the employer to allocate one of the dedicated spaces to that worker.

Some benefits may continue after employment has ended. An employer's duties under the Equality Act extend to its former workers in respect of such benefits.

10.3 Pensions

10.3.1 Occupational pension schemes

Employers may provide benefits to current and former workers and their dependants through occupational pension schemes. The schemes are legally separate from the employers and are administered by trustees and managers. The benefits will be in the form of pensions and lump sums. Special provisions apply to such schemes because of their separate legal status and the nature of the benefits they provide (EHRC 2011).

An occupational pension scheme is treated as including a 'non-discrimination rule' by which a 'responsible person' must not discriminate against another person in carrying out any functions in relation to the scheme or harass or victimise another person in relation to the scheme (EHRC 2011).

A responsible person includes a trustee or manager of a scheme, the employer of members or potential members and a person who can make appointments to offices (EHRC 2011).

The provisions of an occupational pension scheme have effect subject to the non-discrimination rule. So, for example, if the rules of a scheme provide for a benefit which is less favourable for one member than another because of a protected characteristic, they must be read as though the less favourable provision did not apply.

In addition to the requirement to comply with the non-discrimination rule, a responsible person is under a duty to make reasonable adjustments to any provision, criterion or practice relating to an occupational pension scheme which puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled (EHRC 2011).

- **Example:** The rules of an employer's final salary scheme provide that the maximum pension is based on the member's salary in the last year of work. Having worked full-time for 20 years, a worker becomes disabled and has to reduce her working hours two years before her pension age. The scheme's rules put her at a disadvantage as a result of her disability, because her pension will only be calculated on her part-time salary. The trustees decide to convert her part-time salary to its full-time equivalent and make a corresponding reduction in the period of her part-time employment which counts as pensionable. In this way, her full-time earnings will be taken into account. This is likely to be a reasonable adjustment to make (EHRC 2011).

11 Avoiding discrimination in recruitment

Ensuring fair recruitment processes can help employers avoid discrimination. While nothing in the Equality Act prevents an employer from hiring the best person for the job, it is unlawful for an employer to discriminate in any of the arrangements made to fill a vacancy, in the terms of employment that are offered or in any decision to refuse someone a job. With certain limited exceptions, employers must not make recruitment decisions that are directly or indirectly discriminatory. As with other stages of employment, employers must also make reasonable adjustments for disabled candidates, where appropriate (EHRC 2011).

It is recognised that employers will have different recruitment processes in place depending on their size, resources, and the sector in which they operate. Whichever processes are used, applicants must be treated fairly and in accordance with the Equality Act (EHRC 2011).

11.1 Defining the job

11.1.1 General principles

The inclusion of requirements in a job description or person specification which are unnecessary or seldom used is likely to lead to indirect discrimination. Employers who use job descriptions and person specifications should therefore review them each time they decide to fill a post. Reliance on an existing person specification or job description, may lead to discrimination if they contain discriminatory criteria (EHRC 2011).

- **Example:** An employer uses a person specification for a research technician's post that states 'employees must be confident in dealing with external clients' when in fact the job in question does not involve liaising directly with external clients. This requirement is unnecessary and could lead to discrimination against disabled people who have difficulty interacting with others, such as some people with autism (EHRC 2011).

11.2 Job descriptions

Job descriptions should accurately describe the job in question. Inclusion of tasks or duties that workers will not, in practice, need to perform has two pitfalls. It may discourage appropriately qualified people from applying because they cannot perform the particular task or fulfil the particular duty specified. It may also lead to discrimination claims if such people believe they have been unfairly denied an opportunity of applying (EHRC 2011).

Tasks and duties set out in the job description should be objectively justifiable as being necessary to that post. This is especially important for tasks and duties which some people may not be able to fulfil or would be less likely to be able to fulfil, because of a protected characteristic. Similarly, the job description should not overstate a duty which is only an occasional or marginal one (EHRC 2011).

- **Example:** A job description includes the duty: 'regular evening working'. In reality, there is only an occasional need to work on an evening. This overstated duty written

into the job description puts off disabled people with energy limiting conditions who do not wish to work on an evening, and so could amount to indirect discrimination unless the requirement can be objectively justified.

Where there are different ways of performing a task, job descriptions should not specify how the task should be done. Instead, the job description should state what outcome needs to be achieved (EHRC 2011).

- **Example:** A job description includes the task: 'Using AAA software to produce reports about sample analyses. This particular software is not accessible to some disabled people who use voice-activated software. Discrimination could be avoided by describing the task as 'Producing reports about sample analyses.

Job descriptions should not specify working hours or working patterns that are not necessary to the job in question. If a job could be done either part-time, full-time, or through job share arrangements, this should be stated in the job description. As well as avoiding discrimination, this approach can also widen the group of people who may choose to make an application (EHRC 2011).

- **Example:** A job description for a manager state that the job is full-time. The employer has stated this because all managers are currently full-time, and he has not considered whether this is an actual requirement for the role. The requirement to work full-time could put disabled people at a disadvantage compared with non-disabled people because more disabled people than non-disabled people work part-time, or job share in order to accommodate their disabilities. This requirement could amount to indirect discrimination unless it can be objectively justified.

11.3 Person specifications

Person specifications describe various criteria – including skills, knowledge, abilities, qualifications, experience and qualities – that are considered necessary or desirable for someone fulfilling the role set out in the job description. These criteria must not be discriminatory. Discrimination can be avoided by ensuring that any necessary or desirable criteria can be justified for that particular job (EHRC 2011).

Criteria that exclude people because of a protected characteristic may be directly discriminatory unless they are related to occupational requirements. Criteria that are less likely to be met by people with certain protected characteristics may amount to indirect discrimination if these criteria cannot be objectively justified. The person specification should not include criteria that are wholly irrelevant (EHRC 2011).

- **Example:** A requirement that the applicant must be 'active and energetic' when the job is a sedentary one is an irrelevant criterion. This requirement could be discriminatory against some disabled people who may be less mobile (EHRC 2011).

As far as possible, all the criteria should be capable of being tested objectively. For example, attributes such as 'leadership' should be defined in terms of measurable skills or experience (EHRC 2011).

11.4 Health requirements in person specifications

The inclusion of health requirements can amount to direct discrimination against disabled people, where such requirements lead to a blanket exclusion of people with particular impairments and do not allow individual circumstances to be considered. Employers should also be aware that, except in specified circumstances, it is unlawful to ask questions about health or disability before the offer of a job is made or a person is placed in a pool of people to be offered a job (EHRC 2011).

- **Example:** A person specification states that applicants must have 'good health'. This criterion is too broad to relate to any specific requirement of the job and is therefore likely to amount to direct discrimination because of disability (EHRC 2011).

The inclusion of criteria that relate to health, physical fitness or disability, such as asking applicants to demonstrate a good sickness record, may amount to indirect discrimination against disabled people in particular, unless these criteria can be objectively justified by the requirements of the actual job in question (EHRC 2011).

Person specifications that include requirements relating to health, fitness or other physical attributes may discriminate not only against some disabled applicants, but also against applicants with other protected characteristics – unless the requirements can be objectively justified (EHRC 2011).

- **Example:** A person specification includes a height requirement. This may indirectly discriminate as it would put at a disadvantaged woman, some disabled people, and people from certain racial groups if it cannot be objectively justified for the job in question (EHRC 2011).

