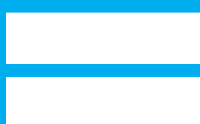
4. Your rights to equality at work: training, development, promotion and transfer.

Equality Act 2010 Guidance for employees.
Vol. 4 of 6.



Equality and Human Rights Commission

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Introduction

This guide is one of a series written by the Equality and Human Rights Commission to explain your rights under equality law. These guides will support the introduction of the Equality Act 2010. This Act brings together lots of different equality laws, many of which we have had for a long time. By doing this, the Act makes equality law simpler and easier to understand.

There are six guides giving advice on your rights under equality law when you are at work, whether you are an employee or in another legal relationship to the person or organisation you are working for. The guides look at the following work situations:

1. When you apply for a job
2. Working hours and time off
3. Pay and benefits
4. Promotion, transfer, training and development
5. When you are being managed
6. Dismissal, redundancy, retirement and after you've left

Other guides and alternative formats

We have also produced:

- A separate series of guides which explain your rights in relation to people and organisations providing services, carrying out public functions or running an association.
- Different guides explaining the responsibilities people and organisations have if they are employing people to work for them or if they are providing services, carrying out public functions or running an association.

If you require this guide in an alternative format and/or language please contact the relevant helpline to discuss your needs.

England

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Arndale House, Arndale Centre, Manchester M4 3AQ

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The legal status of this guidance

This guidance applies to England, Scotland and Wales. It has been aligned with the Codes of Practice on Employment and on Equal Pay. Following this guidance should have the same effect as following the Codes. In other words, if a person or an organisation who has duties under the Equality Act 2010's provisions on employment and other work situations does what this guidance says they must do, it may help them to avoid an adverse decision by a tribunal in proceedings brought under the Equality Act 2010.

This guide is based on equality law as it is at 1 October 2010. Any future changes in the law will be reflected in further editions.

This guide was last updated on 23 July 2010. You should check with the Equality and Human Rights Commission if it has been replaced by a more recent version.

1. Your rights to equality at work: training, development, promotion and transfer

What's in this guide

If your employer is making a decision, or taking action following a decision, about:

- improving your skills, or
- promoting or transferring you to another job or role in your organisation,

equality law applies to what they are doing.

Equality law applies:

- whatever the size of the organisation
- whatever sector you work in
- whether your employer has one worker or ten or hundreds or thousands
- whether or not your employer uses any formal processes or forms to help them make decisions
- whether any training you get is carried out by your employer or by someone else.

This guide tells you what your employer must do to avoid all the different types of unlawful discrimination. It recognises that smaller and larger employers may operate with different levels of formality, but makes it clear how equality law applies to everyone, and what this means for the way every employer (and anyone who works for them) must do things.

It covers the following situations and subjects (we explain what any unusual words mean as we go along):

- When your employer is offering training and development opportunities
- When your employer is making decisions relating to promotion and transfer
- If you are a disabled person, how your employer can make sure you are not discriminated against when they are offering training, development, promotion or transfer opportunities
- How your employer can use voluntary positive action to train, promote or develop a wider range of people

What else is in this guide

This guide also contains the following sections, which are similar in each guide in the series, and contain information you are likely to need to understand what we tell you about training, development, promotion and transfer:

- Information about when an employer is responsible for what other people do, such as their employees.
- Information about reasonable adjustments to remove barriers if you are a disabled person.
- Advice on what to do if you believe you've been discriminated against.
- A list of words and key ideas you need to understand this guide – all words highlighted in **bold** are in this list. They are highlighted the first time they are used in each section. Exceptions to this are where we think it may be particularly useful for you to check a word or phrase.
- Information on where to find more advice and support.

Your rights not to be discriminated against at work: what this means for how your employer must behave towards you

Are you a worker?

This guide calls you a **worker** if you are working for someone else (who this guide calls your **employer**) in a **work situation**. Most situations are covered, even if you don't have a written **contract of employment** or if you are a **contract worker** rather than an **employee**. Other types of worker such as **trainees**, **apprentices** and **business partners** is also covered. If you are not sure, check under 'work situation' in the List of words and key ideas. Sometimes, equality law only applies to particular types of worker, such as employees, and we make it clear if this is the case.

Protected characteristics

Make sure you know what is meant by:

- **age**
- **disability**
- **gender reassignment**
- **marriage and civil partnership**
- **pregnancy and maternity**
- **race**
- **religion or belief**
- **sex**
- **sexual orientation**.

These are known as **protected characteristics**.

What is unlawful discrimination?

Unlawful discrimination can take a number of different forms:

- Your employer must not treat you **worse** than someone else just because of a protected characteristic (this is called **direct discrimination**).

  For example:

An employer does not consider someone to be suitable for a promotion just because they are a disabled person.

  - If you are a woman who is **pregnant** or on **maternity leave**, the test is not whether you are treated worse than someone else, but whether you are treated **unfavourably** from the time you tell your employer you are pregnant to the end of your maternity leave (which equality law calls the **protected period**) because of your pregnancy or a related illness or because of maternity leave.

