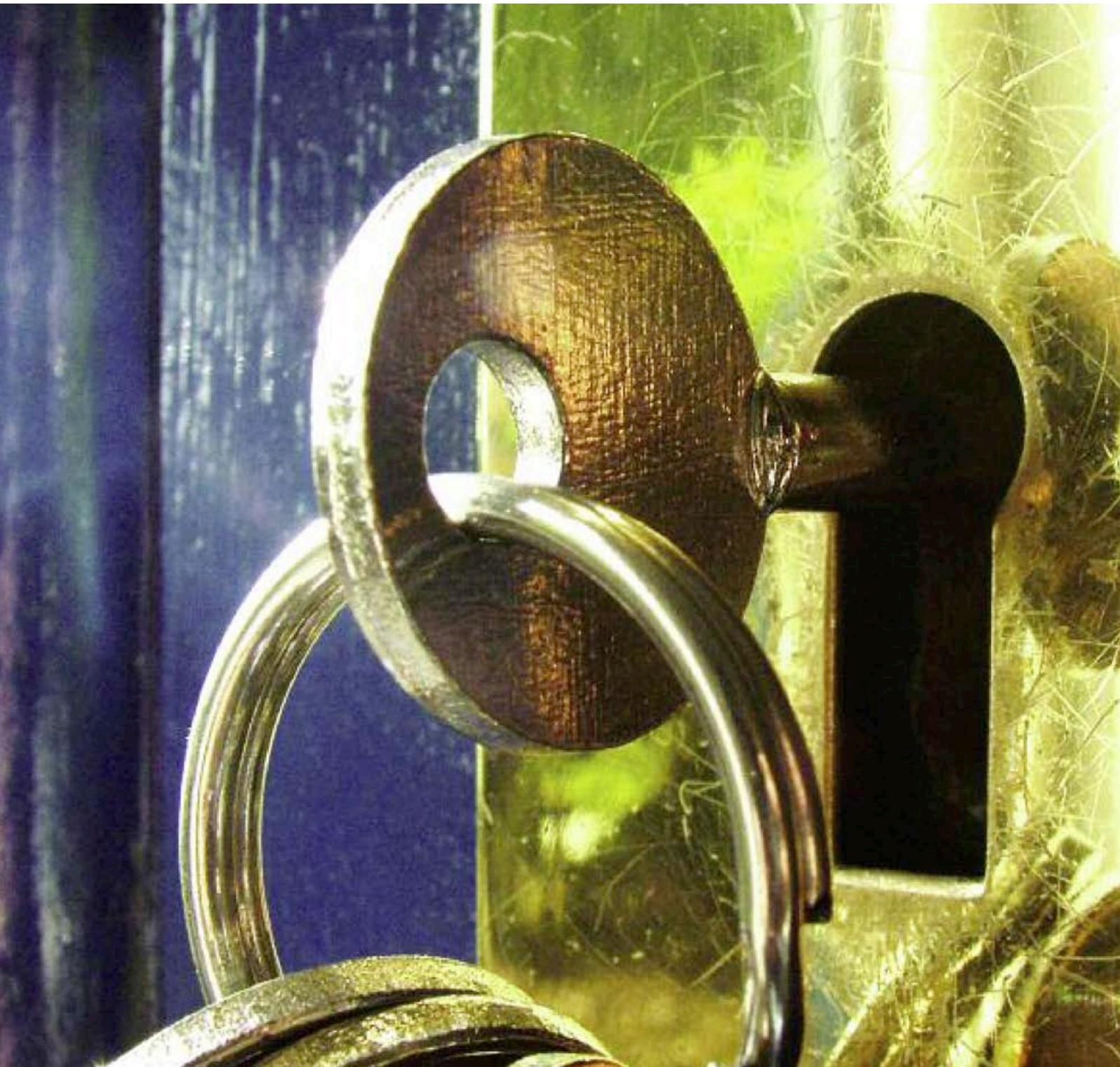


Health and safety for disabled people and their employers



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Health and safety for disabled people

Health and safety legislation should not prevent disabled people finding or staying in employment and should not be used as a false excuse to justify discriminating against disabled people.

