

Health and safety for disabled people and their employers



Contents

How this leaflet can help you	Page 3
Getting started	Page 3
Guidance for disabled people	Page 6
Guidance for people doing risk assessments	Page 8
Case studies	Page 12
The law	Page 14
Treating disabled people fairly – avoiding discrimination	Page 15
Useful information for disabled people and employers	Page 19
Contacts	Page 21
Acknowledgements	Page 22

How this leaflet can help you

Everyone at work is responsible for health and safety: both employers and employees. This leaflet promotes good practice in disability equality at work and health and safety risk assessment.

It provides:

- an introduction to disability discrimination and health and safety law;
- advice for people doing health and safety risk assessments;
- advice for disabled people; and
- links to further sources of information, including grants.

Getting started

This leaflet is about risk assessment and disability:

- It suggests how to do risk assessments involving disabled job applicants and employees with a minimum of fuss.
- It provides links to information and financial grants – these help businesses make the sort of workplace adjustments that enable disabled people to enter and stay in work.

What is a risk assessment?

A risk assessment is simply a careful examination of what could harm people and how likely this is to happen, so that employers can weigh up whether or not the steps they have taken are sufficient to comply with health and safety law. Risk assessments can be carried out in five steps (more information can be found on the HSE website at: www.hse.gov.uk/risk/fivesteps.htm).

- 1 Identify the hazards (what, in the work, could cause harm to people).
- 2 Decide who might be harmed and how.
- 3 Evaluate the risks and decide on precautions.
- 4 Record the findings and act on them.
- 5 Review the assessment and update if necessary.

Risk assessment and disability

Step 2 is about 'who might be harmed'. This means thinking about the workforce, including disabled people.

Some employers worry because they don't understand disability and think it might get in the way of getting the job done. They fear they might break health and safety law. Some disabled people fear that health and safety might be used as an excuse to exclude them from work opportunities.

There can be concern on both sides. By working **together**, employers and disabled workers can get to grips with disability and health and safety. The process therefore works best when the employer **involves** the disabled worker and thinks about their individual circumstances. This helps to avoid the following:

- people making **assumptions** about disabled people which can lead to poor practice or discrimination; and
- people hiding an impairment that might have health and safety implications for fear they won't get or keep a job.

Examples of assumptions

- Thinking a driver who loses an arm can't drive anymore (steering wheels can be modified or replaced, eg with a joystick).
- Believing a deaf person can't be warned of fire (flashing lights can supplement sirens and bells).

Taking action

Employers should:

- make sure they manage work risks for everyone;
- take account of disability, avoiding assumptions;
- involve disabled workers in doing risk assessments and making 'reasonable adjustments' (see page 11);
- consult others with appropriate expertise where necessary; and
- review the situation if necessary, working with the disabled person and/or their representative.

Guidance for disabled people

This guidance is for you, whether you are in work or looking for work.

Health and safety and you

Everyone at work is responsible for health and safety: both employers and 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, for instance follow rules, warnings or guidance; and
- inform your employer or manager if you see something that might harm you or someone else.

If you have a disability or long-term health condition, you may need to tell your employer so you can:

- meet your health and safety responsibilities;
- work with your employer on any 'reasonable adjustments' (see page 11) that may be needed; and
- work with your employer if a risk assessment is needed or if you have concerns about its results. If you have a safety representative, they may help.

Your employer should:

- assess and manage the work risks to **everyone**;
- include you in any health and safety information and training;
- **involve you** if they need to know whether your disability affects workplace health and safety and, if so, to what extent. This is so you can work together to find the best outcome, for instance 'reasonable adjustments' that overcome risk;
- **involve others**, such as specialists or your representative, if needed to understand the effects on workplace health and safety of your disability or long-term health condition;
- **ask for your consent** before approaching specialists or your GP (your doctor) who can advise on options for workplace adjustment;
- **be sensitive and timely** about making risk assessments if these are needed;
- make other, short-term arrangements to support you when delay cannot be helped (for instance, if your employer is waiting for an Access to Work grant); and
- **create a working environment** that allows you to feel comfortable when talking about your disability or long-term health condition.

Finally, employers should remember our lives can never be free from risks and they don't need to overprotect you. They should work with you to make sure adjustments are a help, not a hindrance.

Guidance for people doing risk assessments

Your **risk assessments** should be up to date and take account of:

- workers with disabilities or long-term health conditions;
- ‘reasonable adjustments’ (see page 11) already in place.

