



Campaigning
For Equality

Disability Supporting Disabled Members



An advice guide
for Usdaw reps



The Equality Act 2010

The Equality Act 2010 gives thousands of disabled Usdaw members in England, Scotland and Wales important employment rights and protection at work.

In Northern Ireland the Disability Discrimination Act affords disabled members a similar kind of protection. Members and reps should be aware of these rights and the situations where the Act can help.

The right

The law recognises that it is sometimes necessary to treat disabled people more favourably than their non-disabled colleagues. This is to help overcome the additional barriers that disabled people face at work and in society:

- Members with a disability have a right not to be treated less favourably than non-disabled members.
- Members have a right to have reasonable adjustments made to take account of their disability.
- The law also protects people who are wrongly thought of as being disabled AND those who have been treated less favourably because they associate with a disabled person. Someone who cares for a disabled child or adult is protected from direct discrimination and harassment. However, the Act does not give carers the right to reasonable adjustments. Only disabled people have this right.

What do we mean by disability?

Forget old-fashioned notions that only wheelchair users or people with guide dogs are disabled. One in seven people has a disability and thousands of disabled people face discrimination every day at work.

Just because when you look around your workplace you don't see anyone in a wheelchair or communicating in sign language this doesn't mean that you don't have colleagues with a disability. Try to think about disability as broadly as possible.

The Equality Act gives disabled people a number of important rights and protection at work. To be entitled to this protection, you have to for the definition of disability set out in the Equality Act.

If you are diagnosed with MS, cancer or HIV/AIDS or are registered blind or partially sighted, you are automatically covered by the Equality Act (or the Disability Discrimination Act in Northern Ireland) and protected from discrimination from the point of diagnosis.

A wide range of conditions fall within the scope of the Equality Act. Employment Tribunals have found that people with the following conditions have a disability and are therefore protected by the law:

Some examples:

- Hearing or sight impairment, severe disfigurement.
- Significant mobility difficulty.
- Rheumatoid arthritis or other serious progressive illnesses.
- Health conditions including high or low blood pressure, epilepsy, strokes, ulcers, asthma, diabetes.
- Accidental injuries, post operative recovery periods.
- Mental health conditions, learning difficulties, significant dyslexia, postnatal depression.

When deciding if you or a member are covered by the Equality Act, ask five questions:

- Do I have a physical or mental impairment?
- Is it more than a trivial condition?
- Has it/will it last a year or more? 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 likely to recur. Examples of fluctuating conditions that have been classed as disabilities under the law include asthma, arthritis, epilepsy and migraine.
- What would happen if I stopped taking medication? In deciding whether someone is disabled and therefore entitled to the protection of the law, the effect any medication or treatment has is ignored.
- Does it affect my everyday life? For instance:
 - Mobility.
 - Manual dexterity.
 - Lifting everyday things.
 - Co-ordination.
 - Speech.
 - Memory.
 - Hearing.
 - Concentration.
 - Eyesight.
 - Learning/understanding.

If the answers are yes, then you will be covered by the Act.

When might the Equality Act help?

Reps can use the Equality Act to support disabled members in the following situations at work:

- Bullying and harassment.
- Attendance management and sick leave.
- Performance, appraisal and discipline for performance.
- Capability and ill health dismissals.
- Redundancy selection criteria.
- Promotion and access to training.
- Changes to the workplace, the shift, the job content.
- Terms and conditions and access to benefits and pensions.

The Equality Act outlaws discrimination against disabled people. In reality most reps are unlikely to come across direct discrimination against a disabled person. An example of this would be an employer not giving someone a promotion because they are disabled. It is far more likely that Usdaw reps will encounter a less obvious form of discrimination called discrimination arising from disability. This occurs where an employer treats a disabled person less favourably because of something connected to their disability.