11.5 Advertising a job

An employer must not discriminate in its arrangements for advertising jobs or by not advertising a job. Neither should they discriminate through the actual content of the job advertisement (EHRC 2011).

11.5.1 Content of job advertisements

Job advertisements should accurately reflect the requirements of the job, including the job description and person specification if the employer uses these. This will ensure that nobody will be unnecessarily deterred from applying or making an unsuccessful application even though they could in fact do the job (EHRC 2011).

Advertisements must not include any wording that suggests the employer may directly discriminate by asking for people with a certain protected characteristic, for example by

advertising for a ‘salesman’ or a ‘waitress’ or saying that the applicant must be ‘youthful’ (EHRC 2011).

Advertisements must not include any wording that suggests the employer might indirectly discriminate. Wording should not, for example, suggest criteria that would disadvantage people of a particular sex, age, or any other protected characteristic unless the requirement can be objectively justified or an exception under the Equality Act applies (EHRC 2011).

A job advertisement should not include wording that suggests that reasonable adjustments will not be made for disabled people, or that disabled people will be discriminated against, or that they should not bother to apply (EHRC 2011).

- **Example:** An employer advertises for an office worker, stating, ‘This job is not suitable for wheelchair users because the office is on the first floor’. The employer should state instead, ‘Although our offices are on the first floor, we welcome applications from disabled people and are willing to make reasonable adjustments’ (EHRC 2011).

11.5.2 When is it lawful to advertise for someone with a particular protected characteristic?

An employer can lawfully advertise a job as only open to disabled applicants because of the asymmetrical nature of disability discrimination (EHRC 2011).

- **Example:** A research institute advertises for a disabled administrative assistant. This is lawful under the Equality Act.

An employer may include statements in a job advertisement encouraging applications from under-represented groups, as a voluntary ‘positive action’ measure. An employer may also include statements about their equality policy or statements that all applications will be considered solely on merit (EHRC 2011).

- **Example:** The vast majority of workers employed by a pharmaceutical research company are non-disabled. Consequently, disabled people are under-represented in the organisation. The company needs to recruit more staff. It would be lawful under the Equality Act for that company to place a job advert encouraging applications from all groups, especially disabled applicants.

11.6 Application process

An employer must not discriminate through the application process. A standardised process, whether this is through an application form or using CVs, will enable an employer to make an objective assessment of an applicant's ability to do the job and will assist an employer in demonstrating that they have has assessed applicants objectively. It will also enable applicants to compete on equal terms with each other. A standardised application process does not preclude reasonable adjustments for disabled people (EHRC 2011).

11.6.1 Reasonable adjustments during the application process

An employer must make reasonable adjustments for disabled applicants during the application process and must provide and accept information in accessible formats, where this would be a reasonable adjustment (EHRC 2011).

Where written information is provided about a job, it is likely to be a reasonable adjustment for that employer to provide, on request, information in a format that is accessible to a disabled applicant. Accessible formats could include email, Braille, Easy Read, large print, audio format, and data formats. A disabled applicant's requirements will depend upon their impairment and on other factors too. For example, many blind people do not read Braille and would prefer to receive information by email or in audio format (EHRC 2011).

Where an employer invites applications by completing and returning an application form, it is likely to be a reasonable adjustment for them to provide forms and accept applications in accessible formats. However, a disabled applicant might not have a right to submit an application in their preferred format (such as Braille) if they would not be substantially disadvantaged by submitting it in some other format (such as email) which the employer would find easier to access (EHRC 2011).

In employment, the duty to make reasonable adjustments is not anticipatory. For this reason, employers do not need to keep stocks of job information or application forms in accessible formats, unless they are aware that these formats will be in demand. However, employers are advised to prepare themselves in advance so they can create accessible format documents quickly, allowing a candidate using that format to have their application considered at the same time as other applicants. Otherwise, employers may need to make a further adjustment of allowing extra time for return of the form, if the applicant has been put at a substantial disadvantage by having less time to complete it (EHRC 2011).

Where applications are invited by completing and returning a form online, it is likely to be a reasonable adjustment for the form to be made accessible to disabled people. If on-line forms are not accessible to disabled people, the form should be provided in an alternative way (EHRC 2011).

Where an application is submitted in an accessible format, an employer must not discriminate against disabled applicants in the way that it deals with these applications (EHRC 2011).

11.6.2 Personal information requested as part of the application process

An employer can reduce the possibility of discrimination by ensuring that the section of the application form requesting personal information is detachable from the rest of the form or requested separately. It is good practice for this information to be withheld from the people who are short-listing or interviewing because it could allow them to find out about a person's protected characteristics (such as age or sex). However, where an applicant's protected characteristics are suggested by information in an application form or CV (for

example, qualifications or work history) those who are short-listing, or interviewing must not use it to discriminate against the applicant (EHRC 2011).

Where information for monitoring purposes is requested as part of an online application process, employers should find a way to separate the monitoring process from the application process. For example, a monitoring form could be sent out by email on receipt of a completed application form (EHRC 2011).

Any other questions on the main application form about protected characteristics should include a clear explanation as to why this information is needed, and an assurance that the information will be treated in strictest confidence. These questions should only be asked where they reflect occupational requirements for the post. Questions related to an occupational requirement should only seek as much information as is required to establish whether the candidate meets the requirement (EHRC 2011).

Applicants should not be asked to provide photographs, unless it is essential for security purposes, such as to confirm that a person who attends for an assessment or interview is the applicant (EHRC 2011).

11.7 Selection, assessment and interview process

11.7.1 General principles

Arrangements for deciding to whom to offer employment include short-listing, selection tests, use of assessment centres and interviews. An employer must not discriminate in any of these arrangements and must make reasonable adjustments so that disabled people are not placed at a substantial disadvantage compared to non-disabled people. Basing selection decisions on stereotypical assumptions or prejudice is likely to amount to direct discrimination (EHRC 2011).

An employer should ensure that these processes are fair and objective and that decisions are consistent. Employers should also keep records that will allow them to justify each decision and the process by which it was reached and to respond to any complaints of discrimination. If the employer does not keep records of their decisions, in some circumstances, it could result in an Employment Tribunal drawing an adverse inference of discrimination (EHRC 2011).

Staff involved in the selection process should receive training on the employer's equality policy (if there is one) (EHRC 2011).

An employer should ensure that they do not put any applicant at a particular disadvantage in the arrangements they make for holding tests or interviews or using assessment centres. For example, dates that coincide with religious festivals or tests that favour certain groups of applicants may lead to indirect discrimination, if they cannot be objectively justified (EHRC 2011).

- **Example:** An all-day assessment that involves a social dinner may amount to indirect discrimination if the employer has not taken account of dietary needs relating to an applicant's disability.

An employer is not required to make changes in anticipation of applications from disabled people in general – although it would be good practice to do so. It is only if the employer knows or could be reasonably expected to know that a particular disabled person is (or may be) applying, and that the person is likely to be substantially disadvantaged by the employer's premises or arrangements, that the employer must make reasonable adjustments. If an employer fails to ask about reasonable adjustments needed for the recruitment process but could reasonably have been expected to know that a particular disabled applicant or possible applicant is likely to be disadvantaged compared to non-disabled people, they will still be under a duty to make a reasonable adjustment at the interview (EHRC 2011).