We want to enable disabled people and those with health conditions, including mental health conditions, to get into and stay in work.

This guidance will help those employing disabled people to understand their health and safety responsibilities.

Guidance for employers

As an employer you are responsible for the health, safety and welfare of all your employees, whether they have a disability or not.

You cannot always tell when someone has a disability and some people may not make you aware that they are disabled, particularly where it will not interfere with their ability to do the job.

You have a duty to consult with your employees, or their representatives, on issues relating to health and safety. They know about the job and how the way it is done can impact upon them, and they are likely to have good ideas about how to change things to make the situation better.

Risk assessment

There is no requirement to carry out a specific, separate, risk assessment for a disabled person. If you become aware of a worker (or others, e.g. visitors) with a disability, you may need to review your existing risk assessment to make sure it covers risks that might be present for them.

Don't make assumptions or introduce blanket policies, be aware that disabilities can affect people in very individual ways.

Unnecessary assumptions might include:

- Thinking a driver who loses an arm can't drive anymore - steering wheels can be modified or replaced, e.g. with a joystick;
- Believing a deaf person can't be warned of fire - flashing lights can supplement sirens and bells;
- Thinking a person with a mental health condition cannot do a demanding job – they can, as long as the risks are managed and they are supported in their role, so that it does not become stressful;
- Employing someone with a disability is going to be expensive – many reasonable adjustments required by equality law, do not incur costs (see 'reasonable adjustments' below).

Unnecessary blanket policies might include:

- Banning all people with a certain condition from carrying out particular tasks, despite the fact that symptoms and severity of symptoms for that condition differ greatly from person to person. Instead, consider how the condition actually affects their ability to carry out the task.

Reasonable adjustments

Under equality law, you have a duty to make reasonable adjustments for disabled workers. The aim of the duty is to make sure that, as far as is reasonable, a disabled worker has the same access to everything that is involved in doing and keeping a job as a non-disabled person.

This may mean removal of physical barriers and/or providing extra support for a disabled worker.

In many cases, making adjustments will be simple and low cost, and an employer is not required to do more than is reasonable; for example improving access or layout, adapting work equipment or relocating a workstation. What is reasonable will depend, among other things, on the size and nature of the business.

If the support needed is subject to delay, it might be necessary to implement short-term temporary arrangements for disabled workers.

In addition to discussing things with your disabled workers, you may need to involve others to help understand the effects on workplace health and safety of your employee's disability. For example disability employment advisors or medical professionals.

Remember, you cannot insist employees reveal details of their disability, they are under no obligation to do so, and you must get their consent before approaching specialists or doctors. Ensure the disabled worker is involved in this process and share with them any specialist information provided.

People with mental health conditions, including those linked to stress, may also require adjustments in the workplace, with employees and employers working together.

Guidance for employees

As an employee, you should:

- Take reasonable care of your own health and safety and the health and safety of anyone who might be affected by what you are doing;
- Co-operate with your employer on health and safety issues. This includes listening, following instructions and training, and using any safety equipment that has been provided;
- Inform your employer or manager if you see something that might harm you or someone else.

You do not have to disclose your disability. However when making this decision, you will want to consider the following:

- If you have a disability, you are protected under the Equality Act 2010. This makes it unlawful for employers to treat an employee with a disability less favourably than other employees for any reason connected with their disability, unless there is justification for such action.
- Employers have a duty to make reasonable adjustments to ensure disabled workers aren't disadvantaged when doing their jobs.
- If an employer does not know about your disability, they will not be able to take any necessary action to protect you from harm.

Your employer must manage the workplace risks to the health and safety of all their employees and must include you in any relevant health and safety information and training.

Your employer may need to involve others, for example specialists or your doctor, to understand any effects that your disability may have on workplace health and safety; and how to minimise those risks and make reasonable adjustments to ensure you are not disadvantaged. Your employer can only approach others if you give your consent.

Reasonable adjustments may also be provided for employees with mental health conditions, including those which have been linked to stress. Employees and employers should work together to discuss what might be helpful.

