

Disability Discrimination

Events which give rise to a disability claim

Before employment

The Equality and Human Rights Commission (EHRC), but not applicants themselves, can take action against discriminatory adverts for a position or benefit, either internal or external (the EHRC took over this function from the Disability Rights Commission (DRC) on 1 October 2007). The discrimination can be an indication:
References: DDA 1995, s 16B

EA 2006, s 25

- o that selection might favour applicants with no disability
- o of the employer's reluctance to make reasonable adjustments

An indication includes anything which might reasonably be understood as an indication. The indication can relate to disability generally or to a particular disability. The disability can be current or past. It is an offence for a third party to publish discriminatory adverts (maximum fine £5,000) unless they can show they reasonably relied on a statement by the person placing the advert that it was not discriminatory.

Job applicants are also protected against discrimination:

References: DDA 1995, s 4(1)

- o in the selection process
- o in the terms and conditions offered
- o in refusing or deliberately omitting to offer employment

This includes oblique requirements that applicants be 'active' or 'team players' where the qualities are not directly related to the proposed duties. It makes it difficult for an employer to ask questions about disability unless they relate to someone's ability to do a particular job.

An employer's reason for refusing or deliberately not offering advertised employment to a disabled applicant is assumed (unless the contrary is shown) to be related to the applicant's disability.

Prospective employees are protected against harassment related to their disability.

References: DDA 1995, s 3B

During employment

Discrimination can arise:

- o in the terms of employment or dismissal
- o in the opportunities for promotion, transfer, training or receipt of any other benefit afforded to them (or a refusal or deliberate omission to afford such opportunities)
- o in being subjected to any other detriment

No complaint is possible where the employer also provides the same benefits to the public (or a section of the public including the disabled person) unless the benefits provided:

- o to the public and to employees are materially different
- o to the disabled employee are regulated by his employment contract, or
- o relate to training

After employment

Former employees are also protected against discrimination.

References: DDA 1995, s 16A

Discrimination can either be subjecting them to a detriment or to harassment arising out of and with a close connection to the employment. It doesn't matter when the employment ended: there is no time limit. The correct comparator is an ex-employee, not a current employee.