This guidance will help you when:

- checking existing risk assessments;
- a job applicant or employee has declared a disability or long-term health condition and there is good reason to believe it may affect workplace health and safety.

Do:

- ✓ **involve** disabled applicants and employees – appreciate the skills and insight they may have to find the best outcome;
- ✓ **work together** with disabled applicants and employees if it is necessary to assess whether their disability affects health and safety and, if so, to what extent. In other words, work together when doing risk assessments that consider the effects of the person’s disability and when thinking about the ‘reasonable adjustments’ needed for them to enter or stay in work;
- ✓ **take account of any adjustments already in place**, so your conclusions are based on any remaining risks, if they exist;
- ✓ **make new ‘reasonable adjustments’** to overcome remaining risks, remembering to work with the disabled person to tailor the adjustments to their needs;

- ✓ **be sensitive and timely** to support the disabled person and avoid delays. Where delay can't be helped (for instance if you are waiting for an Access to Work grant) you may have to make short-term temporary arrangements so they are not at a disadvantage in their work;
- ✓ **involve others**, such as specialists (eg Disability Employment Advisers, Occupational Health or the employee's representative or advocate), if you need to gain a better understanding. Many disabled people are experts in their disability, but others, for instance people with certain learning disabilities or people new to a long-term health condition, may be less familiar. Attend professional disability-awareness training if needed;
- ✓ **check** that advisers, such as safety consultants or the occupational health ('works') doctor, understand disability discrimination;
- ✓ **share** with the disabled person (and their representative, if they have one) any specialist information to give them a say in its contribution to the assessment;
- ✓ **make sure** you can give good reasons for decisions you make about how to manage health and safety risks in relation to a disabled person, otherwise you risk discriminating illegally. Following this guide will help;
- ✓ **create a working environment** that allows disabled people to feel comfortable talking about their disability;
- ✓ **be sensible**. Remember our lives can never be free from risks and, for disabled people, overcoming them can be harder. This doesn't mean being overly protective. You should **enable disabled people** to enter and stay in work. So check with the person that workplace adjustments are a help not a hindrance.

Don't:

- ✘ make assumptions about the health and safety implications of a person's disability as it might not make a difference to workplace risks. If you do a risk assessment with no good reason you might discriminate illegally (see page 14 for guidance about the law);
- ✘ have 'blanket' policies that treat disabled people differently. For instance, a ban on applicants with, say, epilepsy, diabetes or mental health problems is likely to be direct discrimination. Be aware that disabilities often affect people in very individual ways;
- ✘ have unnecessary criteria for a job, eg the need for a Group 2 driving licence when a Group 1 licence would do. This could unfairly discriminate;
- ✘ insist on employees revealing details of their disability. Disabled people have rights to confidentiality (see page 14 for guidance about the law). However, they also have health and safety responsibilities, so may have to tell you about the consequences of a condition if there are health and safety effects. Then they can work with you on 'reasonable adjustments'.

And finally, don't panic. Yes, you may have to do things differently, but with the right levels of involvement and support, you should find you are on the right track to meet your legal duties. Following this guidance will help.

See 'Useful information for disabled people and employers' for more information, including **government grants**, on page 19.

Examples of reasonable adjustments

- Adjustments to the workplace to improve access or layout
- Giving some of the disabled person's duties to another person, eg employing a temp
- Transferring the disabled person to fill a vacancy
- Changing the working hours, eg flexi-time, job-share, starting later or finishing earlier
- Time off, eg for treatment, assessment, rehabilitation
- Training for disabled workers and their colleagues
- Getting new or adapting existing equipment, eg chairs, desks, computers, vehicles
- Modifying instructions or procedures, eg by providing written material in bigger text or in Braille
- Improving communication, eg providing a reader or interpreter, having visual as well as audible alarms
- Providing alternative work (this should usually be a last resort)

Case studies

These case studies give examples of 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.

Note: Epilepsy Action has advice on employing people with epilepsy. Their phone number is 0800 800 5050.

Firefighter with diabetes

A firefighter 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 firefighter 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 firefighter. He returned to work with the following reasonable adjustments:

- restrictions on the emergency vehicles he could drive;
- regular checks by the work health service; and
- the provision of a fridge to store his insulin.

Note: DVLA has information on medical rules for drivers. Their number is 0870 240 0009, the Textphone number for the deaf and hard of hearing is 01792 766 366.