Gov.uk provides information on Access to Work grants, which can help pay for practical support if you have a disability, health or mental health condition so you can start work or stay in work.

The law

Health and safety is sometimes used as an excuse to justify discrimination against disabled workers. This should not happen.

There are no health and safety regulations specific to disabled people only. The Health and Safety at Work etc. Act 1974 (HSWA) requires employers to protect all workers from the risk of injury or harm at work, so far as is reasonably practicable. This includes those who may be affected by their work activities.

Under health and safety law, every employer must ensure the health and safety of all their employees, whether they have a disability or not, so far as *reasonably practicable*.

Equality Act 2010

The Equality Act came into force in October 2010, providing a modern, single legal framework with clear, streamlined law to tackle disadvantage and discrimination more effectively.

It is discrimination to treat a disabled person unfavourably because of something connected with their disability. This type of discrimination is unlawful where the employer knows, or could reasonably be expected to know, that the person has a disability.

Definition of a disability

Under the Equality Act 2010, the definition of a disability is a physical or mental impairment that has a substantial and long-term negative effect on someone's ability to do normal daily activities.

- Substantial is more than minor or trivial. For example, it takes much longer than it usually would to complete a daily task like getting dressed.

- Long-term means 12 months or more. For example, a breathing condition that develops as a result of a lung infection.

There are special rules about recurring or fluctuating conditions, for example arthritis.

Reasonable adjustments

Equality law recognises that bringing about equality for disabled people may mean changing the way employment is structured, the removal of physical barriers and/or providing extra support for a disabled worker. This is the duty to make reasonable adjustments.

The aim of the duty is to make sure that, as far as is reasonable, a disabled worker has the same access to everything that is involved in doing and keeping a job as a non-disabled person.

Public sector equality duty

The public sector equality duty (section 149 of the Equality Act) applies to public bodies and those carrying out public functions. It supports good decision-making by ensuring public bodies consider how different people will be affected by their activities. It also helps them to deliver policies and services which are efficient and effective, accessible to all, and which meet different people's needs.

The equality duty requires public bodies to have due regard to the need to:

- **eliminate unlawful discrimination**, harassment, victimisation and any other conduct prohibited by the Act;
- **advance equality of opportunity** between people who are covered under the equality act and people who are not;

- foster good relations between people who share a protected characteristic and people who do not share it.

Having due regard means consciously thinking about the three aims of the equality duty as part of the process of decision making, including the provision of a robust health and safety management system.

Visit gov.uk to find out more about:

- the definition of disability and what needs to be taken into account
- discrimination
- the duty to make reasonable adjustments

Frequently asked questions

Q: Can health and safety law provide an employer with a legitimate reason to reject a job applicant on the grounds of their disability?

A: There are very few cases where health and safety law requires the exclusion of specific groups of people from certain types of activity. While work in hazardous situations cannot always be eliminated, it can often be substantially reduced with comparatively little cost. With reasonable adjustments and plans to review if circumstances change, risks can be managed. This might be achieved by reallocating responsibilities or rescheduling duties to more suitable times.

Find out more about recruitment of disabled people on gov.uk.

Q: Is an employer required to carry out a separate risk assessment for each disabled employee?

A: No, there is no requirement to carry out a separate risk assessment for a disabled employee. Employers should already be managing any significant workplace risks, including putting control measures in place to eliminate or reduce the risks. If an employer becomes aware of an employee who has a disability, they should review the risk assessment to make sure it covers risks that might be present for that employee.

Q: Can an employee who has epilepsy be allowed to work at height and around hazardous machinery?

A: Many workplaces at height, or with dangerous machinery, should be suitably protected and not present a problem for a person with epilepsy. Where risks remain, reasonable adjustments, and plans to review if circumstances change, mean the residual risks can be managed. Reasonable adjustments might include considering the scheduling of duties in the vicinity of hazardous machinery to times when the machines are not operating.

Epilepsy action provides more information about epilepsy in the workplace .

Q: How does an employer assess whether an employee's condition puts themselves and others at risk?