11.7.2 Guaranteed interviews for disabled applicants

Some employers operate a guaranteed interview scheme, under which a disabled candidate who wishes to use the scheme will be short-listed for interview automatically if they demonstrate that they meet the minimum criteria for getting the job. The Equality Act permits questions to be asked at the application stage to identify disabled applicants who want to use this scheme (EHRC 2011).

11.7.3 Selection tests and assessment centres

Ability tests, personality questionnaires and other similar methods should only be used if they are well designed, properly administered and professionally validated and are a reliable method of predicting an applicant's performance in a particular job. If such a test leads to indirect discrimination or discrimination arising from disability, even if such discrimination is not intended and the reason for the discrimination is not understood, the test should not be used unless it can be objectively justified (EHRC 2011).

Where tests and assessment centres are used as part of the selection process, it is recommended that employers take account of the following guidelines:

- Tests should correspond to the job in question, and measure as closely as possible the appropriate levels of the skills and abilities included in the person specification.
- Deaf people whose first language is British Sign Language may be at a substantial disadvantage if a test is in English (or Welsh). An employer will need to consider what they should do to comply with the duty to make reasonable adjustments for such applicants.
- All candidates should take the same test unless there is a health and safety reason why the candidate cannot do so, for example because of pregnancy, or unless a reasonable adjustment is required (EHRC 2011).

Test papers, assessment notes and records of decisions should be kept on file (EHRC 2011).

Employers should make adjustments where a test or assessment would put a disabled applicant at a substantial disadvantage, if such adjustments would be reasonable. Examples of adjustments which may be reasonable include:

- providing written instructions in an accessible format.
- allowing a disabled person extra time to complete the test.
- permitting a disabled person, the assistance of a reader or scribe during the test.
- allowing a disabled applicant to take an oral test in writing or a written test orally (EHRC 2011).

The extent to which such adjustments would be reasonable may depend on the nature of the disabled person's impairment, how closely the test is related to the job in question and what adjustments the employer would be reasonably required to make if the applicant were given the job (EHRC 2011).

However, employers would be well advised to seek professional advice in the light of individual circumstances before making adjustments to psychological or aptitude tests (EHRC 2011).

11.8 Interviews

An employer must not discriminate at the interview stage. In reality, this is the stage at which it is easiest to make judgements about an applicant based on instant, subjective and sometimes wholly irrelevant impressions. If decisions are based on prejudice and stereotypes and not based on factors relating to the job description or person specification, this could lead to unlawful discrimination. By conducting interviews strictly on the basis of the application form, the job description, the person specification, the agreed weight given to each criterion and the results of any selection tests, an employer will ensure that all applicants are assessed objectively, and solely on their ability to do the job satisfactorily (EHRC 2011).

Employers should try to be flexible about the arrangements made for interviews (EHRC 2011). For example, a disabled person who has to organise a carer to accompany them may have difficulties attending an early morning interview.

By the interview stage, an employer should already have asked whether reasonable adjustments are needed for the interview itself. This should have been covered on the application form or in the letter inviting a candidate for interview. However, it is still good practice for the interviewer to ask on the day if any adjustments are needed for the interview (EHRC 2011).

The practical effects of an employer's duties may be different if a person whom the employer previously did not know to be disabled (and it would not be reasonable to expect them to have known this) arrives for interview and is substantially disadvantaged because of the arrangements. The employer will be under a duty to make a reasonable adjustment from the time that they first learn of the disability and the disadvantage. However, the

extent of the duty is less than might have been the case if they had known (or ought to have known) in advance about the disability and its effects (EHRC 2011).

An employer can reduce the possibility of unlawful discrimination by ensuring that staff involved in selection panels have had equality training and training about interviews, to help them:

- recognise when they are making stereotypical assumptions about people.
- apply a scoring method objectively
- prepare questions based on the person specification and job description and the information in the application form; and
- avoid questions that are not relevant to the requirements of the job (EHRC 2011).

It is particularly important to avoid irrelevant interview questions that relate to protected characteristics, as this could lead to discrimination under the Equality Act. In relation to disability these could include, for example, questions about personal care arrangements, or the expected trajectory of impairment associated with their diagnosis. Where such information is volunteered, selectors should take particular care not to allow themselves to be influenced by that information (EHRC 2011).

Questions should not be asked, nor should assumptions be made, about whether someone would fit in with the existing workforce (EHRC 2011).

- **Example:** At a job interview a visibly disabled person is asked: 'You would be the only visibly disabled person doing this job, and your colleagues might make ableist jokes. How would you feel about this?' This question could amount to direct disability discrimination.

Except in particular circumstances, questions about disability or health must not be asked at the interview stage or at any other stage before the offer of a job (whether conditional or not) has been made, or where the person has been accepted into a pool of applicants to be offered a position when one becomes available (EHRC 2011).

11.9 Job Offers

An employer must not discriminate against a person in the terms on which the person is offered employment (EHRC 2011).

- **Example:** An employer offers a job but extends their usual probation period from three months to six months because the preferred candidate is a person with a disability. This would be discrimination in the terms on which the person is offered employment (EHRC 2011).

12 Avoiding discrimination during employment

The Equality Act prohibits discrimination, victimisation and harassment at all stages and in all aspects of the employment relationship, including in workers' training and development. It also places employers under a duty to make reasonable adjustments for disabled workers (EHRC 2011).

Many aspects of the employment relationship are governed by the contract of employment between the employer and the worker, which may be verbal or written. Practical day-to-day arrangements or custom and practice in the workplace are also important; in some cases, these features are communicated via written policies and procedures (EHRC 2011).

In many workplaces, a trade union is recognised by the employer for collective bargaining purposes. Where changes to policies and procedures are being considered, an employer should consult with a recognised trade union in the first instance. It is also good practice for employers to consult with trade union equality representatives as a first step towards understanding the diverse needs of workers. The role of trade unions in meeting the training and development needs of their members should also be recognised (EHRC 2011).

Where resources permit, employers are strongly advised to maintain proper written records of decisions taken in relation to individual workers, and the reasons for these decisions. Keeping written records will help employers reflect on the decisions they are taking and thus help avoid discrimination. In addition, written records will be invaluable if an employer has to defend a claim in the Employment Tribunal (EHRC 2011).

It is also useful for employers to monitor overall workplace figures on matters such as requests for flexible working, promotion, training and disciplinary procedures to see if there are significant disparities between groups of people sharing different protected characteristics. If disparities are found, employers should investigate the possible causes in each case and take steps to remove any barriers (EHRC 2011).

12.1 Working hours

Working hours are determined by agreement between the employer and the worker, subject to collective agreements negotiated by trade unions on behalf of workers. The Working Time Regulations 1998 set out certain legal requirements; for example, maximum average working hours per week, minimum rest breaks, daily and weekly rest periods and entitlement to annual leave. There are also special provisions for night workers (EHRC 2011).

Established working time agreements can be varied either simply by agreement between the employer and worker or following a statutory request for flexible working (EHRC 2011).

12.2 Flexible working for disabled employees

It is also important to bear in mind that rigid working patterns may result in indirect discrimination unless they can be objectively justified. Although a flexible working request

may legitimately be refused under the statutory rules, such a refusal may still be indirectly discriminatory if the employer is unable to show that the requirement to work certain hours is justified as a proportionate means of achieving a legitimate aim. For example:

- **Example:** A requirement to work full-time hours could indirectly discriminate against disabled people with certain conditions (such as ME). It could also amount to a failure to make reasonable adjustments (EHRC 2011).