- Your employer must not do something to you in a way that has a worse impact on you and other people who share a particular protected characteristic than on people who do not have the same characteristic. Unless your employer can show that what they have done, or intend to do, is **objectively justified**, this will be **indirect discrimination**. 'Doing something' can include making a decision, or applying a rule or way of doing things.

  For example:

An employer only allows workers who work full-time to apply for promotion. This has a worse impact on women workers, who are more likely to work part-time. Unless the employer can **objectively justify** the requirement to work full-time, this is very likely to be indirect discrimination because of sex.

- If you are a disabled person, your employer must not treat you **unfavourably** because of something connected to your disability where they cannot show that what they are doing is **objectively justified**. This only applies if they know or could reasonably be expected to know that you are a disabled person. This is called **discrimination arising from disability**.

  For example:

  An employer who runs a fashion store turns down an employee who is a disabled person for a promotion to a customer-facing role, even though she is well-qualified for the job. The employee is a person of restricted growth and very few of the clothes the store sells fit her, which means she could not meet the requirement the employer has that shop staff should wear the clothes the store sells. The employee has been treated unfavourably (not getting the promotion) because of something arising from her disability (that she cannot wear standard sized clothing). This is almost certainly discrimination arising from disability unless the employer can objectively justify the requirement to wear particular clothes. This may also be a failure to make a reasonable adjustment.

- Your employer must not treat you worse than someone else because you are **associated with** a person who has a protected characteristic.

  For example:

  An employer does not ask a worker if they would like to go on a training course because they know the worker has a disabled partner who they assist in day-to-day tasks like washing and dressing. The employer assumes the worker would not want to be away from home for a longer than usual working day, which is what the training would involve. However, the worker should still be asked if they want to go on the course. Instead, they have been excluded from this opportunity. This is very likely to be direct discrimination because of disability.

- Your employer must not treat you worse than someone else because they incorrectly think you have a protected characteristic (**perception**).

  For example:

  An employer does not offer a worker a chance of a promotion because they think the worker is gay, even though they are not, and they do not think other workers would like to be managed by them. This is likely to be direct discrimination because of sexual orientation.

- Your employer must not treat you badly or **victimise** you because you have complained about discrimination or helped someone else complain or have done anything to uphold your own or someone else's equality law rights.

  For example:

  > An employer does not offer a worker training. This is because last year the worker supported a colleague in a complaint that she had been harassed at work. If the previous complaint is the reason for the failure to give the worker the assessment, this is likely to be victimisation.

- Your employer must not **harass** you.

  For example:

  > An employer makes someone who is being interviewed for promotion feel humiliated by telling jokes about their religion or belief during the interview.

In addition, if you are a disabled person, to make sure that you have the same access, as far as is reasonable, to everything that is involved in getting and doing a job as a non-disabled person, your employer must make **reasonable adjustments**.

For example:

> A suitably qualified and experienced disabled employee who has an impairment which affects their hand and arm mobility is promoted to a position where they need to word process documents. Their employer provides them with assistive technology to help with this part of the role. While they are waiting for the technology to be installed, the employer arranges for a temporary audio typist to assist them instead.

You can read more about reasonable adjustments to remove barriers for disabled people in Chapter 3.

Situations where equality law is different

Sometimes there are situations where equality law applies differently. This guide refers to these as **exceptions**.

There are several exceptions which relate to training, promotion and transfer which apply to all employers.

There are others that only apply to particular types of employer.

This guide lists the exceptions that apply to the situations it covers. There are more exceptions which apply in other situations, for example, when your employer is selecting someone for redundancy. These are explained in the relevant guide in the series.

In addition to these exceptions, equality law allows your employer to:

- Treat disabled people better than non-disabled people.
- Use voluntary **positive action**. You can read more about positive action in relation to training, promotion and transfer later in this chapter.

Age

Age is different from other protected characteristics. If your employer can show that it is **objectively justified**, they can make a decision based on someone's age, even if this would otherwise be direct discrimination.

However, it is very unusual to be able to **objectively justify** direct age discrimination of this kind. Employers should be careful not to use stereotypes about a person's age to make a judgement about their fitness or ability to do a job.

For example:

- An employer rejects an application for a promotion by a 25 year old worker because they are younger than the people they would be managing.
- An employer refuses to provide training to workers over 50 because the employer believes they are likely to be too set in their ways.

Both of these employers would have unlawfully directly discriminated against their workers because of age unless they can objectively justify what they have done, which is highly unlikely.

But special exceptions apply for people close to **retirement age**, and in this situation your employer do not have to show that the age limit they are using is **objectively justified**:

Your employer can decide not to take you on as an **employee**, including promoting or transferring you, because of your age if, within 6 months of applying for the job, you will be 65 or older or over your organisation's **normal retirement age** if that is higher than 65.

For example:

An organisation has a normal retirement age of 70. An applicant for a transfer is 69 years and 8 months old at the time of making an application to work for it. The employer is allowed to refuse the application just because the applicant will reach the age of 70 within six months.

In addition, provided access to training or another opportunity counts as a benefit (so that it is treated like pay), your employer is allowed to offer you different access to training, based on how long you have worked for them, even though this would otherwise be indirect discrimination (because younger workers are likely to find it harder to get the better benefits as they will have been at work for a shorter time).