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; and
- arranging for her colleagues and supervisor to attend mental health awareness training so her team understood.

The law

What counts as a disability in law?

Disability is not always obvious. The Disability Discrimination Act 1995 (DDA) defines a person as disabled if they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

- ‘Normal day-to-day’ means things that people do on a regular or daily basis, such as reading, writing, using the telephone, having a conversation and travelling by public transport.
- ‘Long-term’ usually means the impairment should have lasted or be expected to last at least a year.
- ‘Substantial’ means not minor or trivial.

The key thing is not the impairment but its effect. Some people don't realise that impairments such as migraines, dyslexia, asthma and back pain can count as a disability if the adverse effect on the

individual is substantial and long-term. Some conditions automatically count as disabilities for the purposes of DDA, from the point at which the individual first has them – these are cancer, HIV and multiple sclerosis (MS).

Your local Jobcentre Plus or the Equality and Human Rights Commission (EHRC) can tell you more. The EHRC has advice on what counts as a disability according to the law (www.equalityhumanrights.com).

Treating disabled people fairly – avoiding discrimination

Employers must treat job-seekers and disabled employees fairly to avoid:

- the three types of disability discrimination (see section below);
- victimisation; and
- harassment.

Disability discrimination

Details of disability discrimination law, with case studies to help, can be found in EHRC's *Disability Discrimination Act 1995 Code of Practice on Employment and Occupation* (First published 2004, ISBN 978 0 11 703419 8). This explains these legal concepts in more detail.

The three types of unlawful discrimination are:

- direct discrimination;
- failure to make a reasonable adjustment; and
- disability-related discrimination.

‘Direct’ discrimination cannot be justified and happens when:

- a disabled person is treated less favourably than a non-disabled person, whose relevant circumstances are the same or not materially different; and
- the treatment is on grounds of disability.

An example of this would be an employer having a blanket ban on employing someone with a particular disability.

Failure to make a reasonable adjustment cannot be justified and happens when an employer fails to make a reasonable adjustment for a disabled person.

Disability-related discrimination is when a disabled person is treated less favourably for a disability-related reason and the treatment cannot be justified. For example, an employer treats someone differently because they have a guide dog.

Victimisation

Victimisation is where someone is treated less favourably because, for instance, they have made a complaint at work or used their legal rights or have supported someone to do this.

For example, a colleague of a disabled employee attends a tribunal hearing to give evidence, in good faith, to support a disability discrimination claim. After the hearing, the employer brands the colleague ‘a troublemaker’ for giving evidence and withholds a bonus. This is likely to be victimisation.

Harassment

Harassment is any form of unwanted and unwelcome behaviour that has the purpose or effect of:

- violating the disabled person's dignity; or
- creating an intimidating, hostile, degrading, humiliating or offensive environment.

For example, a person with schizophrenia is often jokingly referred to by colleagues as being 'a bit off the wall'. People with schizophrenia may experience the world differently to most people, and this may at times affect their behaviour at work or in other settings. However, regardless of the fact that colleagues may not have intended any offence, the disabled person feels that these remarks make them nervous about the work environment. The colleagues' conduct is likely to amount to harassment and employers would have to deal with this.

Employers can help themselves by not making assumptions about disabled people and finding out about the effects of an applicant's or employee's impairment.

Help for businesses and workers on disability rights and discrimination law is also available from your local Jobcentre Plus or the EHRC. The Department for Work and Pensions (DWP) has advice for employers and the EHRC has particular advice for workers.

Disability equality in the public sector

The public sector and, potentially, its partners have a new Disability Equality Duty, found on the EHRC website (www.equalityhumanrights.com), to make a real, positive change to the lives of disabled employees, ensuring they are treated fairly and equally.

Making reasonable adjustments

Employers are required to make 'reasonable adjustments' to jobs and workplaces for disabled workers. This is to ensure disabled people have equal opportunities in applying for and staying in work.

Confidentiality and data protection

Revealing a disability

If a disabled person expects an employer to make a reasonable adjustment, they will need to provide the employer with enough information to carry out that adjustment. Disabled people have a right to confidentiality and an employer must not disclose confidential details about them without their explicit consent.

Data protection

The Data Protection Act 1998 places duties on employers to ensure confidential and appropriate handling of 'sensitive personal data', which includes data about a person's health.

The Data Protection Act also gives individuals the right to see personal data and information held or processed about them, provided they request it in writing. This provision is important in accessing personal information relating to a risk assessment.

