

Causeway Coast & Glens
Borough Council

**BALANCING DISABILITY RIGHTS AND
HEALTH AND SAFETY REQUIREMENTS**
A GUIDE FOR EMPLOYERS

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1. INTRODUCTION

In Northern Ireland it is estimated that almost one in five people of working age has a long-term disability. It is also recognised that the likelihood of acquiring a long-term disability increases with advancing age. ¹

The Disability Discrimination Act 1995 (DDA) which applies to employers with fifteen or more employees, makes it unlawful to discriminate against disabled people in terms of recruitment, promotion, training, working conditions or dismissal. The DDA also places a duty on employers to make 'reasonable adjustments' within their workplace for disabled workers.

Employers concerns about health and safety issues have been identified as an artificial barrier to employment for disabled people. ² Employers may have limited information about disability and be uncertain about whether the DDA or health and safety at work legislation should take precedence.

This practical guide aims to clarify your responsibilities as an employer under both the DDA and health and safety at work legislation. It explains the main issues, uses case studies to illustrate practical steps which can be taken and provides information on local sources of advice.

2. WHAT IS DISABILITY?

The DDA defines a disability as a "physical or mental impairment that has a substantial and long term adverse effect on a person's ability to carry out normal day-to-day activities."

This definition applies where the disability has lasted twelve months or is expected to last twelve months or more. Disability is not always obvious. If in doubt seek guidance on the definition from the Equality Commission for Northern Ireland.

An I.T. worker who developed schizophrenia, wished to return to work after a period of extended leave. The employer sought advice regarding revision of duties. The individual was able to return to work in a project team where he was supported and able to work at his own pace. He started working three days a week and gradually phased himself back into full-time employment. The employer also arranged for the worker's colleagues and supervisor to attend mental health awareness training.

3. WHEN DOES DISCRIMINATION OCCUR?

Employers may be deemed to have discriminated against a disabled person in either one of two ways:

- **Less Favourable Treatment** – If for a reason relating to a person’s disability, the employer treats that person less favourably than they would treat others to whom that reason does not apply and, they cannot show that the treatment is justified; and/or
- **Reasonable Adjustment** – If they fail to make a “reasonable adjustment” to the working arrangements or physical features of premises which place a disabled person at a substantial disadvantage compared to non-disabled persons, and this failure cannot be justified.

For more information on discrimination issues contact the Equality Commission for Northern Ireland.

A machine operator on a rotating shift pattern developed epilepsy. Following discussion with the employee, and recommendations made by his GP the employer deployed the employee to other duties that involve a fixed day shift. The move to a more regular working pattern was of assistance to the employee in managing his condition.

4. WHAT ARE REASONABLE ADJUSTMENTS?

When an employer becomes aware of an employee’s disability, some adjustments that could be considered reasonable are:

- Adjustments to premises or workstations;
- Allocating some of the disabled person’s duties to another person;
- Transferring the employee to another post;
- Altering working hours;
- Assigning the employee to a different place of work;
- Allowing time off for rehabilitation, assessment or treatment;
- Giving, or arranging for the employee to receive training;
- Providing training for other employees;
- Acquiring or modifying equipment;
- Modifying instructions or reference manuals;
- Modifying procedures for testing or assessment;
- Providing a reader or interpreter and;
- Providing supervision.

In determining whether it is reasonable for an employer to take a particular action, regard will be given to:

- The effectiveness of the adjustment in preventing the disadvantage to the disabled person;
- The practicability of the adjustment;
- The financial and other costs of the adjustment and the extent of any disruption caused;
- The extent of the employer's financial or other resources and;
- The availability of financial or other assistance.

The employer is not required to do anything under the DDA that would result in a breach of any other statutory obligations including health and safety law.

However the burden of proof rests on the employer to show that no reasonable adjustments were available to enable the disabled person to work safely.³

A sensible approach which employers may wish to adopt is, firstly to look at what reasonable adjustments are required under the DDA. Then consider which, if any, additional reasonably practical adjustments are necessary to ensure compatibility with health and safety legislation.

The employer should discuss the adjustments with the disabled person, as the individual is often the best person to identify what is needed. For further advice about reasonable adjustments, see the list of contacts in Section 9.

Quite often the necessary adjustments are inexpensive. Research has shown that almost half of workplace adjustments for disabled people cost less than £50 and in some cases, the cost is zero.² The Disablement Employment Advisors (DEA) from the Department for Employment and Learning can provide advice on financial assistance available to employers.

Studies have also shown that retaining people who have become disabled, may be more cost effective than recruiting and training a new employee to the position.⁴

As a result of a head injury, a telephone sales consultant had difficulties in hearing. Sound absorbing partitions were installed to reduce noise and distractions at her workstation and her telephone ring tone was reprogrammed so that she could hear when her phone was ringing. She was also supplied with a vibrating pager, which can be activated to alert her in the event of an emergency.

5. HEALTH & SAFETY AT WORK REQUIREMENTS

The Health and Safety at Work (NI) Order 1978 states that the employer must 'ensure so far as is reasonably practicable the health, safety and welfare at work of all his employees'.