For length of service up to five years, your employer does not have to justify differences at all.

For example:

An employer runs an extra course to help workers with three to five years' service think about promotion opportunities. Workers with only one or two years' service do not get the opportunity to attend this.

Length of service can be worked out in one of two ways:

- by the length of time you have been working for your employer at or above a particular level, or
- by the length of time you have been working for your employer in total.

If your employer uses length of service of more than five years to award or increase a benefit, this falls outside the exception.

But there is a further difference: your employer may still be able to use length of service to set benefits (including training) after workers have been with them for more than five years if they **reasonably** believe that using length of service in this way fulfils a business need. They may believe it rewards higher levels of experience, encourages loyalty, or increases or maintains workers' motivation.

This is a less difficult test than the general test for **objective justification** for indirect discrimination. However, your employer must still have evidence on which to base their belief.

Occupational requirements

If your employer can show that a particular protected characteristic is central to a particular job, they can insist that only someone who has that particular protected characteristic is suitable for the job, including on promotion or transfer. This would be an '**occupational requirement**'.

For example:

> An organisation promoting the interests of transsexual people may want to say that its chief executive, who represents it to the outside world, should be a transsexual person. This would probably be a genuine occupational requirement because only someone from the group whose interests are being promoted can explain the issues firsthand.

Obeying another law

Your employer can take a protected characteristic into account where not doing this would mean they broke another law.

For example:

> A driving school cannot promote a 19-year-old administrator to a job as a driving instructor even after suitable training because a driving instructor must be aged at least 21.

National security

Your employer can take a protected characteristic into account if there is a need to safeguard **national security**, and the discrimination is proportionate.

Exceptions that only apply to some employers

There are also exceptions that only apply to some employers:

- If your employer is a **religion or belief organisation**, they may be able to say that a job requires you to hold a particular religion or belief if, having regard to the nature or context of the job, this is an Occupational Requirement and it is **objectively justified**. This includes on promotion or transfer.

  For example:

  > A Humanist organisation wants to promote an internal candidate as its chief executive. It may well be able to say that the chief executive must be a Humanist and exclude applicants who are not.

- If your employer is an **organised religion**, or even if they are not but a job is for the purposes of an organised religion, they may be able to say that a job or role requires you to have or not have a particular protected characteristic or to behave or not behave in a particular way. This includes on promotion or transfer, and can also apply to training opportunities.

  If:

  - a job or role exists for the purposes of an organised religion, such as being a Minister or otherwise promoting or representing the religion, and
  - because of the nature or context of the employment, it is necessary to avoid conflict with the strongly held religious convictions of a significant number of the religion's followers or to conform to the doctrines of the religion by applying a requirement to the job or role,

  your employer may be able to refuse to train, promote or transfer you because:

  - you are male or female
  - you are a transsexual person
  - you are married or in a civil partnership, including taking into account who you are married to or in a civil partnership with (such as being married to a divorced person whose former spouse is still alive)
  - you **manifest** a particular sexual orientation, for example, you are a gay or lesbian or bisexual person who is in a relationship with a same sex partner.

  The requirement must be crucial to the job or role, and not merely one of several important factors. The job or role must be closely related to the purposes of the religion, and the application of the requirement must be **proportionate**.

- If an organisation is an **employment service provider**, they may be able to say that you must have a particular protected characteristic to do **vocational training**, if the training leads to work for which having that characteristic is an occupational requirement

- Some **educational establishments** like particular schools or colleges may be able to say that you have to be of a particular religion or belief, or must be a woman, to hold a particular post, including on promotion or transfer

- If a promotion or transfer is within the **civil, diplomatic, armed or security and intelligence services and some other public bodies**, the employer can specify what nationality you have to be

- If an employer is promoting or transferring people who are serving in the armed forces, they may be able to exclude women and transsexual people if this is a proportionate way to make sure the combat effectiveness of the **armed force**s. In addition, age and disability are, in effect, not protected characteristics for service in the armed forces.

There are more details of these exceptions in the list of words and key ideas.

Treating disabled people better than non-disabled people

As well as these exceptions, equality law allows an employer to treat a disabled person better – or **more favourably** – than a non-disabled person. This recognises that disabled people face a lot of barriers to participating in work and other activities.

For example:

> An employer has a policy of shortlisting and interviewing all disabled applicants who meet the minimum requirements for a job on promotion. The law would allow this. It would not be unlawful discrimination against a non-disabled applicant who also meets the minimum requirements but is not shortlisted because there are better-qualified candidates.

What's next in this guide

The next part of this guide tells you more about how an employer can avoid all the different types of **unlawful discrimination** in the following situations:

- When your employer is offering training and development opportunities
- When your employer is making decisions relating to promotion and transfer
- If you are a disabled person, how your employer can make sure you are not discriminated against when they are offering training, development, promotion or transfer opportunities
- How your employer can use voluntary positive action to train, promote or develop a wider range of people

When your employer is offering training and development opportunities

Training is usually aimed at improving someone's skills or knowledge or raising awareness of an issue, for example, of what equality law means for how workers behave towards one another.