A: An employer must not make assumptions about an employee's condition and should consider a number of things:

1 Have the risks to all employees been assessed properly and appropriate control measures put in place?

It may be that appropriate changes to the work equipment and environment could significantly reduce the risk and take the issue of disability out of the equation.

2 Does the employee's condition create an increased risk to their health and safety or the health and safety of others?

The condition might be well managed and the employer may conclude that review of the situation at regular intervals is sufficient.

■ If so, can these risks be prevented or adequately controlled through normal health and safety management?

Can the risks be addressed by allowing other colleagues to do certain elements of the activity, or by providing suitable, alternative equipment, for example automated equipment to reduce manual handling or change systems of work?

■ If not, what reasonable adjustments could be put in place to prevent or adequately control the residual risks?

The employer might be able to apply for financial assistance through the Government's Access to Work scheme to cover the cost of new equipment.

- Be sure to consult with the employee themselves and colleagues, seeking opinions and ensuring they are involved in discussions which affect them. Those involved in the work often propose good solutions.

Q: Do employees have to disclose a disability to their employer?

A: No, there is no obligation for an employee to disclose their disability to their employer. However, if an employee has a disability, they are protected under the Equality Act 2010. This makes it unlawful for an employer to treat them less favourably than other employees for any reason connected with their disability, unless there is justification for such action. There is also a duty for employers to make reasonable adjustments to ensure disabled workers aren't seriously disadvantaged when doing their jobs. If an employer does not know about a disability they will not be able to take the necessary action to protect the employee from harm.

Q: What is a reasonable adjustment?

A: A reasonable adjustment is an adjustment which aims to make sure that, as far as is reasonable, a disabled worker has the same access to everything that is involved in doing and keeping a job as a non-disabled person.

Many of the adjustments an employer can make will not be particularly expensive and could be as simple as providing a special computer mouse, or chair, or sitting someone in a specific location. An employer is not required to do more than what is reasonable for them to do. What is reasonable for them to do depends, among other factors, on the size and nature of their organisation.

Advice is available from the Equality and Human Rights Commission (EHRC) about workplace adjustments, with a further link to examples of the sort of adjustments an employer could make.

Q: The guidance covers disabled workers, but what about disabled people accessing services – shop customers, for example. Is a service provider required to make adjustments?

A: The primary focus of the guidance is employers' responsibilities towards their employees. However, service providers should not use 'health and safety' as a false excuse for refusing to make reasonable adjustments for service users under the Equality Act 2010.

Myths

HSE's Myth Buster Challenge Panel has considered a number of disability related cases. The Panel provides a route to challenge perceptions and promote awareness.

Myth: Health and safety provides a legitimate reason for not taking on a disabled worker

Reality: This is not the case. There is no health and safety legislation that would prevent a disabled person finding or staying in employment. Health and safety should not be used as an excuse for doing nothing, or for refusing to make reasonable adjustments.

Myth: Employing a disabled worker is expensive and difficult

Reality: Many people with disabilities do not require additional assistance to do their job. Employers have a duty to make reasonable adjustments to make sure disabled workers aren't seriously disadvantaged when doing their jobs. Many of these adjustments can be simple and straightforward, for example installing a ramp or letting a wheelchair user work on the ground floor. The Government's Access to Work programme means that funding may be available, should any adjustments be required.

Myth: You have to be registered as disabled to ensure you can get the adjustments needed to do your job

Reality: There is no process requiring registration for disabled people. If you have a disability, your employer has a duty to make reasonable adjustments to enable you to do your job. The best way to make sure this happens is to inform your employer of your disability and work with them to identify and consider adjustments that could be put in place to assist you.

Find out more about making reasonable adjustments on gov.uk.

If you are blind or partially sighted, you have the option to register with your Local Authority. You do not have to be registered to access help, registration is voluntary and may entitle you to certain concessions. The RNIB provides information on registering your sight loss.

Practical examples

These examples illustrate good practice. They show practical steps, including involving the disabled worker, to promote disability equality when managing health and safety.

