

Agnes Fletcher looks at the benefits compliance with the Disability Discrimination Act brings to your organisation, your employees and your clients

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■ Many businesses find employment and discrimination law difficult and think of it as a threat. However, disability is definitely a business issue. Around one in five of the working age population is likely to meet the definition in the Disability Discrimination Act (DDA) because of a disability or long-term health condition. Getting management of disability and health in the workplace right benefits everyone.

Having a disability or health condition usually isn't obvious to others and is much more common than people often think. Being a flexible employer can mean you get the best out of your staff – whether that relates to understanding childcare needs, flexibility for people with disabilities and long-term health conditions or days off for religious festivals. On the whole, you get back what you put in.

Ensuring that you can recruit and retain the one in five people of working age who are disabled in the terms of the DDA isn't something you should do just because there's a law about it or because it's a good thing to do. It can:

- make your workforce more representative of the community it serves
- attract and keep able staff, with problem-solving and negotiation skills
- avoid undervaluing, under-using or losing able staff
- avoid the costs and uncertainties involved in recruiting and training someone new when you could have kept an employee – and kept valuable customer and business expertise within the organisation
- improve staff morale and productivity
- improve the way all staff are managed, including in areas like health and safety and absence
- help to develop good practice that improves customer care as well as your employment practice.

what does the law say?

It is against the law for an employer of any size to discriminate unfairly against someone who meets the definition of a 'disabled person' in the DDA because of their disability or long-term health condition.

You cannot discriminate against someone with a disability or health condition:

- in the recruitment process
- in their terms and conditions of employment
- in chances for promotion, transfer, training or other benefits
- by dismissing them unfairly
- by treating them less fairly than other workers
- by subjecting them to harassment or victimisation.

what does discriminate mean?

The DDA describes the following kinds of discrimination: direct discrimination, failure to comply with the duty to make reasonable adjustments, disability-related less favourable treatment, subjecting a disabled person to harassment and victimisation of a disabled person (or a non-disabled person).

direct discrimination

The Act says that an employer's treatment of a disabled person amounts to direct discrimination if the treatment is on the grounds of his/her disability and the treatment is less favourable than the way in which a person not having that particular disability is (or would be) treated.

For example, if an employer operated a blanket ban on everyone with diabetes and turned someone down for a job purely on this basis without looking at whether they could do the job, that would be direct discrimination.

failure to comply with a duty to make reasonable adjustments

Employers have a duty to make reasonable adjustments for disabled job applicants or staff when a policy, practice or something about their premises, places the disabled person at a substantial disadvantage.

Some examples of reasonable adjustments are given below:

- altering the person's working hours
- allowing absences during working hours for medical treatment
- giving additional training
- getting special equipment or modifying existing equipment
- changing instructions or reference manuals
- changing an open plan working policy to accommodate someone with an anxiety condition or autism
- providing additional supervision or support
- making adjustments to premises.

Changes of this kind are usually low or no cost and are part of being a good employer.

When is it 'reasonable' for me to make an adjustment?

The law lists factors that may affect whether it is reasonable for an employer to make a particular adjustment. These are:

- how effective the adjustment is in preventing the disadvantage
- how practical it is
- the financial and other costs and the extent of any disruption
- the extent of the employer's financial or other resources
- the availability to the employer of financial or other help to make the adjustment
- the size and type of business.

disability-related less favourable treatment

The law says that an employer's treatment of a disabled person amounts to less favourable treatment if the treatment is for a reason related to their disability; and the treatment is less favourable than the way others would be treated.

For example, you may give all of your staff training on a new process in your business. If you do not offer that training to a disabled staff member because it might take longer, you are treating them less favourably.

harassment

Harassment occurs when, for a reason which relates to a person's disability, another person engages in unwanted conduct which may violate the disabled person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for that disabled person. As an employer, you are responsible for the behaviour of your staff.

victimisation

It is unlawful to victimise someone because they have taken part in legal proceedings under the DDA or have alleged in good faith that someone else could be in breach of the Act. This form of disability discrimination is the only one for which the DDA gives protection to non-disabled people.

who is disabled?

Disabled people aren't just those who use wheelchairs or guide dogs. There are many types of disability and health condition that mean someone could be covered by the DDA. And you often can't tell just by looking at someone whether they meet this definition. In fact, around half of those with rights under the DDA don't describe themselves as a 'disabled person'. The fact is, most employers will already be employing someone who might be protected by the law. The employer may not realise it – and the person themselves may not realise that they have rights or could ask for support to do their job better.

A 'disabled person' is legally defined as someone with 'a physical or mental impairment that has a substantial and long-term adverse effect on his/her ability to carry out normal day-to-day activities'. What matters is that their impairment or health condition has an impact – not what their diagnosis is. Normal-day-to-day activities include:

- mobility – e.g. being able to walk to the local shop
- manual dexterity – e.g. typing
- physical co-ordination
- continence
- ability to lift, carry or otherwise move everyday objects
- speaking, hearing or seeing
- memory or ability to concentrate, learn or understand
- perception of the risk of physical danger.

The law can cover people with facial disfigurements and 'hidden' disabilities like depression, dyslexia, epilepsy and schizophrenia. It can also cover people with progressive conditions, such as HIV, cancer or multiple sclerosis (soon this will be from the point of diagnosis rather than onset of symptoms).

People who have had a disability in the past are also covered, even if they have recovered – for example, those who have had episodes of mental ill health. People who have severe back pain or arthritis can be covered by the law if that condition means that their ability to do normal activities is affected.

Many people experience the effects of conditions such as these – particularly as they get older. It doesn't mean that people aren't able to do a range of jobs. Often they bring important skills and life experiences, such as negotiation, patience and problem-solving. There is also nothing in the DDA to make you employ someone who is incapable, even with reasonable adjustments, of doing the job. ■

Agnes Fletcher – Assistant Director, Communications, Disability Rights Commission

further information

The Disability Rights Commission (DRC) provides information and advice on the DDA to disabled people, employers and service providers. You will also find more detailed information on their website:

www.drc-gb.org

If you can't find what you need there, or need further help, you can contact the helpline available between 08.00 and 20.00 Monday to Friday.

tel: 08457 622633

textphone: 08457 622644

fax: 08457 778 878

e-mail: enquiry@drc-gb.org

DRC Helpline, Freepost MID02164, Stratford upon Avon CV37 9BR.

The helpline can provide free information and advise you on what the law means in general terms but cannot give you advice on individual cases.

money and help

Access to Work is a government scheme operated by the Jobcentre. It provides practical advice and support to disabled people and their employers to help overcome work related obstacles. It can pay a grant towards certain extra employment costs resulting from disability, such as fares to work if transport is difficult; a communicator at a job interview for someone with a hearing impairment; a support worker, such as a reader if someone has a visual impairment; specialist equipment, such as voice activated software; adaptations to premises, such as installing an accessible toilet.