Your employer can generally decide whether to offer training and, if they do offer it, who needs it. But if they do offer opportunities for training or development, they must do this without **unlawful discrimination**.

Use the information earlier in this guide to make sure you know what equality law says your employer must do to avoid unlawful discrimination.

Training and development opportunities can be delivered in-house or by external providers. They can happen face-to-face, online, in groups or one-to-one. They can include the following:

- learning 'on the job'
- coaching
- e-learning
- workshops
- induction programmes
- job shadowing
- mentoring
- networking and seminars
- formal classes on day release or out of working hours
- project work
- 'buddying'
- secondments and sabbaticals.

If your employer makes assumptions on the basis of your protected characteristics about your ability to take part in training or the benefits you will gain, this may lead to **unlawful discrimination**.

For example:

- An employer must not assume that women are not interested in training or development because they have children and domestic responsibilities. If an employer acted on this assumption, it would probably be direct discrimination because of sex.
- If a worker is older, an employer must not assume that they will not want to continue to learn and develop. Or that younger workers will quickly move on and any investment in their training will be wasted.
- An employer must not make assumptions about disabled people's ability to take part in training or the benefits they will gain. They should discuss training with a disabled worker and find out whether they need reasonable adjustments to participate fully.

Your employer may need to offer training flexibly or to make changes to the timing, style and location of training to avoid unlawful discrimination, particularly indirect discrimination (if they cannot **objectively justify** what you are doing) or a failure to make reasonable adjustments.

For example:

- An employer only offers one chance to do a training course which is on a Friday in winter starting at 8.30am and finishing at 5.00pm, by which time it is dark. Unless the employer can objectively justify only offering this one chance on that particular day, this may be indirect discrimination against women (who are more likely to work flexibly) and Jewish people (who may need to have finished work before dark to observe the Sabbath).
- An employer uses computer-based training. They should not assume everyone will be able to use a computer without checking this first. Some disabled workers may not be able to use a computer without reasonable adjustments.
- An employer does not check that an external training venue is accessible to a worker who has a mobility impairment. When the worker, who uses two sticks to walk with, arrives, they cannot access the training room, which is up two flights of stairs with no lift. It is likely that offering the training at an accessible location would have been a reasonable adjustment.

Access to some opportunities, including training, may count as a benefit. This means they are treated in the same way as pay. You can read more about what this means in the Equality and Human Rights Commission guide: *Your rights to equality at work: pay and benefits*.

Training and development for women who are pregnant or on maternity leave

Your employer must not stop you doing training because you are pregnant, on maternity leave or due to take maternity leave, or on pregnancy- or maternity-related sickness absence.

It would almost certainly be unlawful sex discrimination to deny you training for a reason related to your pregnancy (or impending maternity leave).

Your employer cannot try to justify this by saying they are protecting you from a health and safety risk, unless a specific risk has been identified.

When your employer is making decisions relating to promotion or transfer

Your employer must offer opportunities for promotion, transfer or other career development without **unlawful discrimination**. This includes development opportunities that could lead to permanent promotion – for example, ‘acting up’ on temporary promotion, deputising or secondment.

Use the information earlier in this guide to make sure you know what equality law says your employer must do to avoid unlawful discrimination.

Promoting or transferring a worker is very similar to recruiting them in the first place. If you want to know more about this, read the Equality and Human Rights Commission guide: *Your rights to equality at work: when you apply for a job*.

There are steps your employer can take to help them make sure they are not taking your protected characteristics into account in a way that equality law does not allow.

Does an employer have to advertise a promotion or transfer opportunity?

Although equality law does not require an employer to advertise vacancies or opportunities for promotion either inside or outside their organisation, doing this may help your employer avoid unlawful discrimination.

For example:

> An employer promotes a male worker to a post without advertising the vacancy internally. There are female workers who are qualified for the role and would have applied if they had known about it. They have missed out on an opportunity and if they can show either that the employer ignored them just because they were female (which would be direct discrimination) or applied a requirement to the role which had a worse impact on the female workers and which the employer could not objectively justify and this was why the employer did not consider them (which would be indirect discrimination), then the employer may find themselves facing a tribunal claim.

Promotion and other opportunities during pregnancy and maternity leave

Your employer must not deny you promotion opportunities because you are a woman who is pregnant or on maternity leave. If you are on maternity leave, you must be considered for promotion in the same way as any other worker who is not on leave.

To avoid unlawful discrimination, your employer should tell you about promotion opportunities when you are on maternity leave, and give you the opportunity to apply for any promotion you would have been told about had you been at work.

Your employer should avoid making assumptions about women when promoting people. Acting on an assumption that a woman with children will be unreliable, inflexible or not interested in a demanding role, and therefore unsuitable for promotion, would almost certainly be unlawful direct discrimination because of sex.

If you are a disabled person how your employer can make sure you are not discriminated against when they are offering training, development, promotion and transfer opportunities

To make sure that they are not excluding disabled people from training, development, promotion or transfer opportunities, your employer needs to look at how they describe the role and the person they are looking for.

