



Members' guide

Reasonable adjustments



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Introduction

Prospect is committed to achieving equality for all members irrespective of disability, sex, gender identity, race, sexual orientation, age or religion.

Prospect representatives play a key role in challenging and changing the culture in the workplace. They do this by shaping workplace policies, ensuring fairness, and assisting members in personal cases.

This guidance aims to help representatives and members improve equality for disabled people at work, with a specific focus on reasonable adjustments.

We adhere to the social model of disability, which is based on what disabled people can do rather than what they cannot do.

The social model looks at the barriers that our society puts in the way of disabled people's participation, including both attitudes and practical barriers.

However, the Equality Act uses language based on the medical model and therefore such language will inevitably be reflected in our guidance on the Equality Act.

The Equality Act can cover a very wide range of workers including those on freelance, casual,

zero-hours, internships and other atypical contracts.

Whereas some statutory rights, such as unfair dismissal and redundancy, only cover employees, the protection against discrimination at work is much more extensive. It will only be the genuinely self-employed who are excluded from bringing a claim under the Equality Act.

Freelancers working through their own limited company may still be covered, but it will always depend on the individual circumstances.

Even as a short term freelance worker, you are likely to have rights not to be discriminated against on the grounds of disability by an engager, employer, or co-worker. This will apply to any length of engagement, even if it is just a few days' work.

Determining employment status can be complex, so if in doubt contact your union full-time officer.

The Equality Act applies to England, Wales and Scotland. It does not apply in Northern Ireland, which continues to have separate, though very similar, legislation. There are also significant differences in the Isle of Man and Channel Islands.

1. The definition of a disabled person: What the law says

1.1 There are three conditions that are automatically considered to be a disability under the Equality Act. These are multiple sclerosis, cancer and HIV.

1.2 A person will meet the definition of a disabled person under the Act if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities

1.3 This is a legal definition, not a medical one. Therefore, while medical evidence will of course be important, whether someone meets the definition of a disabled person under the Act is ultimately a decision for the tribunal.

What is long-term?

1.4 Long term is defined as:

- has lasted at least 12 months;
- is likely to last at least 12 months; or
- is likely to last for the rest of the person's life.

1.5 The provisions of the Act also apply to people who have previously had a disability. This means that someone who is no longer disabled, but who met the requirements of the definition in the past, will still be covered by the Act. For example, if several years ago, a

member had a 'mental impairment' which had a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities but had experienced no recurrence of the condition more recently, they are still entitled to the protection afforded by the Act, as a person with a past disability if they are discriminated against because of their past condition.

1.6 Recurring conditions which may not affect someone on a daily basis, may also be covered under the Act. For example, a condition such as rheumatoid arthritis, may only have substantial adverse effects every few weeks or so, but would likely still be covered by the Act.

What is a substantial effect?

1.7 The Act describes a substantial effect as being one that is more than a minor or trivial effect.

1.8 The effect of any medication or treatment should be disregarded when determining if the effect is substantial.

What are normal day-to-day activities?

1.9 It is important to note that 'normal day to day activities' cover everything a person does, not just work related activities.

1.10 In general, day-to-day activities are things people do on a regular or daily basis, such as shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling and taking part in social activities.

1.11 Government guidance on matters to be taken into account in determining questions relating to the definition of disability, provides useful information on what evidence a tribunal will take into account when considering whether a Claimant meets the legal definition of a disabled person.

2. The duty to make reasonable adjustments

2.1 The Act imposes a duty on employers to make reasonable adjustments to overcome any substantial disadvantage to a disabled person.

2.2 However, an employer can only make adjustments if they know, or could have reasonably known, that a person has a disability. We understand that disclosing a disability can be difficult. With Prospect's support we hope that members feel more able to inform their employer about their disability and what adjustments they might need.

2.3 The employer is required to make adjustments where:

- a provision, criterion or practice puts a disabled employee at a substantial disadvantage;
- there is a physical feature of the workplace that causes a disadvantage;
- an auxiliary aid is required by the disabled employee.

2.4 There are a number of criteria to be considered when determining what is reasonable as what is reasonable for one individual or organisation may not be reasonable for another.

2.5 The Equality and Human Rights Commission suggests that the following

is considered when deciding whether an adjustment is reasonable or not:

- How effective the change will be in avoiding the disadvantage that would otherwise be experienced
- How practical it is for the organisation to make it
- The cost
- The organisation's resources and size
- Whether financial support is available to help the organisation make it

Discrimination arising from a disability

2.6 Disabled workers are also protected against discrimination because of something arising in consequence of their disability.

2.7 If, for example, someone is dismissed because of long term absence and this absence arose as a consequence of their disability, the dismissal will be unlawful unless the employer can justify their actions. They will need to show that the dismissal was a proportionate means of achieving a legitimate aim.

2.8 Where performance management reviews, for example, are used to make decisions about pay or other benefits, this

may be discriminatory if the individual can show that their performance has been impacted by their disability.

2.9 An important consideration for the tribunal when considering if the employer has acted proportionately will be whether the employer has made reasonable adjustments.

2.10 Often in cases where members have been subject to performance processes that have resulted in dismissal, had appropriate reasonable adjustments been explored at an earlier stage, the dismissal may have been avoided.

2.11 Direct discrimination, indirect discrimination, harassment and victimisation is also prohibited under the Act. This, however, is outside of the remit of this guide. See Prospect's **Members' guide to equality at work** for more information.

Time limits and claims

2.12 There are very strict time limits for bringing a claim to the tribunal. The process must be started within three months of the discriminatory act. Only in very exceptional circumstances does the tribunal use their discretion to accept a late claim. This however is exceptionally rare and should not be relied upon.

