



Hidden Disability

An Advice Guide
for Usdaw Reps



What is a Hidden Disability?

A lot of people when they think of disability still picture someone with a guide dog or a wheelchair user. But in reality, people with visible disabilities are in the minority, the vast majority of disabled people have hidden disabilities.

A hidden or non-visible disability is simply a disability that might not be immediately obvious to someone who isn't aware of that person's circumstances. This could be, to give a few examples, a learning disability, many cancers, mental health problems, MS or asthma.

You can't tell just by looking at someone whether they may have a disability.

This can lead to problems at work if a member with a hidden disability needs support. Managers may reply that the member 'doesn't look disabled', and use that as a reason not to support them.

Reps should be aware that people with a hidden disability are entitled to the same legal protection against discrimination and rights to reasonable adjustments as those with 'visible' disabilities.

This leaflet has been developed to raise awareness about hidden disabilities, and give reps advice on how to support members to get their disability recognised at work.



What Specific Challenges Will Those With a Hidden Disability Face?

Not only do members with hidden disabilities have to manage their condition, they also often face hostility from managers or colleagues who don't believe they are disabled.

Members with hidden disabilities often feel they have to prove they are disabled, and this usually isn't a one-off process, but one that is repeated again and again when new colleagues or managers join the business, or when someone questions an adjustment that has been put in place.

Often, the words 'you don't look disabled' are used to show disbelief and to challenge an individual's right to reasonable adjustments, usually wrongly associated with a view that the disabled person is gaining an unfair advantage. Reactions such as this can mean that many people who are entitled to legal protection against discrimination and to reasonable adjustments are less likely to seek such adjustments. Sometimes, especially with mental health conditions, those affected are afraid that the stigma associated with their condition is so great that they cannot talk about it at work.

It is important therefore that reps:

- **Believe the member and be supportive.** For the reasons outlined above, it can be difficult for members to talk about their disability, so it is important that the first reaction of a rep is one of support.

- **Understand the law.** Having a good understanding of the Equality Act (Disability Discrimination Act (DDA) in Northern Ireland), and being able to demonstrate how a member is covered by it, is the first step in ensuring members receive their legal rights.
- **Understanding what adjustments could help.** The best way to find this out is to speak to the member. Every case will be different, and each individual will need a tailored approach to their support.
- **Gather evidence.** If the employer is refusing to accept that the member is disabled, it may be necessary to obtain medical evidence – either to support the case that a member is indeed disabled, or to support the case for a specific reasonable adjustment.

The Equality Act

The Equality Act (DDA in Northern Ireland) gives disabled people a number of important rights and protections at work. If a member is classified as disabled under the Act, they are entitled to this protection, irrespective of what their disability is.

The definition of disability under the Equality Act (DDA in Northern Ireland) is far wider than the stereotypical version of disability only applying to wheelchair users or blind people.

Many members may not consider themselves to be disabled, or may not expect the law to protect them because their disability is hidden. However, many hidden disabilities will be covered by the provisions of the Equality Act (DDA in Northern Ireland), and it may be in the interests of a member to show they are disabled because they would then be entitled to legal protections. Employers only fall under a duty to make reasonable adjustments where they know a person is disabled.

Very few conditions are automatically covered under the Act. Instead, you have to show that a member meets the definition of a disabled person as set out in the Act.

When deciding if a member is covered by the Equality Act (DDA in Northern Ireland), look at the following:

1. Does the member have a physical or mental impairment?

It can be difficult to get a manager even to recognise that a member has a medical condition, especially if it is a condition that they have not heard of. It may be helpful to produce medical evidence.

2. Is it more than a trivial condition?

Again, a manager may not accept that it is a serious condition, perhaps basing this on presumptions or past 'experience' of someone who had 'less serious' symptoms of a similar condition. Any decisions should be based on that individual, and how they are affected by their condition.

3. Has the condition lasted, or will it last, for more than a year?

Some conditions can change over time so the effects of them may not be there all the time. Fluctuating conditions can still count as long as they are expected to recur. Examples of fluctuating conditions, that would often be considered hidden, and that have been classed as disabilities under the law include asthma, arthritis, epilepsy and migraine.

4. What would happen if the member stopped taking their medication?

Employers sometimes argue that the member is not disabled because their condition is controlled by medication. However, in deciding whether or not someone is disabled they must be assessed as if they were not taking their medication. This means that a person who would meet the criteria for protection under the Equality Act (DDA in Northern Ireland), but whose condition is controlled by medication, would still come under the definition of a disabled person.

5. Does the condition affect the member's everyday life?

If you can show that the member's condition has a substantial effect on how they carry out normal day-to-day activities, they should meet this definition. Go through a typical day with them and ask how their symptoms affect their day-to-day activities. It does not matter if the effect is not there everyday.

If you can show that the member meets the above criteria then they will be entitled to the protection of the Equality Act (DDA in Northern Ireland). This is well worth having and gives the member strong legal rights.