Employers should also be particularly mindful of their duty to make reasonable adjustments to working hours for disabled workers (EHRC 2011).

- **Example:** A worker with a learning disability has a contract to work normal office hours (9am to 5.30pm in this particular office). He wishes to change these hours because the friend whom he needs to accompany him to work is no longer available before 9am. Allowing him to start later is likely to be a reasonable adjustment for that employer to make (EHRC 2011).
- **Example:** A disabled employee has an energy limiting condition and so works part time from home. Their hours are agreed as a specific number of hours over a set period of time e.g., hours per week, or even hours per year. When these hours are undertaken are up to the disabled employee. There may be specific agreements about attendance at particular events e.g., a monthly team update.

12.3 Rest breaks

Allowing disabled workers to take additional rest breaks is one way that an employer can fulfil their duty to make reasonable adjustments (EHRC 2011).

- **Example:** A worker has recently been diagnosed with diabetes. As a consequence of her medication and her new dietary requirements, she finds that she gets extremely tired at certain times during the working day. It is likely to be a reasonable adjustment to allow her to take additional rest breaks to control the effects of her impairment (EHRC 2011).

12.4 Sickness and absence from work

Sickness and absence from work may be governed by contractual terms and conditions and/or may be the subject of non-contractual practices and procedures. Regardless of the nature of these policies, it is important to ensure that they are non-discriminatory in design and applied to workers who are sick or absent for whatever reason without discrimination of any kind. This is particularly important when a policy has discretionary elements such as decisions about stopping sick pay or commencing attendance management procedures (EHRC 2011).

To avoid discrimination, sickness and absence procedures should include clear requirements about informing the employer of sickness and providing medical certificates. They should also specify the rate and the maximum period of payment for sick pay (EHRC 2011).

In order to defend any claims of discrimination, it is advisable for employers to maintain records of workers' absences. In relation to sick leave, this is a legal requirement under the Statutory Sick Pay (General) Regulations 1982. Particular care is needed to ensure that sensitive medical information about workers is kept confidential and handled in accordance with the Data Protection Act 1998 (EHRC 2011)

When taking attendance management action against a worker, employers should ensure that they do not discriminate because of a protected characteristic. In particular, it will often be appropriate to manage disability-related absences differently from other types of absence. Recording the reasons for absences should assist that process (EHRC 2011).

12.4.1 Disability-related absences

Employers are not automatically obliged to disregard all disability-related sickness absences, but they must disregard some or all of the absences by way of an adjustment if this is reasonable. If an employer takes action against a disabled worker for disability-related sickness absence, this may amount to discrimination arising from disability (EHRC 2011).

- **Example:** During a six-month period, a man who has recently developed a long-term health condition has a number of short periods of absence from work as he learns to manage this condition. Ignoring these periods of disability-related absence is likely to be a reasonable adjustment for the employer to make. Disciplining this man because of these periods of absence will amount to discrimination arising from disability, if the employer cannot show that this is objectively justified (EHRC 2011).

Workers who are absent because of disability-related sickness must be paid no less than the contractual sick pay which is due for the period in question. Although there is no automatic obligation for an employer to extend contractual sick pay beyond the usual entitlement when a worker is absent due to disability-related sickness, an employer should consider whether it would be reasonable for them to do so (EHRC 2011).

However, if the reason for absence is due to an employer's delay in implementing a reasonable adjustment that would enable the worker to return to the workplace, maintaining full pay would be a further reasonable adjustment for the employer to make (EHRC 2011).

- **Example:** A woman who has a visual impairment needs work documents to be enlarged. Her employer fails to make arrangements for a reasonable adjustment to provide her with these. As a result, she has a number of absences from work because of eyestrain. 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 (EHRC 2011).

Disabled workers may sometimes require time out during the working day to attend medical appointments or receive treatment related to their disability. On occasions, it may be

necessary for them to attend to access needs such as wheelchair maintenance or care of working dogs. If, for example, a worker needs to take a short period of time off each week over a period of several months it is likely to be reasonable to accommodate the time off (EHRC 2011).

However, if a worker needs to take off several days per week over a period of months it may not be reasonable for the employer to accommodate this. Whether or not it is reasonable will depend on the circumstances of both the employer and the worker (EHRC 2011).

- **Example:** An employer allows a worker who has become disabled after a stroke to have time off for rehabilitation training. Although this is more time off than would be allowed to non-disabled workers, it is likely to be a reasonable adjustment. A similar adjustment may be reasonable if a disability gets worse or if a disabled worker needs occasional but regular long-term treatment (EHRC 2011).

12.5 Annual leave

Annual leave policies and procedures must be applied without discrimination of any kind. It is particularly important for employers to avoid discrimination when dealing with competing requests for annual leave, or requests that relate to a worker's protected characteristic (EHRC 2011).

12.6 Avoiding discrimination – accommodating workers' needs

12.6.1 Dress and business attire

Many employers enforce a dress code or uniform with the aim of ensuring that workers dress in a manner that is appropriate to the business or workplace or to meet health and safety requirements. However, dress codes – including rules about jewellery – may indirectly discriminate against workers sharing a protected characteristic. To avoid indirect discrimination, employers should make sure that any dress rules can be justified as a proportionate means of achieving a legitimate aim such as health and safety considerations (EHRC 2011).

Employers should also be aware of the duty to make reasonable adjustments to a dress code in order to avoid placing disabled workers at a substantial disadvantage. For example, in some cases uniforms made of certain fabrics may cause a reaction in workers with particular skin conditions (EHRC 2011).

12.6.2 Language in the workplace

A language requirement for a job may be indirectly discriminatory unless it is necessary for the satisfactory performance of the job. For example, a requirement that a worker have excellent English skills may be indirectly discriminatory because of race; if a worker really only needs a good grasp of English, the requirement for excellent English may not be objectively justified. A requirement for good spoken English may be indirectly discriminatory

against certain disabled people, for example, deaf people whose first language is British Sign Language (EHRC 2011).

- **Example:** A superstore insists that all its workers have excellent spoken English. This might be a justifiable requirement for those in customer-facing roles. However, for workers based in the stock room, the requirement could be indirectly discriminatory in relation to race or disability as it is less likely to be objectively justified (EHRC 2011).

In fulfilling the duty to make reasonable adjustments, employers may have to take steps to ensure that information is provided in accessible formats (EHRC 2011).

Inappropriate or derogatory language in the workplace could amount to harassment if it is related to a protected characteristic and is sufficiently serious. Workplace policies – if the employer has these in place – should emphasise that workers should not make inappropriate comments, jokes or use derogatory terms related to a protected characteristic (EHRC 2011).

- **Example:** A worker has made a number of offensive remarks about a worker who is learning disabled, such as 'anyone normal would be able to do this; retards shouldn't be allowed in labs. The employer's equality policy makes it clear that inappropriate and offensive language, comments and jokes related to a protected characteristic can amount to harassment and may be treated as a disciplinary offence. The employer may bring disciplinary proceedings against the worker for making offensive comments that relate to the worker's disability.

