

YOUR RIGHTS

FACTSHEETS

sia spinal
injuries
association
FOR LIFE AFTER SPINAL CORD INJURY



YOUR RIGHTS TO EMPLOYMENT

Introduction

The Equality Act 2010 (EA) replaced the existing Disability Discrimination Act (DDA) and other anti-discrimination legislation from 01 October 2010. Under Discrimination and the Equality Act 2010, it is unlawful for employers to discriminate against disabled people for a reason related to their disability, in all aspects of employment, unless this can be justified. The different types of discrimination under the EA 2010 are explained in the paragraphs below.

The Act covers things like:

- Application forms
- Interview arrangements
- Proficiency tests
- Job offers
- Terms of employment
- Promotion, transfer, or training opportunities
- Work-related benefits such as access to recreation or refreshment facilities
- Dismissal or redundancy.

Who is protected under the Equality Act?

Most people with Spinal Cord Injury (SCI) will be covered under the EA definition of disability. Under the EA, a person has a disability if he or she “has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities.”

For the purposes of the Act:

- Substantial means neither minor nor trivial
- Long term means that the effect of the impairment has lasted or is likely to last for at least 12 months (there are special rules covering recurring or fluctuating conditions)
- Normal day-to-day activities include everyday things like eating, washing, walking, and going shopping

The EA can also protect someone who is discriminated against because of his or her association with a disabled person - for example, if you are a parent or carer of a disabled child. This protection only extends to protection from direct disability discrimination and from harassment.

Who has obligations under the Equality Act?

Since October 2004, all employers (except the armed forces) have duties under the Act which makes it unlawful to discriminate against employees or job applicants because of disability.

Your rights: The Equality Act 2010

An employer can discriminate against a disabled person in six ways.

- Direct discrimination
- Indirect discrimination
- Discrimination arising from disability
- Failure to make 'reasonable adjustments'
- Victimisation
- Harassment

Direct discrimination

Direct discrimination occurs when an employer treats a disabled person less favourably than someone who does not have a disability would be treated in the same circumstances.

For example, direct discrimination occurs when an employer refuses to employ you because you are a wheelchair user, even if you are the best candidate for the job.

Indirect discrimination

Indirect discrimination occurs when an employer has a particular policy or practice that applies to everyone but puts a disabled person at a disadvantage compared to people who are not disabled. Indirect disability discrimination is unlawful unless the employer can show that there is a good reason for the policy or practice and that it is proportionate. This is known as 'objective justification'.

For example, indirect discrimination may occur when an employer states that all job applicants must have a driving licence. This requirement may put some disabled people who cannot drive due to impaired mobility at a disadvantage compared to other applicants who are not disabled. If the job advert is for a bus driver, the need to have a driving licence is likely to be objectively justifiable. However, if the job is for an office manager who occasionally has to work across two offices, the requirement may be more difficult to justify.

Discrimination arising from disability

Discrimination arising from disability occurs when an employer treats a disabled person unfavourably because of something arising in consequence of his or her disability. It will not apply if the employer did not know, or could not reasonably be expected to have known, that the person had a disability. Like indirect discrimination, discrimination arising from disability will be unlawful unless the employer can show that there is good reason for the treatment and that it is proportionate.

For example, an employee with limited hand function due to SCI cannot work as quickly as his or her fellow employees. If the employee was dismissed due to his or her slow output, the employer would need to show that the dismissal was for good reason and proportionate; in other words, that it was objectively justified.

Failure to make reasonable adjustments in the workplace

Under the Act, an employer has a duty to make 'reasonable adjustments' to make sure that disabled people are not put at a substantial disadvantage by employment arrangements or any physical feature of the workplace compared to non-disabled people. The duty applies to all aspects of employment, including recruitment and selection, training, transfer, career development and retention. What adjustments are 'reasonable' will depend on a variety of factors such as: the size of the organisation and the resources available to it, the extent to which the adjustment will be effective in reducing or overcoming the disadvantage, whether it is practical, and health and safety considerations.

Examples of the sort of adjustments an employer should consider, in consultation with you, include:

- Allocating some of your work to someone else
- Transferring you to another post or another place of work
- Making adjustments to the buildings where you work
- Being flexible about your working hours – for example, allowing you to have different core working hours and to be away from the office for assessment, treatment, or rehabilitation
- Providing training or retraining if you cannot do your current job any longer
- Providing modified equipment
- Making instructions and manuals more accessible
- Providing a reader or interpreter.

You can play an active role in discussing these arrangements with your employer. You might also want to encourage your employer to speak to someone with expertise in providing work-related help for disabled people, such as an occupational health adviser. You may also want to ensure that your employer is aware of the Access to Work programme run by Jobcentre Plus. Through this programme, employers can get advice on appropriate adjustments and may be granted financial help towards the cost of the adjustments. An Access to Work grant may also be available to a disabled employee to help pay for help getting to and from work.