An example would be where a disabled person is disciplined for regularly being late. The employer says this is fair because everyone would be disciplined for persistent lateness. However the disabled member is late because they have multiple sclerosis. Their sleep at night is constantly disrupted by pain and so it takes them much longer to prepare for work in the morning. Therefore the lateness is for a reason connected to their disability and the employer should take this into account possibly by giving the member flexibility about when their shift starts.

It is important to bear in mind that this only applies where the employer knows or could be reasonably expected to know that the member is disabled.

Adopt a problem solving approach. Help the employer to find solutions and encourage them to seek advice and guidance from Government schemes and organisations that represent disabled people. A list of useful contacts can be found at the back of this leaflet.

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Supporting members with mental health problems

It's estimated that at least one in four of us will experience mental health problems at some point in our lives. Despite this, stigma and prejudice still surround this issue and people with mental health problems continue to experience appalling discrimination:

- Almost two thirds of employers said that they would not consider employing a person who had a history of mental illness.
- Three quarters of employers believe it would be impossible to employ a person with a diagnosis of schizophrenia.
- Less than a quarter of people with mental health problems are in employment.
- One third of people with mental health problems report being dismissed or forced to resign because of their mental health problem.

Reps have an important role to play in helping to ensure that our members with mental health problems stay in and get on at work. Members with mental health problems such as stress, depression, anxiety or obsessive compulsive disorder may be entitled to the protection of the Equality Act (or DDA in Northern Ireland) if you can prove that they meet the definition of a disabled person.

Many members with mental health problems (and other disabilities) may not want to talk to anybody about them, not just because they view their disability or illness as personal but also because they worry this will affect their chances of either getting a job in the first place or keeping their job.

It's important that we encourage members with a disability who may be struggling because of attendance or performance levels to come forward and talk to their rep. This is because an employer only falls under the duty to make reasonable adjustments when they know about (or could reasonably be expected to know) a person's disability.

Putting up Usdaw's *Supporting Disabled Members* Poster R39 on noticeboards, leaving our leaflets on disability in the workplace or running our disability survey are all ways in which reps can get the message out that the Union understands disability rights and is prepared to support disabled members.

Falling within the scope of the Equality Act

The Act doesn't have a long list of mental health problems that you can point to to say that a member is covered. As with almost any other disability you have to show that the person fits the definition of disability as outlined in the Act.

In order to be covered by the Act a person will have to show that they have:

"A physical or mental impairment that has a substantial, long term, adverse effect on their ability to carry out normal day-to-day activities."

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Reasonable adjustments

Once you've convinced the employer that the member fits this definition then the employer has to make reasonable adjustments. The law forbids employers from making the disabled person pay for the adjustment. Reasonable adjustments can be made to policies and procedures (like sickness absence policies) and working conditions as well as to the physical workplace environment. See the section later on in this leaflet for a more in-depth explanation of reasonable adjustments.

Below are some examples of reasonable adjustments:

- Allowing the employee to adjust their working hours. This is particularly helpful where a person might be struggling to sleep or has difficulty travelling to and from work during rush hour.
- Allowing the person to take more frequent breaks. This can help where a person suffers from stress and needs to take time out to calm down or to take medication.
- Providing a mentor or workplace buddy. This can help where someone needs friendly support particularly if a new system has been introduced and the disabled person needs time to 'learn the ropes'.

- Re-allocating some of the disabled person's duties to another person. This can help where someone finds one aspect of their job particularly stressful or difficult.
- Adjusting sickness absence procedures to discount disability related absence. Sickness absence triggers may be adjusted or absence related to a person's disability ignored for disciplinary purposes.
- Adjusting performance targets to take into account a person's disability. Targets may be set lower to allow for the effects a person's disability has on the time it takes them to carry out a task.
- Allowing a person to be absent from work for medical appointments including counselling.

Seeking support

If you are disabled don't be afraid to approach your rep for help and support. You might need to ask for a reasonable adjustment to be made or at least explore some options. This will be particularly important if your condition has deteriorated or there are changes at work which you are finding difficult.