12.6.3 Understanding a worker's needs

The employer's duty to make reasonable adjustments continues throughout the disabled worker's employment. It is good practice for an employer to encourage disabled workers to discuss their disability so that any reasonable adjustments can be put in place. Disabled workers may be reluctant to disclose their impairment and the Equality Act does not impose any obligation on them to do so. An employer can help overcome any concerns a disabled worker may have in this regard by explaining the reasons why information is being requested (that is, to consider reasonable adjustments). The employer should also reassure the worker that that information about disability is held confidentially (EHRC 2011).

- **Example:** An office worker has symptomatic HIV and does not wish to tell his employer. His symptoms get worse, and he finds it increasingly difficult to work the required number of hours in a week. At his annual appraisal, he raises this problem with his line manager and discloses his medical condition. As a result, a reasonable adjustment is made, and his working hours are reduced to overcome the difficulty (EHRC 2011).

Sometimes a reasonable adjustment will not succeed without the co-operation of other workers. To secure such co-operation it may be necessary for the employer, with the

disabled worker's consent, to tell their colleague(s) in confidence about a disability which is not obvious. This disclosure may be limited to the disabled person's line manager, or it may be appropriate to involve other colleagues, depending on the circumstances (EHRC 2011).

However, an employer should obtain a worker's consent before revealing any information about their disability. Employers need to be aware that they have obligations under the Data Protection Act 2018 in respect of personal data (EHRC 2011).

- **Example:** A factory worker with cancer tells her employer that she does not want colleagues to know of her condition. As an adjustment she needs extra time away from work to receive treatment and to rest. Neither her colleagues nor her line manager needs to be told the precise reasons for the extra leave, but the line manager will need to know that the adjustment is required in order to implement it effectively (EHRC 2011).

12.7 Liability for discrimination outside the workplace

Employers are liable for prohibited conduct that takes place 'in the course of employment'. This may extend to discrimination and harassment occurring away from work premises or outside normal working hours where there is sufficient connection with work – for example, at team building days, social events to which all workers are invited, business trips or client events (EHRC 2011).

To avoid liability for discrimination and harassment outside the workplace, employers should consider taking steps such as: drafting disciplinary and equality policies that refer to acceptable behaviour outside the office; checking dietary requirements to ensure that all workers have appropriate food during work-related events; and making it clear to workers what is required of them to comply with acceptable standards of behaviour. Employers should also consider whether they need to make any reasonable adjustments to accommodate the needs of disabled workers (EHRC 2011).

- **Example:** A disabled worker who uses a wheelchair has a job in a robotics research team. On Friday nights her team colleagues go to a local club to socialise. During this time, they talk mainly about work-related issues. The team manager also buys drinks for the team member who has achieved the most impressive results that week. The worker cannot attend these events as the club has no step free access; she feels excluded and undervalued. This treatment could amount to unjustifiable disability discrimination. The manager should consider organising team social events somewhere that has wheelchair access.

12.8 Induction, training and development

It is important to make sure that induction procedures do not discriminate. Employers should ask themselves whether any changes are needed to remove the indirectly discriminatory effect of a provision, criterion or practice. They must also consider whether any reasonable adjustments are required to enable disabled workers to participate fully in

any induction arrangements. In addition, employers may want to consider whether there are any proportionate positive action measures that would help remedy disadvantage experienced by workers sharing a protected characteristic (EHRC 2011).

- **Example:** A worker with a hearing impairment is selected for a post as an engineer. He attends the induction course which consists of a video followed by a discussion. The video is not subtitled and thus the worker cannot participate fully in the induction. To avoid discrimination, the employer should have discussed with the worker what type of reasonable adjustment to the format of the induction training would enable him to participate (EHRC 2011).

The induction process is also a good opportunity to make sure all new staff members are trained in the employer's equality policy and procedures (EHRC 2011).

12.8.1 Training and development

Training and development opportunities, including training provided by a trade union to its members, should be made known to all relevant workers including those absent from the office for whatever reason. However, it will not be appropriate for an employer to contact a worker who is absent for a disability-related reason if the employer has agreed to have limited contact (EHRC 2011).

To avoid discrimination, employers should ensure that managers and supervisors who select workers for training understand their legal responsibilities under the Equality Act. It is advisable to monitor training applications and take-up by reference to protected characteristics, taking steps to deal with any significant disparities. Selection for training must be made without discrimination because of a protected characteristic (EHRC 2011).

- **Example:** An employer has opened a new office overseas and is offering managers the chance of a six-month secondment at the new office to assist in the initial set up. They do not select any of the disabled managers who apply for the secondment, as they assume these managers would struggle to cope with another culture's attitude to their disability and would not perform as well as other managers. This is likely to amount to direct discrimination because of disability.

Employers should be mindful of their duty to make reasonable adjustments in relation to training and development. For example, if a worker with a mobility impairment is expected to be attending a course, it is likely to be a reasonable adjustment for the employer to select a training venue with adequate disabled access. An employer may need to make training manuals, slides or other visual media accessible to a visually impaired worker (perhaps by providing Braille versions or having materials read out) or ensure that an induction loop is available for someone with a hearing impairment (EHRC 2011).

Employers should also consider whether opportunities for training are limited by any other potentially discriminatory factors. If food is provided at training events, employers should try to make sure that special dietary requirements are accommodated. If resources permit,

training and development opportunities should be offered on a flexible basis, to accommodate those who work part-time, who have atypical working patterns or who cannot attend training on a particular day, for example, because of conflict with a medical appointment (EHRC 2011).

Any criteria used to select workers for training should also be regularly reviewed to make sure they do not discriminate (EHRC 2011).

Employers may want to consider taking positive action to remedy disadvantage, meet different needs or increase the participation of people who share a protected characteristic. Providing training opportunities for a group which is under-represented in the workforce might be one way of doing this. It is also lawful for employers to provide training for disabled workers, regardless of whether the criteria for positive action are met (EHRC 2011).

Workers who have been absent for disability-related reasons may need additional training on their return to work. It is good practice for employers to liaise with the worker either before or shortly after their return to work to consider whether any additional training is needed (EHRC 2011).

12.9 Appraisals

An appraisal is an opportunity for a worker and their line manager to discuss the worker's performance and development. Appraisals usually review past behaviour and so provide an opportunity to reflect on recent performance. They also form an important part of a worker's continuing training and development programme (EHRC 2011).

The Equality Act does not require employers to conduct appraisals, although it is good practice to do so if resources permit. Where a formal appraisal process is used, the starting point should be that employers take a consistent approach. In particular, they should ensure that in awarding marks for performance they do not discriminate against any worker because of a protected characteristic. This is especially important because low appraisal scores can have a negative impact on pay, bonuses, promotion and development opportunities (EHRC 2011).

Employers should also be aware of the duty to make reasonable adjustments when discussing past performance. For example, they should consider whether performance would have been more effective had a reasonable adjustment been put in place or introduced earlier. Appraisals may also provide an opportunity for workers to disclose a disability to their employer, and to discuss any adjustments that would be reasonable for the employer to make in future (EHRC 2011).

- **Example:** An employer installed voice-activated software as a reasonable adjustment to accommodate the needs of a new manager with a visual impairment. The manager takes several weeks to familiarise herself with the software. After six months in post, the manager undergoes an appraisal. In assessing the manager's performance, it would be a reasonable adjustment for the employer to take account

of the time the manager needed to become fully familiar with the software (EHRC 2011).