Your employer must consider not only whether they are **discriminating directly or indirectly** because of your disability, but also:

- Whether they are treating you in a particular way which, because of something connected with your disability, puts you at a disadvantage if they cannot justify this way of doing what they are doing ('**discrimination arising from disability**').
- Whether **reasonable adjustments** are required to enable you to take up a training, development, promotion or transfer opportunity.

Training

Your employer must make sure you are not discriminating against or causing substantial disadvantage to you if you are a disabled person. Anything which is more than minor or trivial is considered to be substantial disadvantage.

This may require them to make **reasonable adjustments** to selection procedures for training or the training arrangements themselves. This could involve changing the way they do things, or changes to the premises that they use or providing extra aids, services or equipment.

You can read more about reasonable adjustments to remove barriers for disabled people in Chapter 3.

This includes your employer looking at how they give you access to secondment opportunities, work shadowing, having access to a mentor or attending an event that may help you to develop your career.

Specialist training

Your employer may need to provide you with specialist training so that you can make effective use of reasonable adjustments. This could include training on equipment which you have as an adjustment, for example, specialist computer software.

Or the training may in itself be an adjustment, for example, orientation training in a new workplace if someone has a learning disability or visual impairment.

Training for other staff

It may also be helpful for your employer to consider the training needs of other staff who are working with you as a reasonable adjustment (provided you have given permission for other staff to know about your situation). This could range from specialist training for managers who are making decisions about reasonable adjustments through to things like Deaf awareness training for people with a Deaf colleague.

Promotion or transfer

If you might be eligible for a promotion or transfer or other development opportunity and you are a disabled person:

- Your employer must not make assumptions about your abilities or willingness to take on a new role.
- It is also important for your employer to consider whether particular qualifications are actually required or whether what they really need is a particular skill level.
- Any information about the role should not say or imply that it is unsuitable for a disabled person unless there is a clear role-related reason for this.
- Your employer should tell everyone, including workers who have a disability, about any promotion or transfer or other development opportunity. This includes giving you the information in the format you usually use at work, for example, large print or electronically. This is likely to be a reasonable adjustment.
- If your employer decides to interview you for a promotion or other opportunity and knows that you are a disabled person they must make any reasonable adjustments you need to attend and participate in the interview.
- When assessing your suitability for the new role your employer needs to take account of how reasonable adjustments could enable you to meet the new requirements.
- If after working out how reasonable adjustments could enable you to meet the new requirements of a role to which they are considering promoting you, your employer decides you are not the best person for the promotion, they do not have to offer it to you. Obviously if you are the best person they will want to offer it to you and make the reasonable adjustments.

How your employer can use voluntary positive action to train, promote or develop a wider range of people

In this section, we look at the following issues

- What is 'positive action'?
- Does an employer have to take positive action?
- When can employer use positive action?
- Treating disabled people better than non-disabled people
- Other exceptions where a particular protected characteristic can be looked at during training, development, promotion or transfer but which are not positive action

What is 'positive action'?

'**Positive action**' means the steps that an employer can take to encourage people from groups with different needs or with a past track record of disadvantage or low participation to participation to take up training, development, promotion or transfer opportunities.

An employer can use positive action where they reasonably think (in other words, on the basis of some evidence) that:

- people who share a **protected characteristic** suffer a **disadvantage** connected to that characteristic
- people who share a protected characteristic have **needs that are different** from the needs of people who do not share it, or
- participation in an activity by people who share a protected characteristic is **disproportionately low**.

Sometimes the reasons for taking action will overlap. For example, people sharing a protected characteristic may be at a disadvantage and that disadvantage may also give rise to a different need or may be reflected in their low level of participation in particular activities.

To deal with the three situations, an employer can take proportionate action to:

- enable or encourage people to overcome or minimise disadvantage
- meet different needs, or
- enable or encourage participation.

When an employer is considering promoting someone, equality law allows positive action before or at the application stage, when the steps could include encouraging particular groups to apply, or helping people with particular protected characteristics to perform to the best of their ability (for example, by giving them training or support not available to other applicants).

In relation to training and development, equality law allows an employer to target training at particular groups.

An example of when an employer might decide to take positive action is if they have evidence that the make up of a particular level in their workforce is different from the make up of their local population, so they decide to encourage people who share particular under-represented protected characteristics to undertake training.

Or there is evidence that people with a particular protected characteristic are less likely to have a particular qualification which is relevant to a job or might increase their chances of getting promoted. The employer gives particular attention to training people from that group.

This is not the same as '**positive discrimination**' or '**affirmative action**' which equality law does not allow.

Does an employer have to take positive action?

Taking positive action is voluntary. An employer does not have to take positive action and you cannot make an employer use positive action in relation to training, development, promotion or transfer. However:

- Meeting the different needs of a workforce (for example, in relation to training) can help make staff more productive.
- Recruiting from or promoting or developing a wider range of people, in terms of their protected characteristics, can help an organisation to understand its customers, clients or service users better.
- If an employer is a **public authority**, positive action may help them meet the **public sector equality duty**.

When can an employer use positive action?

Equality law says that an employer has to go through a number of tests to show that positive action is needed.

The tests say that the steps an employer is allowed to take as part of positive action must be **proportionate** to these aims which means they must:

- be related to the level of disadvantage that exists;
- not be simply for the purposes of favouring one group of people over another where there is no disadvantage or under-representation in the workforce.