Victimisation

Victimisation has a particular legal definition in the EA. Victimisation occurs when someone is treated badly because they have done a 'protected act' or someone helps another person who has been the victim of discrimination in the workplace. A 'protected act' is defined as:

- Taking proceedings under the Act
- Giving evidence or information at such proceedings
- Helping a disabled person to take proceeding under the Act
- Alleging that someone has infringed the Act

The Act applies both to disabled applicants for employment and to disabled employees. It applies equally to applicants for outside adverts and internal trawls and notices and covers:

- Recruitment and selection
- Terms and conditions
- Opportunities for promotion, career development and training
- Working conditions
- Employee benefits
- Dismissal procedures

Harassment

Under the EA, it is unlawful for an employer to harass a worker because of his or her disability. Harassment occurs where, for a reason related to your disability, your employer creates an intimidating, hostile, degrading, humiliating or offensive environment for you.

An example of harassment would be if you had informed your manager that you needed time off for a hospital appointment relating to your disability. On your return, your manager publicly accuses you of missing work for no reason and says that you have placed the rest of the team under pressure. This confrontation takes place in front of your office colleagues and they ignore you after this point.

Redundancy

Your employer cannot select you for redundancy because you are disabled or for any reason relating to your disability. If your employer is consulting about any future redundancies, they should take reasonable steps to make sure that you are included in the consultations.

Your employer must also make reasonable adjustments to any selection criteria they create for selecting employees for redundancies to make sure that the criteria used do not discriminate against disabled employees. For example, discounting disability-related sickness absence when using attendance as part of a redundancy selection scheme could constitute a 'reasonable adjustment'. On the other hand, if your employer decides to make you redundant because you had been working for the organisation for a shorter time than anyone else and the redundancy has nothing to do with your disability, this would not amount to unlawful disability discrimination.

What to do if there is an issue

There are several steps you can take to resolve workplace problems in a friendly and constructive way, without legal actions. Resolving problems with your employer in this way can often result in a better outcome for you than taking a tribunal claim.

The first steps you take in raising the difficulties with the employer can help determine how quickly and successfully a situation gets sorted out. So, before you do anything, consider all your options.

An informal grievance

Do not assume that your employer is unwilling to resolve problems or take positive steps to support you at work. Unless the employer knows about your concerns, they cannot put things right. A good first step is to raise your complaint informally.

You can raise an informal grievance by:

- Discussing your complaint with your line manager
- Contacting your HR or personnel department and asking for informal advice

You are more likely to get the result you want if:

- You raise your informal grievance in a constructive way, and
- You make practical and reasonable suggestions about how to put things right

For example, if you are requesting a reasonable adjustment, you could tell your employer that a grant may be available under the Access to Work programme.



Make a note of what is said at any meetings or discussions about the grievance. And keep copies of any letters about the grievance. If you and your employer do not resolve the grievance informally, your next step could be to make a formal, written grievance.

A formal grievance

For matters occurring on or after 6 April 2009 you are not required to raise a formal grievance (unless you live in Northern Ireland), however it remains advisable to do so. Ask for a copy of your employer's grievance procedure. This should tell you how your employer will deal with your complaint including:

- To whom you should send your written grievance
- Who will investigate your complaint and how long this will take?
- When you will get a decision from the employer.

If your employer does not have a grievance procedure it is advisable to follow the ACAS Code of Practice which can be found on the ACAS website.

Writing a formal grievance letter

Send your employer a brief letter saying that you wish to make a formal grievance and the reasons why you wish to do so.

How to write your grievance statement

- Keep your statement brief, unemotional and to the point
- Write your statement in numbered paragraphs
- Keep these paragraphs short (one new point per paragraph)
- If possible, type your statement.

What to include in your grievance statement:

- Describe what has happened in date order, with the most recent event last
- Include key dates
- Include the names and job titles of the people involved
- Say clearly that you think what has happened to you amounts to unlawful disability discrimination
- Say what you have done to try to resolve matters before making a formal grievance
- If you need a reasonable adjustment to take part fairly in the grievance process, say so now.

Remember to...

- Keep a copy of your grievance statement and letter
- Get proof that your grievance has been received by asking for an acknowledgment.

The Equalities and Human Rights Commission will be able to give you some examples which may help you to write your grievance letter. You will find their contact details in the 'Contacts' section of this document.

Grievances and tribunal time limits

If your complaint is about something that your employer has done or should have done (for example, a failure to make a reasonable adjustment), or if you are resigning from your employment because of alleged discrimination, you should state your complaint, or 'grievance', in writing to your employer before you take any further action.

It is important to note that in the event that you have to take your complaint to an employment tribunal, there is a strict time limit within which you must make your claim. This is usually 3 months less one day from the date of the alleged discrimination last happened. This time still applies if you are taking out a grievance so you should ensure that you do not run out of time whilst going through the grievance procedure.

Employers should arrange for a formal meeting to be held within a reasonable time, at which you should be allowed to explain the nature of your complaint and how you think it should be resolved. If you are unhappy with the outcome of the meeting, you have the right to appeal. You will need to let your employer know the grounds of your appeal in writing and without unreasonable delay. If you still feel you have a case, you can make a claim to the employment tribunal.

