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Employment – 20:20 vision

Providing clarity and insight on employment law matters

Levelling the playing field: Disability in the workplace and reasonable adjustments



There are over 14 million disabled people in the UK, with 19% of working age adults identifying themselves as having a disability¹. Thursday 3rd December 2020 is International Day of Persons with Disabilities – marking the end of a year where public conversation has focused on health issues including the pandemic's effect on people with disabilities. During this time, employers have had to implement significant changes to protect their workforces and adapt their businesses. As part of those changes, particular care has been required to protect disabled employees, which includes a legal duty to make reasonable adjustments. A failure to do so can lead to employers facing discrimination claims with uncapped compensation. In this alert we look at some practical tips for employers to consider when making reasonable adjustments.

Checklist for employers making reasonable adjustments

Reasonable adjustments are those made by an employer to try to ensure a disabled individual is not placed at a substantial disadvantage because of their disability. The specific adjustment will depend on the individual's disability, how that disability affects them personally (the same disability can have different effects on different individuals), the nature and requirement of their work. Typically reasonable adjustments fall into three main types:

- Changing the way things are done such as general policies, practices and criteria
- Changes to overcome barriers to the physical features of the workplace
- Providing extra equipment to assist a disabled employee in doing their job

While every situation should be considered on its facts, the checklist below contains helpful factors for employers to consider.

Recruitment

- The duty to make reasonable adjustments extends to a wide pool of individuals including job applicants. To avoid a discrimination claim, think about disability and reasonable adjustments at the recruitment stage.
- Identify potentially harmful biases or assumptions that may be made which disproportionately affect disabled applicants.
- **Make reasonable adjustments from the outset**
 - Understand that some disabled individuals may perform better under an amended recruitment process.
 - Review the recruitment criteria and discuss with disability and employment law specialists.
- Remember not all disabilities are obvious – there are a number of invisible disabilities e.g. dyslexia and epilepsy.
- The rejection of a disabled applicant must be based on their performance at interview rather than on having to make reasonable adjustments or any reason associated with their disability.

¹ <https://www.scope.org.uk/media/disability-facts-figures/>

During employment

- Consult with disabled employees as to what reasonable adjustments would help them carry out their role effectively:
 - Would they like the option of agile working or remote working?
 - Do they prefer to have their own desk rather than hot-desking?
 - Do they need any specific equipment?
 - Would certain work patterns or flexible hours help them?
- Provide unconscious bias training for all employees. Employees without disabilities may often be unaware of the needs and support required for colleagues who may have a disability. By training employees on the difficulties people with disabilities might face at work, you can open their eyes to things they should be considering.

Disciplinary or termination

- Consider the duty to make reasonable adjustments for disabled employees when issuing disciplinary warnings and managing sickness absence.
- As the Equalities and Human Rights Code suggests, it could be a reasonable adjustment to allow an employee with learning difficulties to be accompanied to a hearing by a friend or relative.
- When disciplining or terminating employment, document the decision setting out its business rationale to minimise the risk of claims the employee's disability impacted the decision.
- Where there is a redundancy situation, consider whether, any selection criteria will put a disabled employee at a substantial disadvantage – such as using sickness absence as a ground for redundancy.

Covid-19 related issues

- If disabled employees are told to self-isolate due to COVID-19, consider how the absence should be recorded, i.e. as 'Self-isolation Coronavirus Absence' to differentiate it from other forms of sicknesses and to protect from any disadvantageous treatment.

When the time comes for many to return to the workplace what will this look like for disabled employees and what adjustments should be made? For example, working different hours to avoid rush-hour commuting? Continued remote working if the virus is still in circulation and they are deemed vulnerable?

- Remember individuals who did not satisfy the definition of being disabled at the start of the pandemic may do so by the time they return to the workplace – ie if they have a physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. For example, mental health issues caused or exacerbated by the pandemic or "Long Covid" may fall into this category. Accordingly, the importance of communication and mental health and wellbeing surveys should not be underestimated.

For more information on the issues covered in this alert please contact Kate Brearley, Leanne Raven, Charlotte Varela or your usual Stephenson Harwood contact.

Contact us



Kate Brearley

Partner

T: +44 20 7809 2107

Email: [Kate](#)



Leanne Raven

Professional support lawyer

T: +44 20 7809 2560

Email: [Leanne](#)



Charlotte Varela

Paralegal

T: +44 20 7809 2340

Email: [Charlotte](#)