Reasonable adjustments – what can be done

Employers have a duty to make reasonable adjustments to take account of the member's disability in a wide range of situations. The best person to ask about what adjustments will be most helpful is the disabled person. You might want to suggest that employers contact an outside agency for expert advice such as the RNID but always make sure the disabled person agrees to this and is involved in the process.

Examples of reasonable adjustments include:

- Adjustments to the building.
- Changing elements of the job.
- Using modified tools and equipment.
- Training, mentoring and support.
- Transfer to a new role.
- Changing, reducing or working flexible hours.
- Adapting communication systems to make manuals and instructions accessible.
- Adjustments to sickness absence formulae – for example counting disability-related absence separately and making allowance for it.
- Adjustments to redundancy selection criteria.
- Using a reader or interpreter.

If you are disabled don't be afraid to approach your rep for help and support. You might need to ask for a reasonable adjustment to be made or at least explore some options.

Case study

Joanne, working for a major retailer, explains:

“My depression comes and goes ... some weeks I'm absolutely fine and then it'll hit me out of the blue and I'll really struggle to do even everyday things like get out of bed, open the post or eat, let alone leave the house to go to work.

“I first started having difficulty at work because of my levels of sickness absence. Nearly all of my absences were related to my depression. I was told that if I was off sick again in the near future I would probably lose my job. That only made my depression worse.

It was then that I got in touch with my Usdaw rep. She told me about the Equality Act – up until that point I never thought about myself as being disabled and so didn't realise I had rights.

“Things changed after that – I was represented in meetings and my employer agreed to make reasonable adjustments. Changes were made to the job I did and adjustments were made to the absence policy to take account of any absences I might have related to my depression. These adjustments have meant I've kept my job and that I'm able to get into work most of the time. The backing of my Usdaw rep has made all this possible.”

Meetings in general

You may represent a member at a Disciplinary or Grievance Hearing about any issue – not just Equality Act complaints. Make sure that the member can fully participate in the meeting and there are no disability related issues which put them at a disadvantage. Ask for adjustments as required – hearing loops, large print documents, rest breaks or dictaphones. Similarly, your member may need this kind of support to attend management briefing meetings or training.

Sickness absence

Attendance management formulae should count disability-related absence separately.

Disability-related sickness absence should be discounted for the purpose of redundancy selection criteria, performance appraisal, disciplinary purposes and promotion criteria.

There should be a planned return to work programme after a long period of ill health absence with reasonable adjustments. Things like returning initially on shorter hours (sometimes called a phased return) might be helpful.

Ill health dismissals

A dismissal on the grounds of ill health which relates to a disability will be discriminatory unless the company has properly explored and exhausted all possible reasonable adjustments – including alternative work.

If dismissal on ill health grounds cannot be avoided, then ill health early retirement should be carefully explored.

Redundancy selection

Redundancy selection criteria which are based on sickness absence, flexibility and performance appraisals may put disabled members at a disadvantage. Criteria should be questioned and reasonable adjustments made if a member scores badly because of disability-related factors.

Changes to the systems of work

Changes to shift patterns, locations, working systems may impact adversely on members with disabilities and this should be taken into account and adjustments made.



Bullying and harassment

Company policies on dignity at work, bullying and harassment should include disability.

It is unlawful to bully, harass, pick on or intimidate someone because they are disabled. It is unlawful to name call, make offensive jokes or otherwise create a humiliating, hostile or degrading environment.

Victimisation

The Act also protects members from reprisal for having:

- Made a complaint of discrimination to a tribunal or under the company procedures.
- Helped someone else to complain.
- Raised allegations that the Act has been breached.

Health and safety

For some people with certain disabilities there may be special health and safety issues to consider. For example, how will a worker who has severe mobility difficulties be protected if there is a fire alarm? There may also be some tasks that some workers can't do because of their disability, but this will depend on each individual's circumstances.

A worker who has epilepsy that is well controlled may be able to work with dangerous machinery but someone who has a recent history of fits/blackouts may not.