2.13 With reasonable adjustment claims the time limit runs from the date the employer refuses the adjustment or, where there has been no clear rejection, when they should have reasonably complied with the request.

2.14 Before presenting a legal claim, the member will be expected to raise a grievance internally. A failure to do so can result in compensation being reduced by up to 25%. It is important to remember that the grievance does not extend the tribunal time limits, so it is often not possible to wait for the outcome of a grievance before starting your claim.

2.15 The rules on time limits and procedures are complicated so always seek advice from Prospect as soon as possible.

Prospect advice

2.16 Prospect aims, where possible, to resolve issues within the workplace. However, sometimes there is no other option but to take a case to an employment tribunal.

2.17 Legal advice and assistance is offered at the discretion of the union and is decided on the facts and merits of each case. For more information see our *Guide to Legal Advice* at <https://library.prospect.org.uk/download/2015/01155>

3. Building an open and supportive culture

3.1 The more an organisation can do to ensure individuals feel supported at work, the more likely disabled people will feel comfortable to be open about their experiences and what support they need.

3.2 Managers should be open to discussing employees' concerns around discrimination and workplace culture.

3.3 Examples (anonymous if necessary) of where reasonable adjustments have been successfully implemented should be highlighted so employees feel more confident about making requests.

Simple processes

3.4 It is good practice to have a written document that sets out the organisation's commitment to tackle discrimination and promote equality and diversity.

3.5 The process of requesting reasonable adjustments should be simple and speedy, with clear policies and procedures to follow. It is important that employees are not waiting for lengthy periods with no adjustments in place.

3.6 Employers should consider having a central budget specifically allocated for reasonable adjustments so funds can be accessed quickly and easily when required.

Training

3.7 All staff should attend equality training but simply running training is not enough – it is the nature of that training and its effectiveness that is important.

3.8 It is important that the employer regularly provides equality and diversity training for all staff. Bespoke training should be provided to supervisors and line managers to ensure they can provide appropriate support for disabled employees.

3.9 It is important to routinely review how effective training has been – do workers feel able to make reasonable adjustments requests or raise any concerns that they have? What action is taken when they do?

4. Making adjustments

No two experiences of a disability are the same

4.1 What is a suitable reasonable adjustment for one person, may not be for another. In looking to make adjustments, it is vital that the member is consulted and does not simply have “reasonable adjustments” imposed on them.

4.2 The member will know better than anyone about how their disability affects them and how specific adjustments need to be tailored to meet their needs. Discussions with the employer should be approached in a proactive and constructive manner.

Seek expert guidance

4.3 Often, the employer will want to arrange for the member to see Occupational Health. Occupational Health reports can be useful in setting out what adjustments are required so it is important that members have a careful think about what they might need before attending an Occupational Health assessment.

4.4 However, it is also worth the member obtaining their own medical advice from their GP or another treating medical professional

to support their request for reasonable adjustments and not to solely rely on the Occupational Health report.

Role of the Line Manager

4.5 It is important that the member’s line manager is involved in the process and understands why the reasonable adjustment(s) is required and how this will help the individual in carrying out their role.

Reasonable adjustment passports

4.6 Prospect encourages employers to operate a passport system to record adjustments that have been agreed between the member and the employer.

4.7 A disability passport removes the need to revisit or renegotiate adjustments every time the member is transferred to a new job, promoted, relocated or has a new line manager.

4.8 The passport belongs to the member and it is up to them who sees it. However, line managers should keep a copy and it should also be kept on the individual’s personal record held by HR.

4.9 Useful guidance for reps, produced by the GMB and TUC, including a model reasonable adjustments passport can be found on the TUC website here: <http://bit.ly/DP-model>

Regular reviews

4.10 Changes to health or personal circumstances can occur at any time. It is important to review the effectiveness of adjustments and the ongoing impact.

4.11 It is good practice to review the passport after six months to ensure the adjustments are working to the member's benefit. It should then be reviewed periodically, at dates to be agreed between the member and their line manager. The passport should also be revisited if anything changes.

5. Reasonable adjustments

– some examples

5.1 It would be incredibly difficult to give an exhaustive list of all possible reasonable adjustments. Here, however are some

suggestions that members might find helpful when considering what reasonable adjustments they need:

Physical adaptations	<ul style="list-style-type: none">• Provision of equipment such as adapted keyboards, mouse etc.• Voice recognition software• Adjusted workspaces e.g. larger screens, quiet space, height-adjustable desks• Quiet working spaces• Easy access to facilities e.g. kitchen, toilets etc.• Designated parking spaces• Designated desks, particularly in hot-desking environments
Flexible working	<ul style="list-style-type: none">• Changing hours of working• Working from home• Compressed hours• Additional breaks• Job sharing• Altering duties• Time off for medical appointments• Changing roles
Policies and processes	<ul style="list-style-type: none">• Modification of assessment and promotion procedures• Modification of disciplinary or grievance procedures• Modification of performance/capability assessment processes

6. Resources and support

Resources

- Prospect
www.prospect.org.uk
- Bectu
www.bectu.org.uk
- Prospect's Equality, Diversity and Inclusion Strategy
<https://library.prospect.org.uk/download/2021/00905>
- Members' guide to equality at work
<https://library.prospect.org.uk/download/2008/00092>
- Members' guide to bullying and harassment
<https://library.prospect.org.uk/download/2007/00549>
- TUC Disability Passport
<https://bit.ly/DP-model>

How to access support

For more information and support:

- Contact your local union representative
- Email your full-time negotiator
- Call the Member Contact Centre on 0300 600 1878



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