To avoid discrimination when conducting appraisals, employers are recommended to:

- make sure that performance is measured by transparent, objective and justifiable criteria using procedures that are consistently applied.
- check that, for all workers, performance is assessed against standards that are relevant to their role.
- ensure that line managers carrying out appraisals receive training and guidance on objective performance assessment and positive management styles; and
- monitor performance assessment results to ensure that any significant disparities in scores apparently linked to a protected characteristic are investigated, and steps taken to deal with possible causes (EHRC 2011).

12.10 Promotion and transfer

Issues and considerations that arise on recruitment can arise again in respect of promoting or transferring existing workers to new roles. It is unlawful for employers to discriminate against, victimise or harass workers in the way they make opportunities for promotion or transfer available or by refusing or deliberately failing to make them available. An employer may need to make reasonable adjustments to the promotion or transfer process to ensure that disabled workers are not substantially disadvantaged by the process for promotion or transfer or by the way the process is applied (EHRC 2011).

Failure to inform workers of opportunities for promotion or transfer may be direct or indirect discrimination. To avoid discrimination, employers are advised to advertise all promotion and transfer opportunities widely throughout the organisation. This includes development or deputising opportunities or secondments that could lead to permanent promotion (EHRC 2011).

If an employer has an equal opportunities policy and/or recruitment policy and procedures, it would be good practice to ensure that these policies are followed when internal promotions or transfers are taking place. This can help ensure that that selection is based strictly on demonstrable merit. Unless a temporary promotion is absolutely necessary, employers should avoid bypassing the procedures they have adopted for recruiting other staff (EHRC 2011).

Employers should consider whether it is really necessary to restrict applications for promotion and other development opportunities to staff at a particular grade or level. This restriction would operate as a provision, criterion or practice and, unless it can be objectively justified, could indirectly discriminate by putting workers sharing a protected characteristic at a particular disadvantage (EHRC 2011).

Arrangements for promoting workers or arranging transfers must not discriminate because of disability – either in the practical arrangements relating to selection for promotion or

transfer, or in the arrangements for the job itself. It is also important for employers to consider whether there are any reasonable adjustments that should be made in relation to promotion or transfer (EHRC 2011).

- **Example:** A woman with a disability resulting from a back injury is seeking a transfer to another department. A minor aspect of the role she is seeking is to assist with unloading the weekly delivery van. She is unable to do this because of her disability. In assessing her suitability for transfer, the employer should consider whether reallocating this duty to someone else would be a reasonable adjustment to make (EHRC 2011).

Employers should not make assumptions about the suitability of existing workers for promotion or transfer (EHRC 2011).

12.11 Disciplinary and grievance matters

It is good practice for employers (irrespective of their size) to have procedures for dealing with grievances and disciplinary hearings together with appeals against decisions under these procedures. Where procedures have been put in place, they should not discriminate against workers either in the way they are designed or how the employer implements them in practice. More information about disciplinary and grievance procedures, including a worker's right to be accompanied by a trade union representative or fellow worker, can be found on the Acas website (ACAS 2015; EHRC 2011)

An employer may in addition wish to introduce a separate policy designed specifically to deal with harassment. Such policies commonly aim to highlight and eradicate harassment whilst at the same time establishing a procedure for complaints, similar to a grievance procedure, with safeguards to deal with the sensitivities that allegations of harassment often bring (EHRC 2011).

- **Example:** An employer has a procedure that allows a grievance relating to harassment to be raised with a designated experienced manager. This avoids the possibility of an allegation of harassment having to be raised with a line manager who may be the perpetrator of the harassment (EHRC 2011).

Employers should ensure that when conducting disciplinary and grievance procedures they do not discriminate against a worker because of a protected characteristic. For example, employers may need to make reasonable adjustments to procedures to ensure that they do not put disabled workers at a substantial disadvantage (EHRC 2011).

12.11.1 Dealing with grievances

Employers must not discriminate in the way they respond to grievances. Where a grievance involves allegations of discrimination or harassment, it must be taken seriously and investigated promptly and not dismissed as 'over-sensitivity' on the part of the worker (EHRC 2011).

Wherever possible, it is good practice – as well as being in the interests of employers – to resolve grievances as they arise and before they become major problems. Grievance procedures can provide an open and fair way for complainants to make their concerns known, and for their grievances to be resolved quickly, without having to bring legal proceedings (EHRC 2011).

It is strongly recommended that employers properly investigate any complaints of discrimination. If a complaint is upheld against an individual co-worker or manager, the employer should consider taking disciplinary action against the perpetrator (EHRC 2011).

Whether or not the complaint of discrimination is upheld, raising it in good faith is a 'protected act' and if the worker is subject to any detriment because of having done so, this could amount to victimisation (EHRC 2011).

12.11.2 Disciplinary procedures

Employers must not discriminate in the way they invoke or pursue a disciplinary process. A disciplinary process is a formal measure and should be followed fairly and consistently, regardless of the protected characteristics of any workers involved. Where a disciplinary process involves allegations of discrimination or harassment, the matter should be thoroughly investigated, and the alleged perpetrator should be given a fair hearing (EHRC 2011).

If a complaint about discrimination leads to a disciplinary process where the complaint proves to be unfounded, employers must be careful not to subject the complainant (or any witness or informant) to any detriment for having raised the matter in good faith. Such actions qualify as 'protected acts and detrimental treatment amounts to victimisation if a protected act is an effective cause of the treatment (EHRC 2011).

12.11.3 Avoiding disputes and conflicts

To help avoid disputes and conflicts with and between workers with different protected characteristics, employers should treat their workers with dignity and respect and ensure workers treat each other in the same way. If the principle of dignity and respect is embedded into the workplace culture, it can help prevent misunderstandings and behaviour that may lead to prohibited conduct. It is good practice to have a clear policy on 'dignity and respect in the workplace', setting out workers' rights and responsibilities to each other (EHRC 2011).

It is also good practice, and in the interests of both employers and their workers, to try to resolve workplace disputes so as to avoid litigation. Employers should have different mechanisms in place for managing disputes, such as mediation or conciliation. Where it is not possible to resolve a dispute using internal procedures, it may be better to seek outside help (EHRC 2011).

Employers will sometimes have to deal with complaints about prohibited conduct that arise between members of staff. They can avoid potential conflicts by noticing problems at an

early stage and attempting to deal with them by, for example, talking to the people involved in a non-confrontational way. It is important to encourage good communication between workers and managers in order to understand the underlying reasons for potential conflicts. Employers should have effective procedures in place for dealing with grievances if informal methods of resolving the issue fail (EHRC 2011).

There may be situations where an employer should intervene to prevent a worker discriminating against another worker or against another person to whom that employer has a duty under the Equality Act (such as a customer). In these circumstances, it may be necessary to take disciplinary action against the worker who discriminates (EHRC 2011).

13 Equality policies and practice in the workplace

There is no formal statutory requirement in the Equality Act for an employer to put in place an equality policy. However, a systematic approach to developing and maintaining good practice is the best way of showing that an organisation is taking its legal responsibilities seriously. To help employers and others meet their legal obligations and avoid the risk of legal action being taken against them, it is recommended, as a matter of good practice, that they draw up an equality policy (also known as an equal opportunities policy or equality and diversity policy) and put this policy into practice (EHRC 2011).

