



The Disability Discrimination Act – Employment

An article in the XXX issue of Fires and Fireplaces considered how the Disability Discrimination Act 1995 (DDA) relates to the supply of goods and services, and in particular the impact on access to premises. This second article looks at employers' duties under the DDA, duties which now apply to all employers as the small company exemption has ended.

According to a fact sheet published by the Royal Mail's Disability Action Centre (www.royalmail.com/dac), eighteen per cent of the working age population is disabled using the DDA's definition of disability (see box below). An even more striking statistic is that seven out of ten disabled people in employment acquire their disability during their working lives, with the incidence of disability increasing steadily from the age of 45. The implication is that sooner or later any organisation is likely to encounter a situation where it is employing a disabled person. If this does occur in your company, what are the obligations imposed on you by the DDA?

Prior to December 1996, most employers with a workforce of 20 or more employees had a legal duty to employ a specified quota – usually 3 per cent – of registered disabled persons. This approach was largely ineffective. The DDA uses a different approach, making it unlawful for an employer to treat a disabled person less favourably than others and requiring the employer to make 'reasonable adjustments' to working conditions and the environment to help overcome the practical effects of disability. In effect, employers must not discriminate against disabled people at any stage of the recruitment, employment, and termination process.

The term 'reasonable adjustments' is key to understanding and complying with the DDA: The vast majority of successful cases brought under the DDA relate to employers being unwilling to make 'reasonable adjustments'. The Disability Rights Commission (DRC) has published a very useful 'Top Tips for small businesses' which can be downloaded from the DRC website (www.drc-gb.org) and contains brief case studies highlighting what could be considered 'reasonable adjustments'. For example, a secretary with a severe back problem is unable to move heavy objects. If moving boxes of files into a storage room is something she only does from time to time, this function could be given to other employees. Another example cites the case of an accountant taking medication for depression which leaves him 'groggy' in the morning. However, the accountant is able to work from 10-00am to 6-30pm and in this case changing his working hours would in most circumstances be reasonable.

There are many factors influencing whether an action is 'reasonable' or not including its effectiveness in preventing the disadvantage, its practicality, its cost and disruption, the resources of the employer, and the nature and size of the business. A useful source of advice and potential funds for employers having to implement 'adjustments' is the 'Access to Work (AtW)' programme which runs through Jobcentre Plus (www.jobcentreplus.gov.uk). AtW can assist with the funding of specialist equipment, adaptations to premises, travel to work, and even a communicator at a job interview for someone who is deaf. Typically the employer arranges to fund the adjustments that have been agreed and then claims it back in the form of a grant from AtW. In the case

of a new recruit AtW pays 100% of the approved costs, and for existing employees AtW pays a proportion of the costs – if the costs are between £300 and £10,000, AtW will pay for 80% of the costs above £300. There are several other schemes that can help, most of which are initially accessed through the Jobcentre Plus 'Disability Service Teams'.

Every so often a case is reported in the press which tends to imply that all applicants in DDA cases win a fortune from their employers. The DRC's research report, 'Monitoring the Disability Discrimination Act', highlights that such cases are atypical. Most DDA cases are resolved by negotiation or conciliation, with applicants often reluctant to be labelled 'disabled' and respondents motivated to settle to avoid adverse publicity. In the case of smaller companies, the cost of defending claims was also cited as a reason to settle before a case reaches a tribunal.

The DRC offers some sound commonsense guidance as to how best to deal with the subject of disability within a workplace. Firstly, take time to think about how the DDA affects you; talk with your staff about the issues raised by the DDA, and consult with disabled employees about reasonable adjustments they might need to do their job effectively. Secondly, treat disabled people with respect and dignity and ask for advice from bodies such as local Business Links and Chambers of Commerce. Thirdly, don't make unfounded assumptions about disabled people and don't assume that 'reasonable adjustments' will be expensive. According to the DRC the average cost is as little as £75.

Finally, responding to the needs of disabled people in your employment will mean you are more likely to understand and meet the needs of existing and potential disabled customers – and with almost 9 million consumers in the disabled category that's got to be worthwhile.

Disabilities covered by the DDA

The DDA identifies someone as disabled if they have a mental or physical impairment that has an adverse effect on their ability to carry out normal day-to-day activities. In practical terms, this means that for an individual to be considered disabled they must be badly affected in at least one of the following areas: mobility, manual dexterity, physical co-ordination, continence, ability to lift and carry objects, speech, hearing or eyesight. The DDA also embraces people with learning difficulties and those unable to understand the risk of physical danger. On April 7th 2005 the Disability Discrimination Act 2005 Chapter 13 received royal assent and extended the definition of disability to cover people with 'progressive conditions' such as HIV, multiple sclerosis and cancer. Taken together, these definitions apply to almost 9 million people in the United Kingdom or, put another way, over 1 in 6 adults: almost 20% of your target market!