Health and safety is sometimes misused as an excuse to deny jobs to workers with disabilities. It is important that health and safety issues connected to a member's disability are properly risk assessed and that the risk assessment is discussed with the member and their safety rep. Remember, the duty to make reasonable adjustments extends to making changes in the workplace or the work that the member does, to protect their health and safety.

Health-Related Recruitment Questions*

An employer or someone acting on their behalf such as occupational health cannot ask questions about health or disability until an offer of a job has already been made. There are very limited circumstances in which such questions can be asked for example, where a question relates directly to the ability of a person to carry out duties that are essential to the job. For example, if an employer is recruiting for the position of a HGV driver questions concerning an ability to sit for long periods of time or questions about a visual impairment or hearing difficulties are likely to be justified. Once a job offer has been made, whether in writing or verbally, the employer can then ask health-related questions.

**This is only in force in England, Scotland and Wales.*



Making a complaint to tribunal

It is always our aim to resolve members' grievances under the company procedures. But if that is not successful a member may make a complaint to an Employment Tribunal if they have suffered discrimination or victimisation.

A member who wishes to make a tribunal complaint under the Equality Act must also lodge a grievance under the company procedures specifically about the discrimination.

The tribunal has strict time limits for making a claim – three months less one day from the date of the incident.

It is the responsibility of the member to ensure that their claim form is lodged in time, but where a tribunal claim is being considered, it is advisable to contact your Area Organiser for advice.

Representing disabled members

Below are some tips on how best to represent disabled members:

1. When representing members always ask them (never guess or make assumptions) about how their disability affects them.
2. Ask members to concentrate on the things they cannot do or find more difficult than others without their disability, rather than the things they can.

For example, if you are hard of hearing, finding it difficult to understand someone speaking in a clear voice over the telephone is something that specifically affects you. Not understanding someone speaking in a quiet voice in a noisy place, such as the factory floor, is something those without a hearing impairment would also have difficulty with. The first is clearly a better example than the second.

3. Remember, aids and the effect of medication are not to be taken into account. For example, any steps taken to correct a person's hearing loss are ignored. This means that if your member wears a hearing aid, it is their hearing without the hearing aid that counts.



Language

Avoid offensive terms and phrases.

Language is important. It can reinforce stereotypes and negative assumptions such as disabled people are less able people. Language is crucial in communicating effectively with disabled people.

Continuing in work

Two important things to remember when representing members that have become disabled:

1. Has the employer considered disability leave, before retirement on medical grounds, to allow members of staff who have become disabled time to adjust to their disability?
2. Where members are on long term sick leave, can their job or hours of work be adjusted to enable them to come back to work as opposed to being dismissed on the grounds of ill health?

Case study

Martin works in a large distribution centre. His colleagues elected him to the position of Union rep. Martin has a learning disability. Managers at the distribution centre attempted to persuade the Union and his colleagues that Martin was not capable of performing the role of Union rep. At no point did management speak to Martin but instead they made assumptions about his capacity.

Martin's Union official, with assistance from a Disability Employment Adviser, discussed his duties, attended his induction and worked through the induction pack with him and visited Martin's workplace.

With this initial level of appropriate support, agreed by Martin, he is now doing a great job as Union rep in the workplace.

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Access to work

There are one million disabled people wanting to work and over 700,000 unfilled jobs in the UK. Disabled people are five times more likely to be unemployed than non-disabled people, whatever their qualifications and abilities.

There are also in-work benefits for disabled people in work:

1. Personal Independence Payment can be paid to disabled people in work. It is a non-means tested, non-taxable benefit.
2. Disabled people on low incomes may also qualify for Working Tax Credit if they work over 16 hours. If a disabled person has children they may also qualify for Child Tax Credit.

From 2017 onwards, disabled adults in or out of work may qualify for Universal Credit.