Who has health and safety responsibilities?

Health and safety laws place duties on everyone concerned with work activities.

- **Employers** have a general duty to take 'reasonably practicable' measures (see page 19) to protect workers, and those affected by their work activities, from the risk of injury or harm at work. They must also provide workers with the information, instruction, training and supervision required to ensure their health, safety and welfare at work.

Employers also have specific duties depending on the nature of their business.

- **Employees** must look after themselves and look out for others who may be affected by their work activities. They must also co-operate with their employers on health and safety.

Reasonably practicable

The law does not expect employers to eliminate all risk, but they are required to protect people as far as 'reasonably practicable'. This is a legal concept which means balancing the level of risk against the measures needed to control the risk in terms of money, time or trouble.

Useful information for disabled people and employers

Disability information and financial help

- **The Equality and Human Rights Commission (EHRC)**
Telephone: 08457 622633 Textphone: 08457 622644
- **Access to Work**
This Jobcentre Plus scheme can offer businesses a grant towards the approved costs that arise because of an individual's disability (not applicable to government departments, which are expected to set examples).
Telephone: 0800 0055 6688.
- **Disability Employment Advisers**
Provide extra employment support for working people with a disability. Contact an adviser through your local Jobcentre.
- **Job Introduction Scheme**
Grants for employers for a range of schemes, including support for new starters with disabilities for their first six weeks of employment. Contact an adviser through your local Jobcentre.

- **Employers' Forum on Disability**
An employers' organisation focusing on disability as it affects business - aiming to make it easier to recruit and retain disabled employees and to serve disabled customers.
Telephone: 020 7403 3020.
- **RADAR**
A national network of disability organisations and disabled people run by and working for disabled people. It provides a gateway to information about disability and employment, with some organisations providing guidance on risk assessment relevant to the specific disability. Telephone: 020 7250 3222.
- **Disability Discrimination Act 1995**
Code of practice on employment and occupation. This explains in detail what disability discrimination law requires and gives many case studies. Equality and Human Rights Commission.
Telephone: 08457 622 633.
- **The Disability Discrimination Act and you**
Leaflet for employers. Contact your local DWP office for a copy.

Health and safety at work

- **Scotland's Health at Work**
This free National Award Programme for promoting health in the workplace has been created to meet the challenge of ensuring the continued success of Scottish industry. The programme supports people in the workplace with disabilities. Your local adviser can discuss how the programme can be tailored to meet the needs of any employee with a disability.
Telephone: 0800 056 1279.
- **Institute of Occupational Health and Safety (IOSH)**
Occupational Health Toolkit (<http://www.ohtoolkit.co.uk/>).
Telephone: 0116 257 3100 for a copy.

Employment relations

- **Acas**

Impartial advice that aims to improve organisations and working life through working with employers and employees to solve problems and improve performance.

Telephone: 0845 747 4747.

- **Fire safety**

‘Fire safety risk assessment: Means of escape for disabled people’ Available from Department for Communities and Local Government Telephone: 020 7944 4400.

Also online at www.communities.gov.uk/publications/fire/firesafetyassessmentmeans.

Contacts

Contacting HSE

If you have a query about health and safety in your workplace contact Infoline, HSE’s national public enquiry centre.

You do not have to identify yourself – you can be confident that you will remain anonymous.

Infoline gives you access to HSE’s wealth of health and safety information. If your enquiry requires specialist advice you will be put in contact with someone who can give you the advice and guidance that you need.

Infoline is available from 8.30 am to 5.00 pm Monday to Friday (excluding Bank Holidays).

How to contact Infoline

HSE Information Services
Caerphilly Business Park
Caerphilly
CF83 3GG

Telephone: 0845 345 0055

e-mail: hse.infoline@natbrit.com

- If you do not speak English, Infoline offers an interpreting service for both telephone and written enquiries.
- A minicom service is also available if you have a hearing impairment (Telephone: 0845 408 9577).

Acknowledgements

The leaflet was developed jointly by HSE and the Disability Rights Commission (DRC).*

We set out our principles of health and safety management and disability in our joint statement which can be found on HSE's website. We acknowledge the support of the disabled people who assisted with this project and HSE Northern Ireland.

* The Disability Rights Commission (DRC) closed on 28 September 2007. Its responsibility for helping secure civil rights for disabled people has transferred to the new Equality and Human Rights Commission (EHRC) which opened for business on 1 October 2007.