Regular work pattern for an operative with epilepsy

A machine operator on shift work developed epilepsy. Her employer was concerned that this might increase her risk of personal injury or put others at risk.

The company involved the employee and, with her consent, her GP. They found the operative was more likely to have seizures if her sleep pattern was disrupted, so a move to day shifts gave her a regular work pattern and she was better able to manage her condition.

Fire fighter with diabetes

A fire fighter who developed insulin-dependent diabetes was seen by an occupational health ('work') doctor to help make arrangements for him to return to work.

Once the fire fighter could show he was managing his diabetes, he was carefully tested on some key tasks (eg using breathing apparatus) to check he could do so safely. Blood tests confirmed his sugar levels were stable and he was no more at risk of collapsing than any other fire fighter. He returned to work with the following reasonable adjustments:

- restrictions on the emergency vehicles he could drive;
- regular checks by the work health service;

- the provision of a fridge to store his insulin.
- gov.uk provides more information on medical conditions, disabilities and driving.

Supporting a colleague with mental health problems

An IT worker wanted to return to work after being off sick with mental health problems. Her employer helped her to manage and avoid work-related stress by:

- helping her to speak openly, so they could work together on making adjustments and checking her well-being;
- allowing her to work a three-day week until she was ready to return to full-time work;
- arranging for her colleagues and supervisor to attend mental health awareness training so her team understood.

Enabling a worker with sight loss to stay in work

An office worker who has recently suffered sight loss wants to remain in work.

Her employer arranges for her to have an occupational health assessment to assess her ability to do her job. The assessment, together with discussion with her line manager, enables the right adjustments to be made, including:

- providing a large screen monitor and magnification software;
- making changes to the workplace layout;
- making instruction manuals more accessible;
- relocating some minor duties to another colleague.
- The RNIB provides information on staying in work.

Further examples

Employers are crucial to improving employment outcomes for disabled people. The further examples at Disability Confident show what can be done.

Resources and useful links

HSE and the Disability Rights Commission commissioned research to establish the nature and extent of the problem of health and safety requirements being used as a 'false excuse' for not employing or continuing to employ disabled people or people with an injury or ill-health condition. The research was prepared and published in 2003.

Gov.uk

Access to Work – an Access to Work grant can help to pay for practical support if you have a disability, health or mental health condition.

Work Choice – can help you get and keep a job if you're disabled and find it hard to work.

Office for Disability Issues (ODI) – supports the development of policies to remove inequality between disabled and non-disabled people.

Through the Disability Confident campaign, the Government is working with employers to remove barriers, increase understanding and ensure that disabled people have the opportunities to fulfil their potential and realise their aspirations.

Fulfilling Potential: Improving the lives of disabled people – find out more about the Government’s view of a society where disabled people can realise their aspirations and fulfil their potential.

Government’s proposals for improving employment support for disabled people and those with health conditions - find out more.

Read the code of practice on the statutory special educational needs and disability (SEND) system for children and young people aged 0 to 25 years.

Equality and Human Rights Commission (EHRC)

The Equality Act Code of Practice on Employment contains information at chapter 5 on discrimination arising from disability and at chapter 6 on the duty to make reasonable adjustments.

There is also more general guidance for employers about their responsibilities under the Equality Act.

Other Organisations

Disability Action Alliance - A cross sector network of organisations committed to making a difference to the lives of disabled people by designing and delivering innovative changes and identifying and spreading good practice, especially at local level.

Disability Rights UK - works to create a society where everyone with lived experience of disability or health conditions can participate as full citizens.

British Association for Supported Employment (BASE) - is the national tradeassociation representing hundreds of agencies involved in securing employment for people with disabilities.

Macmillan Cancer Support - provides support and information about work and cancer for people affected by cancer, and employers.

Business Disability Forum - is a not-for-profit member organisation that makes it easier and more rewarding to do business with and employ disabled people.

Kate Nash Associates deliver advice and support to employers who want to set up a disability network.

The Arbitration Conciliation and Advisory Service (ACAS) - provides advice on rights and responsibilities at work, including disability discrimination

This guide can be found at www.hse.gov.uk/disability/largeprint.pdf
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