Remember, you have three months from the date on which you were discriminated against to submit a claim of discrimination to the employment tribunal. This means that the employment tribunal must receive your claim form (ET1) **no later than three months, less one day** from the date of the discrimination that you are complaining about. The ET1 form is available from your local Job Centre or you can make a claim online or download an ET1 at www.gov.uk/employment-tribunals

You should:

- Put your complaint ('grievance') in writing, to your employer, before you bring a claim.
- Wherever possible, submit your grievance soon after the date on which you were discriminated against, so that you are able to wait 28 days and still submit your claim with the normal three months less one day time limit
- If you are in any doubt as to whether these procedures apply to you, make sure you send your claim form (ET1) to the tribunal within the time limit of three months less one day and then follow the guidance provided by the tribunal.

Contacts

Equality and Human Rights Commission (EHRC)

The Equality and Human Rights Commission is a good source of advice if you feel you may have been discriminated against at work or elsewhere. It can also help if you think you have been discriminated against and want to lodge a claim at an Employment Tribunal.

W: www.equalityhumanrights.com

Equality Advisory & Support Service

Helpline: 0808 800 0082

W: www.equalityadvisoryservice.com

Access to Work

The government's Access to Work scheme provides advice, practical support, and financial assistance to disabled people and their employers to help overcome work related obstacles resulting from disability. For more information, including how to apply for Access to Work, phone your nearest Jobcentre Plus office or apply online at:

W: www.gov.uk/access-to-work/apply

Advisory Conciliation and Arbitration Service (ACAS)

The role of the Advisory Conciliation and Arbitration Service (ACAS) is to help employees and employers resolve disputes at work. ACAS gives impartial information about employment law to both employees and employers. If you have problems at work, ACAS can explain your rights at work. They can also tell you what legal duties your employer has. ACAS cannot take sides or give specific advice about your personal situation.

You can contact ACAS via their Helpline:

T: 0300 123 1100

W: www.acas.org.uk

The Disability Law Service (DLS)

The DLS is a registered charity offering free confidential legal advice on disability discrimination in employment to disabled people. It is able to take on certain cases on behalf of disabled employees or job applicants. In addition to an employment law advice, it can also offer advice in the following other categories of law: community care, education, consumer/contract, welfare benefits.

The Foundry

17 Oval Way

London

SE11 5RR

Email: advice@dls.org.uk

W: www.dls.org.uk

Disclaimer

This factsheet has been prepared by SIA and contains general advice only which we hope will be of use to you. Nothing in this factsheet should be construed as the giving of specific advice and it should not be relied on as a basis for any decision or action. SIA does not accept any liability arising from its use. We aim to ensure the information is as up-to-date and accurate as possible, but please be warned that certain areas are subject to change from time to time. Please note that the inclusion of named agencies, companies, products, services, or publications in this factsheet does not constitute a recommendation or endorsement by SIA.

Revised: October 2019 AR

About SIA



The Spinal Injuries Association (SIA) is the leading national user-led charity for spinal cord injured (SCI) people. Being user led, we are well placed to understand the everyday needs of living with spinal cord injury and are here to meet those needs by providing key services to share information and experiences, and to campaign for change ensuring each person can lead a full and active life. We are here to support you from the moment your spinal cord injury happens, and for the rest of your life.

For more information contact us via the following:

Spinal Injuries Association
SIA House
2 Trueman Place
Oldbrook
Milton Keynes
MK6 2HH

T: 01908 604 191 (Mon – Fri 9am – 5pm)

T: 0800 980 0501 (Freephone Advice Line, Mon – Fri, 11am – 1pm/2pm – 4.30pm)

W: www.spinal.co.uk

@: sia@spinal.co.uk

Charity No: 1054097

Brought to you by:



Please support SIA

SIA relies on fundraising, donations, and gifts in wills to provide services that help spinal cord injured people rebuild their lives.

With your help, we can provide the right support to spinal cord injured people and their families and friends so they can enjoy a full and independent life after injury. Your donation today will go towards changing someone's life.

I would like to give: £15 ☐ £20 ☐ £53 ☐ other amount £.....

Method of payment

☐ I enclose a cheque/postal order/CAF voucher made payable to Spinal Injuries Association.

☐ I would like to pay by Mastercard/Visa/Maestro/Switch (delete as appropriate)

Card number

Start date

Expiry Date

Security Code

Signature

Date/...../.....

Name.....

Address

.....

Postcode Tel no.....

Email address.....

Please gift aid my donation ☐

If you tick the box it means for every £1 you donate, we can claim an extra 25p from the taxman, at no extra cost to you. You need to pay an amount of income tax or capital gains tax at least equal to the tax we reclaim from HM Revenue and Customs – currently 25p in every £1 you give.

Please send your donation to: FREEPOST SPINAL INJURIES ASSOCIATION or you can donate online at www.spinal.co.uk

Thank you for your support!