

Disability Legislation – Changes Brought in by the Equality Act 2010

The Equality Act 2010 came into effect on 1 October 2010. It replaces the existing anti discrimination law with a single act, both simplifying and removing previous inconsistencies. It strengthens the law in several key ways with respect to disability discrimination and inequality.

There are new provisions around **direct discrimination**, and the provision on to access to goods and services had been extended to include disability.

Discrimination arising from disability: this replaces “relating to disability” and strengthens previous law weakened by case law (Malcolm). It applies if a service provider or employer knows or can reasonably be expected to know that someone has a disability. No comparator is needed, it is only required that the claimant has been treated unfavourably because of something arising in consequence of their disability.

Discrimination by perception (new for disability): this protects people mistakenly perceived to be disabled.

Discrimination by association (new for disability but already in case law – Coleman): this protects someone from being treated less favourably because they are associated with a disabled person; for instance someone who cares for a disabled child or adult.

Indirect discrimination (new for disability): this would be a rule, policy or practice that particularly disadvantages a disabled person. Here, lack of financial resources is unlikely to be sufficient justification.

Harassment (changed disability): disability harassment is defined as unwanted behaviour related to a disability that has the purpose or effect of violating a person’s dignity or creating an intimidating hostile, degrading, humiliating or offensive environment for them.

Victimisation (changed for disability): this would be treating someone badly because they have made a complaint under the Act, either for themselves or

on the behalf of someone as a witness. They need to show only that they have been treated badly, and do not need a comparator.

Pre-employment questions on health (new): it is now unlawful for an employer to ask about the health of job applicants before offering work or when short listing. Questions about disability can be asked for monitoring purposes or to provide reasonable adjustments, and also where relevant to specific job requirements.

Reasonable adjustments (changed): as with the DDA (Disability Discrimination Act), under the Equality Act 2010 we will need to continue to show due regard to reasonable adjustments for students, staff and service users, in relation to:

- Provision, criteria or practice i.e. the way things are done, such as changing a policy
- Physical features and the built environment, such as access
- Auxiliary aids and services – for example (information in a certain format, a loop, particular software and so on).

This applies where a disabled person would be put at a substantial disadvantage (changed from impossible or unreasonably difficult). There is still no anticipatory duty to make reasonable adjustments with regard to employment, and this remains if the employer knows or can reasonably be expected to know that their employee is disabled. However, we need to be taking steps under our general duties to find out and to make more anticipatory adjustments for staff, and visitors, as we do for students.

Definition of disability: this has changed slightly and a person no longer has to show their impairment affects one of eight particular capacities. They just need to be able to show that they have difficulty carrying out their day to day activities. The range of impairments covered is the same except for an extension to visual impairment to include new categories now used in diagnosis.

Disability is defined as a physical or mental impairment that has a substantial (more than minor or trivial) and long-term (definition unchanged at 12 months or more) adverse effect on the ability to carry out normal day-to-day activities.

The law protects anyone who has or **has had** a disability.

Public Sector Duty: This has been expanded to cover all protected characteristics (except marriage and civil partnership). Universities, as public sector bodies, need to have due regard to the need to;

- **Eliminate unlawful discrimination**, harassment and victimisation
- **Advance equality of opportunity** by removing or minimising disadvantages experienced by disabled people, meeting the needs of disabled people and encouraging disabled people to participate in public life.
- **Foster good relations** by tackling prejudice and promoting understanding towards disabled people.

Public sector bodies also need to set objectives and publish information to demonstrate how they are meeting the duty.

For more information contact the Equality and Diversity Team at diversity@staffs.ac.uk or 01782 295842