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*Guidance Note G64*

Employment and Disability Guidance

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# Summary

The Equality Act 2010 sets out a number of responsibilities for employers in the area of disability. See SCC 157, Guidance Note G63, Equality in Employment, for more information on the Act.

As with other characteristics protected by the Act, schools must ensure against discrimination on the grounds of disability towards workers, employees and applicants. The legislation places a duty on employers to treat disabled people more favourably, for example making reasonable adjustments to roles, duties and working conditions, in order to help eliminate disadvantage.

This guidance describes the duties required of employers and gives advice to governing bodies and headteachers on how to ensure they comply with the statutory requirements. It also offers guidance on ways to encourage and support disabled people in entering and remaining in employment.

# Defining Disability

* 1. **Conditions included in the definition**

Under the Equality Act, a disabled person is someone who has “a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities”. An impairment is considered to be long term if it has lasted, or is expected to last, for at least twelve months.

The Act removed the previous specific categories of disability that existed, which means that a broader interpretation of conditions coming under the definition of disability can be applied. The definition includes:

* progressive conditions, such as multiple sclerosis, muscular dystrophy, cancer, and HIV, from the onset of the condition, whether or not it has an immediate effect on the employee’s capacity to carry out their role;
* severe disfigurements;
* conditions where symptoms may be controlled through the use of medication or corrective devices, like epilepsy or diabetes;
* conditions which are asymptomatic that impact on a person’s ability to carry out daily activities, which may flare up, such as arthritis.
  1. **Conditions excluded from the definition**

Certain conditions are specifically excluded from the definition of a disability:

* addiction to, or dependency on, alcohol, nicotine or other substances (unless medically prescribed);
* seasonal allergies, for example hayfever, except where it aggravates the effect of another condition;
* tendency to steal
* tendency to set fires (arson);
* tendency to physical or sexual abuse of other persons;
* exhibitionism;
* voyeurism;
* deliberate disfigurement, e.g. through tattoos or body piercing;
* the wearing of corrective lenses for vision, if it means vision is fully corrected.

Care should be taken with conditions that are not protected, as any related health problems caused by the condition may still be protected. For instance, alcoholism is excluded from the definition of a disability, but any associated liver or mental health problem could fall under the protection of the Act. Similarly, obesity is not considered a disability, but associated ailments, such as diabetes or heart problems, could be classed as a disability. If in doubt, medical advice should be sought.

* 1. **The Department for Education (DfE) Requirements and Guidance**

The DfE issues regulations which require those involved in teaching and supervising children to have the necessary health and physical capacity. It is important to note the regulations do not preclude disabled people from working with children and young people.

A prospective trainee teacher who is known to have a condition that makes them unable to carry out the necessary activities will be prevented from training to be a qualified teacher; however, it is possible for a qualified teacher to acquire a disability in the course of employment that stops them having the necessary physical capacity.

The two legal duties of meeting the legal standards, whilst also making reasonable adjustments (see Section 2.2) need to be balanced against each other.

# Discrimination and Reasonable Adjustments

* 1. **What is Disability Discrimination?**

Disability is one of 9 'protected characteristics' covered by discrimination law (Equality Act 2010). Direct discrimination occurs when a worker or applicant is treated less favourably for a reason which relates to disability and on these grounds is automatically unlawful; whereas other types of discrimination (indirect discrimination, discrimination arising from a disability and a failure to make reasonable adjustments) may not be unlawful if the employer can make adequate and detailed justification as to why their actions were necessary (for more information, see SCC 157, Guidance Note 63, Equality in Employment).

Disability is unique because the law requires more favourable treatment, in the form of reasonable adjustments, to help eliminate disadvantage.

Unlawful conduct in employment includes:

* discriminatory arrangements for recruitment and selection;
* offering employment on less favourable terms;
* restricting access to opportunities for promotion, training, transfer, or any other benefit;
* dismissal;
* harassment;
* victimisation;
* and any other detriment.

It is not necessary for a disabled person to produce a direct comparator to support their complaint where less favourable treatment is alleged.

* 1. **Making Reasonable Adjustments**

Employers have a duty to make reasonable adjustments which may include more favourable treatment for disabled people, to remove disadvantage and enable them to undertake various roles they are otherwise suitable for.

Reasonable adjustments could include:

* altering premises, e.g. providing a ramp or a reserved car parking space;
* adapting furniture, such as chairs and tables;
* allocating duties to other employees, e.g. by rearranging duty rosters;
* changing working hours, e.g. a change from full-time to part-time working;
* changing an employee’s precise place of work within a school;
* providing equipment, e.g. adapting a telephone, providing a wrist rest or special chair; providing a visible fire alarm;
* providing a reader or signer;
* redeployment: transfer to a more suitable role when an employee becomes disabled;
* allowing time off for rehabilitation, assessment or treatment;
* enabling the person to take regular breaks if needed and possible;
* a phased return to work after a period of absence;
* providing additional training.