Employers must also have regard for the health and safety of people who are not their employees, but who may be affected by their work or business activities.

In addition, the Management of Health and Safety at Work Regulations (NI) 2000 requires the employer to 'make a suitable and sufficient assessment of risks to the health and safety of his employees to which they are exposed whilst they are at work'.

Employers are also required to consider people who are not their employees, but who may be affected by their work or business activities, in their risk assessment.

Risk Assessment can be considered in five steps:

- Identify the hazards (anything that can cause harm);
- Decide who might be harmed and how;
- Evaluate the risk (the chance that someone will be harmed) and decide what precautions are necessary to eliminate or reduce the risk;
- Record the findings (applies to employers of five or more employees, but is also recommended for smaller businesses);
- Review the assessment if things change.⁵

The Approved Code of Practice on the Management of Health and Safety at Work Regulations suggests that the employer should identify groups of workers, such as disabled people, who might be particularly at risk.

A 'competent person'⁶ should make a specific and objective assessment of the risks associated with the employment of the disabled person. This should be done in consultation with that individual, taking account of both the nature and extent⁷ of their disability and the working environment.

Employers and the individual may need to seek advice. This may be provided by General Practitioners (GPs), occupational health services, other health professionals or the DEAs. Certain provisions of the Access to Personal Files and Medical Reports (NI) Order 1991 will apply to employers seeking a medical report for employment purposes from an individual's GP. The Employment Medical Advisory Service (EMAS) of the Health and Safety Executive for Northern Ireland (HSENI) can also give you advice; see Section 9.

Health and safety law requires that you reduce the risk so far as is 'reasonably practicable'. Put simply, reasonably practicable implies a balancing of the degree of risk against the inconvenience and cost of overcoming it.

Concern was raised about the evacuation of a wheelchair user who was working on the third floor of a building. A personal emergency evacuation plan was devised in consultation with the employee and was incorporated into the general evacuation plan. This involved colleagues providing the employee with assistance in an emergency evacuation where the lift could not be used (note that some lifts can be used in the case of an emergency). The agreed strategy requires the employee to move independently to a fire safe refuge space from where appointed staff members could provide assistance using an emergency evacuation chair. Appropriate training in the use of emergency equipment and in manual handling techniques was provided. Account was taken of annual leave requirements so that adequate staff would always be present to effect the evacuation. The evacuation is practised as part of the regular fire drill routine.

6. BALANCING DDA AND HEALTH AND SAFETY AT WORK

When considering their duties to disabled employees, employers must fully explore their responsibilities under both the DDA and health and safety law in order to avoid unjustifiable treatment and to eliminate or reduce the risks to disabled people and others.

At a recent local Industrial Tribunal ⁸ an employee was awarded the sum of almost £21,500 after being unlawfully discriminated against on the grounds of his disability, a progressive eye condition, under the Disability Discrimination Act.

This case emphasised the importance of the employer's duties to make reasonable adjustments, to undertake a risk assessment and to discuss these procedures with the employee.

In certain circumstances some actions may be 'justified', even if there is a negative impact on the disabled person, so long as the decision to take the action was reached after a careful balancing of obligations under the reasonable adjustment duty and the duty to ensure, as far as is reasonably practicable, the health and safety of employees and others.

It is important to note that, by law, the burden of proof rests on the employer to prove that no reasonable adjustments were available to enable the disabled person to work safely, and that they have done all that is 'reasonably practicable'.

A call-centre worker, whose work involved prolonged sitting, developed severe back pain. Advice was sought from an occupational physician regarding the revision of the employee's duties. A recommendation was made to the employer to purchase a desk that rises up and down, enabling the employee to sit, change position or stand, whilst continuing to work.

7. GETTING STARTED

Whilst there are no hard and fast rules, the following steps are suggested:

- Focus on the facts and don't make assumptions;
- Assess the individual's capabilities and avoid blanket restrictions based on their 'disability';
- Involve the person concerned;
- Seek help from the Disablement Advisory Service, EMAS and others (see Section 9 'Contact us' and Section 11 'Sources of Useful Information');
- Match the person to the essential requirements of the job;
- Consider all the relevant workplace health and safety factors;
- Identify the actual duration and frequency of hazardous situations;
- Assess the risk to the individual and others;
- Identify potential adjustments and implement them and;
- Evaluate and review the situation if things change.⁹

A trainee hotel chef who had a learning disability was required to undergo training in the safe use of a variety of kitchen equipment. A number of adjustments were made to assist with this training including the revision of the training manual, and the offer of additional tutoring and study time.

8. WHO PRODUCED THIS BOOKLET?

This booklet has been jointly produced by Disability Action, the District Councils in Northern Ireland, the Equality Commission for Northern Ireland and the Health and Safety Executive for Northern Ireland.

Disability Action

Disability Action works to ensure people with disabilities attain their full rights as citizens. They offer advice, information and training on a wide range of issues relating to disability including the Disability Discrimination Act. Disability Action undertakes access audits of premises and provides advice in relation to making reasonable adjustments.

