

## Disability Discrimination

**Under the provisions of the Disability Discrimination Act 1995, it is unlawful for employers and others, such as principals, to discriminate against disabled applicants, employees or workers when offering employment or providing it.**

For the purposes of the Disability Discrimination Act 1995, a disabled applicant, employee or worker is a person who has a statutory disability that is one that (i) has lasted or (ii) is likely to last at least twelve months or more or (iii) has ceased but its effect is likely to recur. In other words, not all people with a disability are protected against disability discrimination by the Disability Discrimination Act 1995; only those with a disability that comes within the statutory definition are entitled to protection against disability discrimination.

**Not all applicants for employment or employees or workers who have statutory disabilities are necessarily disabled by them. Nonetheless, where their potential or actual employers apply a provision, criterion or practice, or where any physical feature of the premises occupied by the employer, places the disabled person concerned – whether he or she is a job applicant, an employee or a worker - at a substantial disadvantage in comparison with persons who are not disabled, the employer or potential employer must, as a matter of statutory duty, take reasonable steps in all the circumstances of the case in order to prevent the provision, criterion or practice or feature having that effect.**

When hearing a claim for disability discrimination, an employment tribunal must disregard the effect of any measures (such as medical treatment) being undertaken by the person concerned in determining whether the impairment has created an adverse effect on the claimant's ability to carry out normal day-to-day activities.

**In 2008 the House of Lords ruled that when employment tribunals and the higher courts determine cases of disability-related discrimination under s.3A of the Disability Discrimination Act 1995 such as, for example, where the claimant has been dismissed for sickness absence arising from her or his disability, the comparator shall be a non-disabled person who had also been absent and who would, accordingly, have been treated in the same way as the disabled claimant. In other words, an employer can lawfully now dismiss a disabled employee who has been absent from work because of the effects of her or his disability if the employer would similarly dismiss an employee who did not have a disability but who had been absent from work for a similar period of time.**

Discriminatory job advertisements are unlawful where they indicate an intention to discriminate against a disabled person or a reluctance to make a reasonable adjustment for a job applicant.

**The leading case under the Disability Discrimination Act 1995 is Goodwin v The Patent Office (1999) IRLR 4 that was presided over by the then President of the Employment Appeal Tribunal, Morison P. In that case, he said:**

*'The focus of attention required by the Act is on the things that the applicant either cannot do or can only do with difficulty, rather than on the things that the person can do. The Act is looking to see whether the capabilities listed in para 4(1) have been affected. These capabilities are those which will be required, to a greater or lesser extent, to carry out normal day-to-day activities, whether at home or at work.'*

The normal time limit to make a disability discrimination claim is three months from when the act complained about took place. To make such a claim, there is no need for the claimant to have been continuously employed by the employer for any minimum period of time, such as one year, as is ordinarily required to make a claim for unfair dismissal. Compensation for unlawful disability discrimination, like the other strands of discrimination, is not limited to an upper limit. In addition, as in other strands of unlawful discrimination, where there is a finding of disability discrimination, an employment tribunal can make a specific award for 'injury to feelings' that can range from £500 to £25,000 or more.

**To read 'Disability Discrimination' in full and gain access to the contents of this website, click...**