There is no legal definition of what is “reasonable”

A proper consideration will assess any cost or disruption involved in making the adjustment, together with the extent of the employee’s disadvantage and the improvement which the adjustment would make to remove the disadvantage. Many useful adjustments can be made at minimal cost, although it is important to note that costs alone are not enough to make an adjustment unreasonable.

The worker will be aware of their needs and should be fully consulted about what adaptations and/or support may be required along with medical advice to support an assessment in the workplace.

The school will need to balance any medical recommendations against its own knowledge of its business, and what is reasonable and practical within its context.

# Recruitment and Selection

* 1. **Job Specification and Selection Criteria**

Consideration with the selection criteria should be taken to help prevent any disadvantage towards disabled applicants or discouragement from applying, provided the person is suitably qualified. Only those criteria which are necessary to carry out the work effectively should be used, and it is best to avoid generalised expressions that may be construed as potentially discriminatory, like “fit and energetic”. Advertisements should always be worded to relate specifically to the requirements of the role.

* 1. **Recruitment Information**

Employers are under a duty to make reasonable adjustments to the recruitment process and to roles advertised, in order to enable suitable disabled candidates to undertake the role.

It is good practice to include the following wording in job person profiles:

*If you have a disability or long-term illness that otherwise prevents you from meeting any of the essential criteria, please contact us to discuss whether a reasonable adjustment can be made.*

Whoever is delegated to deal with enquiries should be aware of your school’s commitment to equal opportunities and be aware of the need to seek professional advice through the HR provider. A note should also be kept of any enquiries, and your response.

* 1. **Interviews**

It is good practice and County Council policy to offer an interview to any candidate who declares a disability on their application form if they meet the essential criteria for the post advertised. This is one of the commitments under the national “two ticks” scheme (see Section 6). The following wording is recommended:

For application forms:

*If you have a disability, are there any arrangements which we can make for you if you are called for an interview and/or work-based exercise?* ***Please specify.***

[If following the two ticks scheme]: *We offer a guaranteed interview to all disabled candidates who meet the minimum criteria for a job vacancy.*

For interview invitation letters:

*If you have a disability, are there any arrangements which we can make for you at interview or in any work-based exercises? Please contact [give name and contact details] to clarify what adjustments are needed.*

Reasonable adjustments for an interview might include:

* assistance for someone who is hearing or speech impaired: e.g. provision of an induction loop or an interpreter or signer;
* provision of an escort for a blind applicant;
* allowing an applicant with a learning disability to bring a friend or relative to the interview if requested;
* allowing extra time for a disabled candidate if their thinking or speech processes are affected by their condition;
* ensuring the place of interview is accessible to a candidate with a condition affecting their mobility and offering a car parking facility close by.

All other aspects of the interview process should be the same as for all other candidates.

Issues about any reasonable adjustment that may be required should be explored separately from the main interview and should not form part of the selection decision. Advice and support is available through the HR provider. If there are questions about possible reasonable adjustments, or whether the candidate’s disability is relevant to the performance of the job or could cause a health and safety risk, medical advice should be sought from the applicant**.**

* 1. **Offering the Post**

When a disabled candidate is offered a post, it is important that any reasonable adjustments are implemented as soon as possible by seeking advice from Occupational Health. If adjustments are likely to take some time, the possibility of making temporary arrangements should be explored.

# In Employment

* 1. **Induction**

Induction will need to take into account any factors relevant to the individual. It may become apparent that further adjustments are necessary. It may be necessary to explain to colleagues that some changes will be made to the individual’s working arrangements, or that they may need some assistance. However, the nature of the disability should be treated in confidence and not divulged without consent. This means colleagues may be asked to participate in making adjustments without knowing the precise reason why.

A review of health and safety arrangements may also be necessary, e.g. to ensure that an individual with limited mobility can be evacuated from a building, or to ensure appropriate first aid arrangements are in place.

* 1. **Attendance and Disability Leave**

In monitoring absence, allowance should be made for absences related to a disability.

Absences relating to appointments for rehabilitation, assessment or treatment of a disability should be recorded as disability leave. This is paid and does not affect sick pay entitlements. However, any other periods of absence related to a disability should be classified and recorded as disability related sick leave.

The following could constitute disability leave, if related to a disability:

* Pre and post admission appointments to hospital
* Pre and post-surgery physiotherapy appointments
* The day of surgery
* Occupational Health appointments
* GP appointments.

Any recuperation period after treatment would be recorded as sick leave.