Making the Case

The Equality Act (or DDA in Northern Ireland) doesn't specify a long list of conditions that would be classed as disabilities. Instead, it focuses on the effect a condition has on the individual.

This is helpful to Union reps, because it means almost any condition could be classed as a disability under the law if it has a more than minor effect on day-to-day activities. However, it puts the burden of proof onto the individual (with the help of their rep) to demonstrate that they meet the 'criteria'.

It can be difficult to know where to start in making a case that a member is disabled under the Equality Act (DDA in Northern Ireland), therefore it may be helpful to look at a few examples of some common hidden disabilities:

Cancer

Cancer is one of the few conditions that is automatically covered by the Equality Act and DDA in Northern Ireland (along with HIV and MS). This is often a hidden disability – most of the time you can't tell by looking at someone that they have cancer.

However, managers would never say to an individual who has cancer that they are not disabled, just because they don't have any visible 'signs' of disability. This can serve as a useful example if a manager is refusing to recognise a different hidden disability that there is less public knowledge of.

Learning Disability

Mencap use the following definition of a learning disability:

'A learning disability is a reduced intellectual ability and difficulty with everyday activities – for example household tasks, socialising or managing money – which affects someone for their whole life.'

This definition would clearly cover all of the five points listed on page 3 in defining a disability under the Equality Act (DDA in Northern Ireland) – a member with a learning difficulty will have a mental impairment, which is more than a trivial condition, it is a lifelong condition so has lasted more than a year, the effect of any medication should not be taken into account, and it has an impact on day-to-day activities, such as learning new skills.

However, it may be difficult to get a manager to accept that a member has a learning disability, particularly if they have a mild learning disability. In instances like this, it might help to get medical evidence.

Depression

Clearly depression would be classed as a 'mental impairment', so would normally meet this part of the legal definition.

Whether or not it is more than a trivial condition would depend on the individual's symptoms. Someone with mild depression, for instance, may find that this only affects their ability to carry out one or two of their daily activities and they would be unlikely to meet this part of the definition. Another person, however, may have difficulty sleeping and be unable to get up in the morning, which would clearly have a significant impact on their life.

The member has to show that their depression has lasted for more than a year already or that it is likely to go on for at least a year or more, again this will depend on the individual. It does not matter if their condition comes and goes - the law is absolutely clear that fluctuating conditions can be counted.

Remember, any assessment must be made as if the member were not taking medication. So, for example, a member who would have severe depression were it not for their medication could be regarded as disabled even though their condition is managed by drugs such as an anti-depressant.

The best way to assess impact on everyday life is to talk to the member. For example, a person with depression may struggle to interact with customers because they feel so flat or find it difficult to concentrate and so make mistakes at work. They may have good and bad days so again, it does not matter if the effect is not there every day.

Reasonable Adjustments

If you can show that the member meets these five criteria they would be entitled to the protection of the Equality Act (DDA in Northern Ireland). The employer would then have a duty to make what are called reasonable adjustments to take account of the member's disability. This means that they have to change some aspect of the member's working arrangements to help them stay in or get back to work.

It is impossible to list in this guide every reasonable adjustment, because there isn't a one size fits all approach to what will help a member. Even where two members may have the same condition, it is very unlikely that they will be affected in the same way. Therefore, when discussing reasonable adjustments, the best person to speak to is the member. They will be the expert on how their condition affects them, and what support would help them at work.

The Social vs the Medical Model of Disability

For some time now disabled people have emphasised that it is not so much their disability that prevents them from fully participating in society, but instead it is the way in which society fails to make adjustments for their disability that excludes them.

This emphasis on changing the barriers put up by society, rather than seeing the disabled person as the 'problem', is known as the 'social model of disability'. In other words, disabled people are people with impairments/health conditions who are disabled by discrimination, exclusion, prejudice and negative attitudes towards disability. Their impairment is not the problem.

The 'medical model' attributes the problems resulting from a disability to medical conditions alone. It concentrates on a person's impairment. Rather than focusing on the barriers society throws up that prevent disabled people from participating equally, the 'medical model' focuses on what disabled people should do to adapt to fit into the world as it is. If they are unable to adapt, the medical model accepts their exclusion.

For example, while a mobility difficulty can have an adverse effect on a person's ability to walk, the fact that the transport system is inaccessible to them has a far greater effect on their ability to get around.

The law is unfortunately rooted in the medical model. It has been rightly criticised for focusing on an individual's impairments and their ability to carry out normal day-to-day activities, rather than on getting rid of the barriers society puts in the way of disabled people.

This leaflet is designed to help understand how the law can support disabled members in the workplace and therefore tends to focus on the medical model.



More Information

Usdaw Nationwide

Wherever you work, an Usdaw rep or official (Area Organiser) is not far away. For further information or assistance, contact your Usdaw rep or local Usdaw office. Alternatively you can phone our Freephone Helpline **0800 030 80 30** to connect you to your regional office or visit our website: **www.usdaw.org.uk**

You can also write to the Union's Head Office. Just write **FREEPOST USDAW** on the envelope and put it in the post.

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