



University of Strathclyde
LAW CLINIC

9F Types of claim: (6) Failure to make reasonable adjustments

A guide for the general public

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Introduction

When completing your ET1, you will be asked to identify which claims you are making. This is at Section 8.1 of the ET1.

You will be ticking the box that says discrimination and then the box below that identifies 'disability'. **This may be alongside other complaints.**

However it will also be necessary to be able to identify which type of disability discrimination you are claiming. The earlier you can do this the better so that you can be sure that the type of discrimination you are complaining of is included within the time limit.

You can do this at Section 8.2 of the ET1 where you are asked to set out the background and details of your claim. For more information about completing the claim form see slideshows 3A and 10D.

Types of discrimination

There are six possible claims for disability discrimination. These are:

- ▶ Direct Discrimination
- ▶ Indirect Discrimination
- ▶ Discrimination arising from disability
- ▶ Harassment
- ▶ Victimisation
- ▶ Failure to make reasonable adjustments

You can claim for any combination of these six claims. This series of slideshows aims to explain what these six possible claims are so that you can work out which ones might apply in your case.

Duty to make reasonable adjustments

The duty to make reasonable adjustments 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.**

The duty to make reasonable adjustments applies to employers of all sizes, but the question of what is reasonable may vary according to the circumstances of the employer.

Alternatives to Tribunal

In a failure to make reasonable adjustments claim, we would encourage you to engage in discussions with your employer to try and agree to some adjustments.

It is difficult for the Employment Tribunal to intervene in internal employment issues, or it can take so long to get to a hearing that it becomes too late to help resolve the problem.

If you are still in employment, then raising a Tribunal claim could aggravate the situation and make things harder for you in the workplace. **However** if you wish to protect your position and are aware that time limits will pass if you do not take action then you may raise a claim but indicate that there are outstanding internal procedures that may resolve matters. The case can be put on hold.

In short, a claim for failure to make reasonable adjustments should only be made once you've tried to resolve the situation internally, either through dialogue with your employer or by way of a grievance. However beware of time limits as set out above.

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:

1. 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; and/or,
2. 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; and/or,
3. 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.

What is a provision, criterion or practice (PCP)?

This phrase is not defined by the Act but should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements or qualifications including one-off decisions and actions that exist within the workplace.

What is a 'physical feature'?

Section 20 of 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.

All these features are covered, whether temporary or permanent.

What is an auxiliary aid?

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.

What constitutes a ‘substantial disadvantage’?

The duty to make adjustments arises where a provision, criterion, or practice (PCP), 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.

The Act says that a substantial disadvantage is one which is more than minor or trivial. Whether such a disadvantage exists in a particular case is a question of fact and is assessed on an objective basis.

The purpose of the comparison with people who are not disabled is to establish whether it is because of disability that a particular PCP, physical feature or the absence of an auxiliary aid disadvantages the disabled person in question.

What if the employer does not know that the claimant is disabled? (1)

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.

A worker who deals with customers by phone at a call centre has depression which sometimes causes her to cry at work. She has difficulty dealing with customer enquiries when the symptoms of her depression are severe. It is likely to be reasonable for the employer to discuss with the worker whether her crying is connected to a disability and whether a reasonable adjustment could be made to her working arrangements.

What if the employer does not know that the claimant is disabled? (2)

The 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.

If an employer's agent or employee (such as an occupational health adviser, a HR officer or a recruitment agent) 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 and that they therefore have no obligation to make a reasonable adjustment.

What counts as 'reasonable steps'? (1)

What counts as a reasonable step for an employer to take will depend on all the circumstances of the individual case.

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. We would encourage you to discuss with your employer what adjustments you believe might assist.

If the matter goes to the Tribunal the Tribunal will expect you to set out what reasonable adjustments you believe your employer could have made.

What counts as 'reasonable steps'? (2)

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 step 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); and
- ▶ the type and size of the employer.

Ultimately the test of the 'reasonableness' of any step an employer may have to take is an objective one and will depend on the circumstances of the case.

What might constitute a reasonable adjustment? (1)

- ▶ Making adjustments to premises;
- ▶ Providing information in accessible formats;
- ▶ Allocating some of the disabled person's duties to another worker;
- ▶ Transferring the disabled worker to fill an existing vacancy;
- ▶ Altering the disabled workers' hours of work or training;
- ▶ Assigning the disabled worker to a different place of work or training or arranging home working;
- ▶ Allowing the disabled worker to be absent during working or training hours for rehabilitation, assessment or treatment.

What might constitute a reasonable adjustment? (2)

- ▶ Giving, or arranging for, training or mentoring (whether for the disabled person or any other worker);
- ▶ Acquiring or modifying equipment;
- ▶ Providing a reader or interpreter;
- ▶ Allowing a disabled worker to take a period of disability leave;
- ▶ Modifying disciplinary or grievance procedures for a disabled worker;
- ▶ Adjusting redundancy selection criteria for a disabled worker;
- ▶ Modifying performance-related pay arrangements for a disabled worker.

Examples of reasonable adjustments

An employer makes structural or other physical changes such as widening a doorway, providing a ramp or moving furniture for a wheelchair user.

An employer allows a disabled person to work flexible hours to enable him to have additional breaks to overcome fatigue arising from his 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.

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

Access to Work scheme

The Access to Work scheme 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.

However, Access to Work does not diminish any of an employer's duties under the Act. 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. It is likely to be a reasonable step for the employer to help a disabled person make and/or support their application for assistance from Access to Work.

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.

More information about the Access to Work scheme is available [here](#).

How to prove a reasonable adjustments claim