Any instances of disability leave should not be taken into account in any management processes (whether capability, disciplinary or redundancy selection criteria), but sick leave can be, under certain circumstances, and where there is evidence that all reasonable adjustments have already been made. If in doubt, seek advice from your HR provider.

Whilst recognising the provision of disability leave is a reasonable adjustment, it is also reasonable to expect that individuals should, where possible, book medical appointments outside of their normal working hours. This is often not possible for hospital and occupational health appointments, but it may be possible for GP appointments. Managers and workers should bear this in mind when booking GP appointments, particularly over multiple occasions.

For a school to record an absence as disability leave on iTrent, please refer to the Disability Leave policy for further information.

* 1. **Performance Review, Training & Development**

Arrangements for performance review, training and development should be the same as for all other staff, unless there is a need for any further reasonable adjustments.

* 1. **Harassment, Victimisation and Discrimination**

All staff have the right to be treated with dignity and respect. The Equality Act provides legal protection for disabled workers relating to any detrimental treatment which amounts to harassment, victimisation or discrimination. Employers are vicariously liable for the unlawful actions of their staff unless they can show they took all reasonable steps to prevent them. This will include making sure all workers are aware of the appropriate policies at induction, providing diversity training and challenging and addressing inappropriate behaviour.

Further guidance on is provided in SCC 157 Guidance Note G63, Equality in Employment, and in the appropriate policies on grievance, harassment and disciplinary.

# Workers becoming Disabled

* 1. **Reviewing Long Term Absence**

When a worker develops a condition which would qualify as a disability, or when a disabled worker’s condition becomes worse, it is important to explore all the options for making reasonable adjustments before considering termination of employment. Any case of long-term absence may require considerations under the Equality Act. It is usually necessary to seek the involvement of occupational health and HR.

* 1. **Retaining Workers who become Disabled**

If a person becomes disabled you should explore whether retention in the same post is possible, if reasonable adjustments are made. If it is not possible to retain the existing post, consideration should be given to enabling and assisting suitable alternative employment within the school. For local authority schools, an LA officer of the County Council should be consulted to explore possibilities beyond the school. In every case it is important to consult fully with the worker and any representative, to discuss what options might be available. Medical advice is available from occupational health, in any case where termination of employment is a possible outcome. A number of other sources of advice and help are listed in Section 7 below.

# Positive Commitment: Disability Confidence Scheme

The County Council is a Level 3 Leader under the Employment Service’s Disability Confidence Scheme and agreed to the five commitments set out below:

* To interview all applicants with a disability who meet the minimum criteria for a vacancy, and to consider them on their abilities.
* To ensure there is a mechanism in place to discuss, at any time, but at least once a year, with disabled workers what you and they can do to make sure they can develop and use their abilities.
* To take action to ensure that all workers develop the appropriate level of disability awareness needed to make your commitments work.
* To make every effort, when workers become disabled, to make sure they stay in employment.
* Each year to review the five commitments and what has been achieved, to plan ways to improve on them, and let workers and the Employment Service know about progress and future plans.

The Disability Confident Scheme aims to help employers make the most of the opportunities provided by employing disabled people. It is voluntary and has been developed by employers and disabled people’s representatives.

The County Council encourages all schools, as a matter of good practice, to make the same commitment to promote the employment of disabled people. Participation in this programme will also help local authority schools to meet their requirements under the Public Sector Equality Duty (see SCC 157 Guidance Note G63, Equality in Employment).

# 8. Support and Funding for Schools

**8.1. Support Organisations**

There are a number of organisations offering support and guidance in this area:

* Schools HR should be consulted about all matters connected with disability and employment, and can offer advice on recruitment, selection, reasonable adjustments and the retention of disabled workers. They can help schools to consider medical recommendations in a business context, in order to ascertain whether the suggested adjustment is in fact “reasonable”. They can also provide support to schools in their “two ticks” commitments.
* Occupational Health can provide medical advice on conditions: whether a condition is likely to meet the criteria of a disability under the Equality Act, what medical treatment might help, and can suggest workplace adjustments.
* Disability Employment Advisers, based at local Jobcentre Plus, can provide advice on making reasonable adjustments.
* Other organisations in the charitable and voluntary sector, such as the Papworth Trust and Remploy, can assist with workplace assessments, and can provide individual support and coaching of workers with particular conditions, who meet set criteria. For more information and contact details for the different organisations, see: <http://disabilityrightsuk.org/voluntary-sector-links>

**8.2. Supplementary Funding – Access to Work Scheme**

The responsibility for funding reasonable adjustments rests in the first instance with school governing bodies. In most cases, minor adjustments are sufficient and can be met from a school’s delegated budget. Where more significant expenditure is required, supplementary funding may be available through the Access to Work scheme. More information can be found at:

<https://www.gov.uk/government/publications/access-to-work-guide-for-employers>

# Summary of changes

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