13.1 Why have an equality policy?

There are a number of reasons why employers should have an equality policy. For example:

- it can give job applicants and workers confidence that they will be treated with dignity and respect.
- it can set the minimum standards of behaviour expected of all workers and outline what workers and job applicants can expect from the employer.
- it is key to helping employers and others comply with their legal obligations.
- it can minimise the risk of legal action being taken against employers and workers; and/or
- if legal action is taken, employers may use the equality policy to demonstrate to an Employment Tribunal that they take discrimination seriously and have taken all reasonable steps to prevent discrimination (EHRC 2011).

Equality policies and practices are often drivers of good recruitment and retention practice. Information on these policies, as well as on equality worker network groups, on the organisation's website and/or in induction packs, send a very positive and inclusive signal encouraging people to apply to work for the organisation. This can indicate that the organisation seeks to encourage a diverse workforce and that, for example, applicants with any religion or belief and/or sexual orientation would be welcome in the organisation (EHRC 2011).

13.2 Planning an equality policy

It is essential that a written equality policy is backed by a clear programme of action for implementation and continual review. It is a process which consists of four key stages: planning, implementing, monitoring, and reviewing the equality policy (EHRC 2011).

The content and details of equality policies and practices will vary according to the size, resources and needs of the employer. Some employers will require less formal structures but all employers should identify a time scale against which they aim to review progress and the achievement of their objectives (EHRC 2011).

A written equality policy should set out the employer's general approach to equality and diversity issues in the workplace. The policy should make clear that the employer intends to

develop and apply procedures which do not discriminate because of any of the protected characteristics, and which provide equality of opportunity for all job applicants and workers (EHRC 2011).

13.2.1 Planning the content of equality policies

Most policies will include the following:

- a statement of the employer's commitment to equal opportunity for all job applicants and workers.
- what is and is not acceptable behaviour at work (also referring to conduct near the workplace and at work-related social functions where relevant).
- the rights and responsibilities of everyone to whom the policy applies, and procedures for dealing with any concerns and complaints.
- how the policy may apply to the employer's other policies and procedures.
- how the employer will deal with any breaches of policy.
- who is responsible for the policy; and
- how the policy will be implemented and details of monitoring and review procedures (EHRC 2011)

- **Example:** An organisation informs new recruits that abuse, and harassment are unacceptable and staff who make offensive, racist, homophobic or ableist comments are automatically subject to disciplinary proceedings (EHRC 2011).

It will help an employer avoid discrimination if the equality policy covers all aspects of employment including recruitment, terms and conditions of work, training and development, promotion, performance, grievance, discipline and treatment of workers when their contract ends (EHRC 2011).

13.2.2 Planning an equality policy – protected characteristics

It is recommended that adopting one equality policy covering all protected characteristics is the most practical approach. Where separate policies are developed, such as a separate race equality or sex equality policy, they should be consistent with each other and with an overall commitment to promoting equality of opportunity in employment (EHRC 2011).

13.3 Implementing an equality policy

An equality policy should be more than a statement of good intentions; there should also be plans for its implementation. The policy should be in writing and drawn up in consultation with workers and any recognised trade unions or other workplace representatives, including any equality representatives within the workforce (EHRC 2011).

Employers will be of different sizes and have different structures, but it is advisable for all employers to take the following steps to implement an equality policy:

- audit existing policies and procedures.

- ensure the policy is promoted and communicated to all job applicants and workers and agents of the employer; and
- monitor and review the policy (EHRC 2011).

13.3.1 Promotion and communication of an equality policy

Employers should promote and publicise their equality policy as widely as possible and there are a number of ways in which this can be done. Promoting the policy is part of the process of effective implementation and will help an employer demonstrate that they have taken all reasonable steps to prevent discrimination (EHRC 2011).

Employers may use a number of methods of communication to promote their policy, including:

- email bulletins
- intranet and/or website
- induction packs
- team meetings
- office notice boards
- circulars, newsletters
- cascade systems
- training
- handbooks
- annual reports (EHRC 2011).

These methods of communication may not be appropriate in all cases. Some workers, for example those in customer-facing or shop floor roles, may not have regular access to computers. Alternative methods of communication, such as notice boards and regular staff meetings, should also be considered. Employers must also consider whether reasonable adjustments need to be made for disabled people so that they are able to access the information (EHRC 2011).

Promoting and communicating an equality policy should not be a one-off event. It is recommended that employers provide periodic reminders and updates to workers and others such as contractors and suppliers. Employers should also periodically review their advertising, recruitment and application materials and processes (EHRC 2011).

13.3.2 Responsibility for implementing an equality policy

The policy should have the explicit backing of people in senior positions such as the chair, owner, chief executive, or board of directors. Senior management should ensure that the policy is implemented, resourced, monitored and reviewed, and that there is regular reporting on its effectiveness (EHRC 2011).

- **Example:** When a large company introduces a new equality policy, they might ask an external training company to run training sessions for all staff, or they might ask

their human resources manager to deliver training to staff on this policy (EHRC 2011).

- **Example:** A small employer introducing an equality policy asks the managing director to devote a team meeting to explaining the policy to her staff and discussing why it is important and how it will operate (EHRC 2011).

13.3.3 Implementing an equality policy – training

Employers should ensure that all workers and agents understand the equality policy, how it affects them and the plans for putting it into practice. The best way to achieve this is by providing regular training (EHRC 2011).

Some workers may need more specific training, depending on what they do within the organisation. For example, line managers and senior management should receive detailed training on how to manage equality and diversity issues in the workplace (EHRC 2011).

The training should be designed in consultation with workers, their workplace representatives and managers and by incorporating feedback from any previous training into future courses (EHRC 2011).

Employers should make sure in-house trainers are themselves trained before running courses for other workers. External trainers also need to be fully informed about the employer's policies, including their equality policy (EHRC 2011).

Training on the equality policy may include the following:

- an outline of the law covering all the protected characteristics and prohibited conduct.
- why the policy has been introduced and how it will be put into practice.
- what is and is not acceptable conduct in the workplace.
- the risk of condoning or seeming to approve inappropriate behaviour and personal liability.
- how prejudice can affect the way an employer functions and the impact that generalisations, stereotypes, bias or inappropriate language in day-to-day operations can have on people's chances of obtaining work, promotion, recognition and respect.
- the equality monitoring process (EHRC 2011).

- **Example:** A large employer trains all their workers in the organisation's equality policy and the Equality Act. They also train all occupational health advisers with whom they work to ensure that the advisers have the necessary expertise about the Equality Act and the organisation's equality policy (EHRC 2011).

13.4 Monitoring and reviewing an equality policy

Equality monitoring enables an employer to find out whether their equality policy is working. For example, monitoring may reveal that:

- Disabled applicants are not selected for promotion.
- Disabled workers are concentrated in certain jobs or departments.
- Disabled people do not apply for employment or fewer apply than expected.
- Disabled workers are not selected for training and development opportunities (EHRC 2011).

Equality monitoring is the process that employers use to collect, store, and analyse data about the protected characteristics of job applicants and workers. Employers can use monitoring to:

- establish whether an equality policy is effective in practice.
- analyse the effect of other policies and practices on different groups.
- highlight possible inequalities and investigate their underlying causes.
- set targets and timetables for reducing disparities; and
- send a clear message to job applicants and workers that equality and diversity issues are taken seriously within the organisation (EHRC 2011).