  For example:

> An education employer could not use positive action to attract male candidates on promotion for a head teacher's job where men already hold 80 per cent of senior roles, even though women make up 70 per cent of the teaching workforce as a whole. Since the steps would not be being taken to overcome a disadvantage for or under-representation of men this would be unlawful direct discrimination.
>
> However, the employer could use positive action to promote more women as they are under-represented at this level, for example, they could offer a training programme targeted at women to encourage them to apply for senior jobs and help make sure they can demonstrate the necessary skills to be the best candidate for a particular position.

An employer must not have a blanket policy or practice of automatically treating people who share a protected characteristic better than those who do not have it for recruitment, including promotion or transfer. An employer must still appoint the best person for the job, even if they do not have the particular protected characteristic being targeted by the positive action.

Treating disabled people better than non-disabled people

Equality law allows an employer to treat a disabled person better - or **more favourably** - than a non-disabled person. This recognises that disabled people face a lot of barriers to participating in work and other activities.

For example:

> An employer has a policy of shortlisting and interviewing all disabled applicants who meet the minimum requirements for jobs on promotion. The law would allow this. It would not be **unlawful discrimination** against a non-disabled applicant who also meets the minimum requirements but is not shortlisted.

Other situations where a particular protected characteristic can be looked at during training, development, promotion or transfer but which are not positive action

There are a few exceptions where employers can target applicants with a particular protected characteristic without this being unlawful discrimination. These are not the same as positive action.

For example:

> If an '**occupational requirement**' exists for the job:
>
> - An organisation exists to advance the interests of fathers. It may be possible for them to specify that their chief executive should be a father, since this post has a significant representative role. The applicant's sex would be what is called an 'occupational requirement' for the job and this would apply to internal as well as external candidates.

The difference between an occupational requirement and positive action is that:

- An employer using an occupational requirement says that only people with a particular protected characteristic can do the job.
- An employer who wants to use positive action says that anyone who has the right skills, qualities and experience is able do the job, but they want to look especially hard for someone with a particular protected characteristic.

You can read more about exceptions at page 10.

2. When your employer is responsible for what other people do

It is not just how your employer personally behaves that matters.

If another person who is:

- employed by your employer, or
- carrying out your employer's instructions to do something (who the law calls your employer's agent)

does something that is **unlawful discrimination**, **harassment** or **victimisation**, your employer can be held legally responsible for what they have done.

This part of the guide explains:

- When your employer can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation
- How your employer can reduce the risk that they will be held legally responsible
- When your employer's employees or agents may be personally liable
- What happens if a person instructs someone else to do something that is against equality law
- What happens if a person helps someone else to do something that is against equality law
- What happens if an employer tries to stop equality law applying to a situation

When your employer can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation

Your employer is legally responsible for acts of discrimination, harassment and victimisation carried out by their employees in the course of their employment.

Your employer is also legally responsible as the 'principal' for the acts of their agents done with their authority. Their agent is anyone your employer has instructed to do something on their behalf, even if your employer does not have a formal contract with them.

As long as:

- the employee was acting in the course of their employment – in other words, while they were doing their job, or
- the agent was acting within the general scope of their principal's authority – in other words, while they were carrying out your employer's instructions

it does not matter whether or not your employer:

- knew about, or
- approved of

what their employee or agent did.

For example:

- A shopkeeper goes abroad for three months and leaves an employee in charge of the shop. This employee harasses a colleague with a learning disability, by constantly criticising how they do their work. The colleague leaves the job as a result of this unwanted conduct. This could amount to harassment related to disability and the shopkeeper could be responsible for the actions of their employee.
- An employer engages a head-hunter to work in-house to recruit a team of senior management. The head-hunter weeds out applications from women of child bearing age. This is almost certainly unlawful sex discrimination. Both the employer and the head-hunter (who is the employer's agent) would be legally responsible for the discrimination, except that the employer can show that they told the head-hunter to comply with equality law. This means that the authority given to the head-hunter as agent did not extend to acting in a discriminatory way, the agent acted outside the scope of the employer's authority and only the agent is liable for the discrimination.

However, your employer will not be held legally responsible if they can show that:

- they took **all reasonable steps** to stop an employee acting unlawfully
- an agent acted outside the scope of their authority (in other words, that they did something so different from what your employer asked them to do that they could no longer be thought of as acting on your employer's behalf).

How your employer can reduce the risk that they will be held legally responsible

Your employer can reduce the risk that they will be held legally responsible for the behaviour of their employees or agents if they tell them how to behave so that they avoid unlawful discrimination, harassment or victimisation.

This does not just apply to situations where your employer and their other staff are dealing face-to-face with you, but also to how your employer and the people who work for them plan what happens in your workplace.

When your employer or their employees or agents are planning what happens to you in a work situation, your employer needs to make sure that their decisions, rules or ways of doing things are not:

- **direct discrimination**, or
- **indirect discrimination** that they cannot **objectively justify**, or
- **discrimination arising from disability** that they cannot **objectively justify**, or
- **harassment**,

and that they have made **reasonable adjustments** for you if you are a disabled person.