3. Disability Employment Advisors based in some JobCentre Plus offices can offer a wide range of support, advice and information including 'Access to Work' – a scheme which provides advice and practical and financial support to disabled people and their employers.
4. Benefits for disabled people are changing and you are advised to seek expert advice to ensure disabled members are getting what they are entitled to.



Useful contacts

Action on Hearing Loss

Formerly Royal National Institute of the Deaf (RNID)

Information line: 0808 808 0123
Textphone: 0808 808 9000
web: www.actionhearingloss.org.uk
email: informationline@hearingloss.org.uk

Disabled People Against Cuts (DPAC)

web: www.dpac.uk.net

The Equality and Human Rights Commission

web: www.equalityhumanrights.com

Equality Advisory Support Service

The Equality Advisory and Support Service (EASS) was commissioned by Government in 2012 to replace the EHRC Helpline, which is now closed. Contact the EASS if you need expert information, advice and support on discrimination and human rights issues and the applicable law, especially if you need more help than advice agencies and other local organisations can provide.

The contact details for the EASS are:

Tel: 0808 800 0082
Textphone: 0808 800 0084
web: www.equalityadvisoryservice.com

Post:

FREEPOST EASS Helpline
FPN6521

Opening hours:

09:00 to 19:00 Monday to Friday
10:00 to 14:00 Saturday
Closed on Sundays and Bank Holidays



Mind (National Mental Health Charity)

Mind Infoline: 0300 123 3393
email: info@mind.org.uk

Mind Legal Advice Service:

Tel: 0300 466 6463
web: www.mind.org.uk

Royal National Institute of Blind People (RNIB)

Helpline: 0303 123 9999
web: www.rnib.org.uk
email: helpline@rnib.org.uk

Tax Credits helpline

Tel: 0345 300 3900
Textphone: 0845 300 3909
web: www.hmrc.gov.uk/taxcredits

Access to Work

Visit the website for contact details depending on geographical location.

web: www.gov.uk/access-to-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.

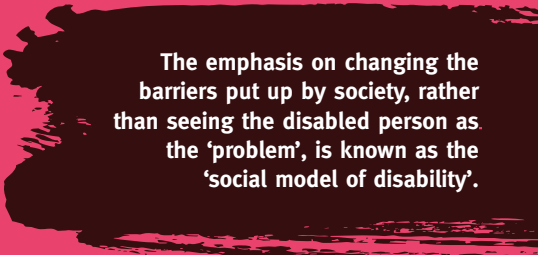
This emphasis on changing the barriers put up by society, rather than seeing the disabled person as the 'problem', is known as the 'social model of disability'. In other words, disabled people are people with impairments/health conditions who are disabled by discrimination, exclusion, prejudice and negative 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 prevents 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 booklet is designed to help understand how the law can support disabled members in the workplace and therefore tends to focus on the medical model.



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Usdaw contacts

To find out more about the work of the Divisional Equalities Forums and Usdaw's equality work or about joining Usdaw contact:

South Wales and Western Division

Cardiff Office
Tel: 029 2073 1131
email: cardiff@usdaw.org.uk

Eastern Division

Waltham Cross Office
Tel: 01992 709280
email: walthamx@usdaw.org.uk

Midlands Division

Redditch Office
Tel: 01527 406290
email: redditch@usdaw.org.uk

North Eastern Division

Leeds Office
Tel: 0113 232 1320
email: leeds@usdaw.org.uk

Scottish Division

Glasgow Office
Tel: 0141 427 6561
email: glasgow@usdaw.org.uk

Southern Division

Morden Office
Tel: 020 8687 5950
email: morden@usdaw.org.uk

North West Division

Warrington Office
Tel: 01925 578050
email: warrington@usdaw.org.uk

Equalities Section

Usdaw
188 Wilmslow Road
Manchester M14 6LJ
Tel: 0161 224 2804
email: equalitymatters@usdaw.org.uk



Improving workers' lives –
Winning for members
www.usdaw.org.uk/equalities

Usdaw

Campaigning
For Equality