- **Example:** A large employer notices through monitoring that the organisation has been successful at retaining most groups of disabled people, but not people with mental health conditions. They act on this information by contacting a specialist organisation for advice about good practice in retaining people with mental health conditions (EHRC 2011).

13.4.1 Monitoring an equality policy – law and good practice

Public sector employers may find that monitoring assists them in carrying out their obligations under the public sector equality duty. For employers in the private sector, equality monitoring is not mandatory. However, it is recommended that all employers carry out equality monitoring. The methods used will depend on the size of the organisation and can be simple and informal. Smaller organisations may only need a simple method of collecting information about job applicants and workers. Larger organisations are likely to need more sophisticated procedures and computerised systems to capture the full picture across the whole of their organisation (EHRC 2011).

Monitoring will be more effective if workers (or job applicants) feel comfortable about disclosing personal information. This is more likely to be the case if the employer explains the purpose of the monitoring and if the workers or job applicants believe that the employer is using the information because they value the diversity of their workforce and want to use the information in a positive way (EHRC 2011).

Employers must take full account of the Data Protection Act 1998 when they collect, store, analyse and publish data (EHRC 2011).

13.4.2 Monitoring an equality policy – key areas

Employers should monitor the key areas of the employment relationship including:

- recruitment and promotion
- pay and remuneration
- training
- appraisals
- grievances
- disciplinary action
- dismissals and other reasons for leaving (EHRC 2011).

Employers who are carrying out equality monitoring will find it useful to compare progress over a period of time and against progress made by other employers in the same sector or industry (EHRC 2011).

13.4.3 Monitoring an equality policy – reporting back

It is important for employers to communicate on a regular basis to managers, workers and trade union representatives on the progress and achievement of objectives of the equality policy. Employers should also consider how the results of any monitoring activity can be communicated to the workforce. However, care should be taken to ensure that individuals are not identifiable from any reports (EHRC 2011).

13.4.4 Monitoring an equality policy – taking action

Taking action based on any findings revealed by the monitoring exercise is vital to ensure that an employer's equality policy is practically implemented. There are a number of steps employers can take, including:

- examine decision-making processes, for example recruitment and promotion.
- consider whether training or further guidelines are required on how to avoid discrimination.
- consider whether any positive action measures may be appropriate.
- work with network groups and trade union equality representatives to share information and advice.
- set targets on the basis of benchmarking data and develop an action plan (EHRC 2011).

13.4.5 Reviewing an equality policy and other employment policies

It is good practice for employers to keep both their equality policy and all other policies and procedures (such as those listed below) under regular review at least annually and to consider workers' needs as part of the process (EHRC 2011).

Policies which should be reviewed in light of an employer's equality policy might include:

- recruitment policies
- leave and flexible working arrangements
- retirement policies
- health and safety, for example, emergency evacuation procedures

- procurement of equipment, IT systems, software and websites
- pay and remuneration
- grievance policies, including harassment and bullying
- disciplinary procedure
- appraisal and performance-related pay systems
- sickness absence policies
- redundancy and redeployment policies
- training and development policies
- employee assistance schemes offering financial or emotional support (EHRC 2011).

Part of the review process may entail employers taking positive action measures to alleviate disadvantage experienced by workers who share a protected characteristic, meet their particular needs, or increase their participation in relation to particular activities. Employers must also ensure they make reasonable adjustments where these are required by individual disabled workers. The review process can help employers to consider and anticipate the needs of disabled workers (EHRC 2011).

14 Useful Links

14.1 Links for disability rights in work

ACAS, advisory, conciliation and arbitration service: https://www.acas.org.uk/

Citizens Advice Bureau: https://www.citizensadvice.org.uk/

Disability Justice Organisation: https://www.disabilityjustice.org.uk/

Disability Law service: https://dls.org.uk/

Disability Rights UK: https://www.disabilityrightsuk.org/

Disability Union: https://disabilityunion.co.uk/

14.2 Other useful links

Purple Reach https://www.purplereach.co.uk/. Disability access and training consultancy.

Access to Work https://www.gov.uk/access-to-work. How to get governmental support for access solutions if you have a disability or health condition.

Fightback for Justice https://www.fightback4justice.co.uk/. Non-profit community interest company offering expert welfare and benefits advice.

15 How these guidelines were created

15.1 Mission

To remove the barriers to accessing life, so people can express their brilliance.

15.2 Our paradigms

We genuinely believe that anyone can work in science. We believe that having a diverse workforce enhances the quality and utility of the science created.

15.3 Key definitions

The core workplace of science is the laboratory. In these guidelines "Labs" refers to laboratories, manufacturing and production lines, engineering facilities, etc.

"Scientists" refers to scientists, technologists, engineers, mathematicians, and healthcare professionals etc.

"Disabled" relates to people who are disabled, D/deaf, or have long term health conditions (both physical and mental), illnesses, or injuries, which have a significant impact on their ability to carry out everyday tasks.

15.4 Aim

The aim was to create a set of documents that would provide a pragmatic and useful guide on to how to create an accessible lab workplace. We wished to accumulate relevant guidelines for lab contexts, edit them for relevancy, expand them in order to be as comprehensive as possible, and share them with the scientific community. The guidelines are mostly created from previously published work, which we cite.

We wanted to provide guidelines for the whole of the lab work ecosystem, and to consider all types of impairments and disabilities.

- Structural access – physical design of laboratory and fixed equipment (e.g., hoods, sinks etc.)
- Equipment access – design and use of movable equipment (e.g., microscopes, centrifuges, PCR machines etc.)
- Protocol access – adaptation of lab protocols to accommodate access needs (e.g., seated working, evacuation protocols, lone working etc.)
- Dissemination access – work done in laboratories must be shared with the wider world. Access issues can be encountered in consultation and dissemination events, meetings, conferences, the publication of work on web pages and in journal articles.
- General working practices access – adaptation of usual HR and working practices (e.g., part time or flexible hours), assisting disabled staff to access to relevant benefits, accessible transport, and parking etc.

15.5 Team expertise

A significant proportion of the Access All Areas in Labs team have disabilities themselves, with lived experience of impairments in mobility, vision, stamina, dexterity, mental wellbeing, cognitive focus, and a range of neurodiversities. They have worked in microbiological, immunological, engineering, electronic, clinical trial, and pharmacy settings as students, researchers, principal investigators, technicians, and administrators.

15.6 Methods

We searched scientific databases (MEDLINE, EMBASE); grey literature; professional magazines; online resources; relevant charities and trade unions; centres for disability studies; consultants that support disabled researchers and employers. We snowballed contacts and resources from the originally identified literature.

We also conducted a survey of people with an interest in lab access about barriers and solutions to lab access (Deane 2023c) along with a set of case study interviews examining solutions to lab access (AAAiLabs 2023).

We identified a key guideline or two at the start of the creation of each of our guidelines. This would then be combined with information from other guidelines, data from the survey and case studies, and combined with the team's lived expertise to allow us to provide comprehensive guidelines with exemplars of implementation solutions across a range of settings and impairments.

15.7 Amendments

Version 1.1: Amended to clarify funding sources.

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