So it is important for your employer to make sure that their employees and agents know how equality law applies to what they are doing.

When your employer's employees or agents may be personally liable

An employee or agent may be personally responsible for their own acts of discrimination, harassment or victimisation carried out during their employment or while acting with their employer's authority. This applies where either:

- your employer is also liable as their employer or principal, or
- your employer would be responsible but they show that:
  - they took **all reasonable steps** to prevent their employee discriminating against, harassing or victimising you, or
  - that their agent acted outside the scope of their authority.

For example:

> A factory worker racially harasses their colleague. The employer would be liable for the worker's actions, but is able to show that they took all reasonable steps to stop the harassment. The colleague can still claim compensation against the factory worker in an employment tribunal.

But there is an exception to this. An employee or agent will *not* be responsible if their employer or principal has told them that there is nothing wrong with what they are doing and the employee or agent **reasonably** believes this to be true.

It is a criminal offence, punishable by a fine, for an employer or principal to make a false statement which an employee or agent relies upon to carry out an unlawful act.

What happens if a person instructs someone else to do something that is against equality law

An employer or principal must not instruct, cause or induce their employee or agent to discriminate against, harass or victimise another person, or to attempt to do so.

'Causing' or 'inducing' someone to do something can include situations where someone is made to do something or persuaded to do it, even if they were not directly instructed to do it.

Both:

- the person who receives the instruction or is caused or induced to discriminate against, harass or victimise, and
- the person who is on the receiving end of the discrimination, harassment or victimisation

have a claim against the person giving the instructions if they suffer loss or harm as a result of the instructing or causing or inducing of the discrimination, harassment or victimisation.

This applies whether or not the instruction is actually carried out.

What happens if a person helps someone else to do something that is against equality law

A person must not help someone else carry out an act which the person helping knows is unlawful under equality law.

However, if the person helping has been told by the person they help that the act is lawful and he or she **reasonably** believes this to be true, he or she will not be legally responsible.

It is a criminal offence, punishable by a fine, to make a false statement which another person relies on to help to carry out an unlawful act.

What happens if an employer tries to stop equality law applying to a situation

An employer cannot stop equality law applying to a situation if it does in fact apply. For example, there is no point in an employer making a statement in a contract of employment that equality law does not apply. The statement will not have any legal effect. That is, it will not be possible for the employer to enforce or rely on a term in a contract that tries to do this. This is the case even if the other person has stated they have understood the term and/or they have agreed to it.

For example:

- A worker's contract includes a term saying that they cannot bring a claim in an Employment Tribunal. Their employer sexually harasses them. The term in their contract does not stop them bringing a claim for sexual harassment in the Employment Tribunal.

- A business partner's partnership agreement contains a term that says 'equality law does not apply to this agreement'. The partner develops a visual impairment and needs reasonable adjustments to remove barriers to their continuing to do their job. The other partners instead ask them to resign from the partnership. The partner can still bring a claim in the Employment Tribunal for a failure to make reasonable adjustments and unlawful disability discrimination.

- An applicant for a job is told 'equality law does not apply to this business, it is too small'. She still agrees to go to work there. When she becomes pregnant, she is dismissed. She can still bring a claim in the Employment Tribunal for pregnancy discrimination.

3. The employer's duty to make reasonable adjustments to remove barriers for disabled people

Equality law recognises that bringing about equality for disabled people may mean changing the way in which employment is structured, the removal of physical barriers and/or providing extra support for a disabled **worker** or **job applicant**.

This is the **duty to make reasonable adjustments**.

The duty to make reasonable adjustments aims to make sure that as a **disabled person**, you have, as far as is reasonable, the same access to everything that is involved in getting and doing a job as a non-disabled person.

When the duty arises, your **employer** is under a positive and proactive duty to take steps to remove or reduce or prevent the obstacles you face as a disabled worker or job applicant.

Many of the adjustments your employer can make will not be particularly expensive, and they are not required to do more than it is reasonable for them to do. What is reasonable depends, among other factors, on the size and nature of your employer's organisation.

If, however,

- you are a disabled person, and
- you can show that there were barriers your employer should have identified and reasonable adjustments your employer could have made, and
- your employer does nothing,

you can bring a claim against your employer in the Employment Tribunal, and your employer may be ordered to pay you compensation as well as make the reasonable adjustments. A failure to make reasonable adjustments counts as unlawful discrimination. You can read more about what to do if you believe you've been discriminated against in Chapter 4.

In particular, if you are a disabled person, the need to make adjustments for you as a worker or job applicant:

- must not be a reason not to appoint you to a job or promote you if you are the best person for the job with the adjustments in place
- must not be a reason to dismiss you
- must be considered in relation to every aspect of your job

provided the adjustments are reasonable for your employer to make.

Many factors will be involved in deciding what adjustments to make and they will depend on individual circumstances. Different people will need different changes, even if they appear to have similar impairments.

Your employer only has to make adjustments where they are aware – or should **reasonably** be aware – that you are a disabled person.

It is advisable for your employer to discuss the adjustments with you, otherwise any changes they make may not be effective.