The Equality Commission for Northern Ireland

The Equality Commission for Northern Ireland is committed to eliminating discrimination in the workplace and when accessing goods, facilities and services. Part of its remit is to provide information, advice, training and guidance to employers on the Disability Discrimination Act and other equality issues. Disabled people may be granted

assistance in taking discrimination cases and employers can contact the Commission for advice on how to make ‘reasonable adjustments’ and implement the law.

Health and Safety Executive for Northern Ireland and the District Councils

The Health and Safety Executive for Northern Ireland (HSENI) is the lead body responsible for setting policy in respect of health and safety at work in Northern Ireland. It shares its responsibility for securing occupational health and safety standards in all workplaces with the District Councils in Northern Ireland.

The Employment Medical Advisory Service (EMAS) is an integral part of HSENI. It is staffed by a medical specialist who can give advice on medical matters relating to work, to a wide range of organisations and individuals.

Enforcement responsibilities are allocated between HSENI and the District Councils according to the Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1999.

In general HSENI is responsible for a range of work sectors including:

- Manufacturing, construction, agriculture, transport, security services, health service and education.
- District Councils are responsible for other work situations including: Offices, retail and wholesale premises, residential and catering services, leisure and entertainment.

9. CONTACT US

Disability Action,

Portside Business Park

189 Airport Road
Belfast, BT3 9ED,
Telephone: 028 9029 7880
Fax: 028 9029 7881
Textphone: 028 9029 7882
E-mail: hq@disabilityaction.org
Website: www.disabilityaction.org

District Councils

There are 11 District Councils in Northern Ireland. Contact details can be obtained from the telephone directory and enquiries should be directed to the relevant Environmental Health Department.

The Equality Commission for Northern Ireland,

Equality House
7 - 9 Shaftesbury Square
Belfast, BT2 7DP
Telephone: 028 9050 0600
Fax: 028 9033 1544
Textphone: 028 9050 0589
E-mail: information@equalityni.org
Website: www.equalityni.org

The Health and Safety Executive for Northern Ireland,

83 Ladas Drive
Belfast, BT6 9FR
Telephone: 028 9024 3249
Fax: 028 9023 5383
Telephone: 028 9054 2122 (EMAS)
Fax: 028 9054 6801 (EMAS)
Textphone: 028 9054 6896
Freephone helpline: 0800 032 0121
E-mail: hzeni@detini.gov.uk
Website: www.hzeni.gov.uk

10. REFERENCE DOCUMENTS

1. **The NI Labour Force Survey** –Summer 2002. Northern Ireland Statistics and Research Agency. Produced by the Department of Finance and Personnel.
2. **Integrating Disabled Employees** - A Watson; G Owen; J Aubrey and B Ellis. Research Report RR56. Produced by the Department for Education and Employment.
3. **Conoco Ltd v Booth (2001) Case Ref EIT/83/00.**
4. **The Recruitment and Retention of People with Disabilities** - S Dench; N Meacher and S Morris. Report 301. Produced by The Institute for Employment Studies.
5. **Safety Pays**– Information for Smaller businesses on Managing Health and Safety. Produced by the District Councils.
6. **The Approved Code of Practice and Guidance on the Management of Health and Safety at Work Regulations 1999.** Produced by the Health and Safety Commission, available from the Stationary Office.
7. **Risk Assessment Simplified** – Basic Guidance on Risk Assessment for Employers in Small to Medium Sized Businesses. Produced by HSENI.
8. **David Winning v Belfast City Airport Limited (2002) Case Ref 03202/97/D.**
9. **Practical Guide to Health and Safety and The DDA** - Employers Forum Briefing Paper Number 7. Produced by the Employers Forum on Disability (GB).

11. SOURCES OF USEFUL INFORMATION

Contact with the **Disablement Employment Advisor** (DEA) through your local Job Centre, ‘ONE’ Centre, Jobs and Benefits Office or:

Disablement Advisory Service

Department for Employment and Learning
5th Floor Gloucester House
57–63 Chichester Street
Belfast BT1 4RA
Telephone: 028 9025 2206
Textphone: 028 9025 2363
Fax: 028 9025 2213

Employer’s Forum on Disability (NI)

Banbridge Enterprise Centre
Scarva Road Industrial Estate
Banbridge BT32 3QD
Telephone: 028 4062 4526
Textphone: 028 4062 4526
Fax: 028 4066 9665
E-mail: info@efdni.org.uk

Employer's Forum on Disability (GB)

Nutmeg House

60 Gainsford Street

London SE1 2NY

Telephone: 020 7403 3020

Fax: 020 7403 0404

E-mail: efd@employers-forum.co.uk

Web site: www.employers-forum.co.uk

Further copies of this booklet are available from Disability Action, your local District Council, the Equality Commission for Northern Ireland and the Health and Safety Executive for Northern Ireland. Alternative formats of this booklet are available, on request, from the Equality Commission for Northern Ireland.

The booklet is also available on the websites of Disability Action, the Equality Commission for Northern Ireland and the Health and Safety Executive for Northern Ireland.