The rest of this section looks at the detail of the duty and gives examples of the sorts of adjustments your employer could make. It looks at:

- Which disabled people does the duty apply to?
- How can your employer find out if you are a disabled person?
- The three requirements of the duty
- Are you at a substantial disadvantage as a disabled person in that work situation?
- Changes to policies and the way an organisation usually does things
- Dealing with physical barriers
- Providing extra equipment or aids
- Making sure an adjustment is effective
- Who pays for reasonable adjustments?
- What is meant by ‘reasonable’

- Reasonable adjustments in practice
- Specific situations
  - Employment services
  - Occupational pensions
- Questions about health or disability

Which disabled people does the duty apply to?

The duty applies to you if you:

- are working for an employer, or
- apply for a job with an employer, or
- tell an employer you are thinking of applying for a job with them.

It applies to all stages and aspects of employment. So, for example, where the duty arises your employer must make reasonable adjustments to disciplinary or dismissal procedures and decisions. It does not matter if you were a disabled person when you began working for them, or if you have become a disabled person while working for them.

The duty may also apply after you have stopped working for an employer.

The duty also applies in relation to **employment services**, with some differences which are explained later in this part of the guide.

Reasonable adjustments may also be required in relation to occupational pension schemes. This is explained later in this part of the guide.

How can your employer find out if you are a disabled person?

Your employer only has to make these changes where they know or could **reasonably** be expected to know that you are a disabled person. This means your employer must do everything they can reasonably be expected to do to find out.

For example:

> An employee's performance has recently got worse and they have started being late for work. Previously they had a very good record of punctuality and performance. Rather than just telling them they must improve, their employer talks to them in private. This allows the employer to check whether the change in performance could be for a disability-related reason. The employee says that they are experiencing a recurrence of depression and are not sleeping well which is making them late. Together, they agree to change the employee's hours slightly while they are in this situation and that the employee can ask for help whenever they are finding it difficult to start or complete a task. These are reasonable adjustments.

This does not, however, that an employer should be asking intrusive questions or ones that violate your dignity. Employers must still think about privacy and confidentiality in what they ask and how they ask it.

Be aware that there are restrictions on when an employer can ask health- or disability-related questions during recruitment before shortlisting someone or making a job offer. This is to make sure that job applicants are not discriminated against because of issues related to health or disability. The exceptions to the restriction are set out at the end of this part of this guide.

An employer can ask you questions to find out if you need reasonable adjustments for the recruitment process. But they must use your answers only for working out the adjustments you need and whether these are reasonable.

If the adjustments are reasonable, and the employer used the fact that you needed the adjustments as a reason not to take you further into the recruitment process, this would be unlawful discrimination.

If you are applying for a job and you do not ask for adjustments in advance but turn out to need them, the employer must still make them, although what is reasonable in these circumstances may be different from what would be reasonable with more notice. The employer must not hold the fact that they have to make last minute adjustments against you.

For example:

> A job applicant does not tell an employer in advance that they use a wheelchair and the employer does not know about this. On arriving for the interview the applicant discovers that the room is not accessible. Although the employer could not have been expected to make the necessary changes in advance, it would be a reasonable adjustment to hold the interview in an alternative, accessible room if one was available without too much disruption or cost. Alternatively, it might be a reasonable adjustment to reschedule the interview if this was practicable.

There is more information about what this means in the Equality and Human Rights Commission guide: *Your rights to equality at work: when you apply for a job*.

The three requirements of the duty

The duty contains three requirements that apply in situations where a disabled person would otherwise be placed at a **substantial disadvantage** compared with people who are not disabled.

- The first requirement involves changing the way things are done (equality law calls this a **provision, criterion or practice**).

  For example:

  > An employer has a policy that designated car parking spaces are only offered to senior managers. A worker who is not a manager, but has a mobility impairment and needs to park very close to the office, is given a designated car parking space. This is likely to be a reasonable adjustment to the employer's car parking policy.

- The second requirement involves making changes to overcome barriers created by the **physical features** of a workplace.

  For example:

  > Clear glass doors at the end of a corridor in a particular workplace present a hazard for a visually impaired worker. Adding stick-on signs or other indicators to the doors so that they become more visible is likely to be a reasonable adjustment for the employer to make.

- The third requirement involves providing extra equipment (which equality law calls an **auxiliary aid**) or getting someone to do something to assist you (which equality law calls an **auxiliary service**).

  For example:

  > An employer provides specialist software for a member of staff who develops a visual impairment and whose job involves using a computer.

Each of these requirements is looked at in more detail later in this part of the guide.

Are you at a substantial disadvantage as a disabled person?

The question an employer needs to ask themselves is whether:

- the way they do things
- any physical feature of their workplace
- the absence of an auxiliary aid or service

puts you, as a disabled worker or job applicant, at a substantial disadvantage compared with a person who is not disabled.

Anything that is more than minor or trivial is a substantial disadvantage.

If a substantial disadvantage does exist, then the employer must make reasonable adjustments.

The aim of the adjustments the employer makes is to remove or reduce the substantial disadvantage.

But the employer only has to make adjustments that are reasonable for them to make. There is more information about how to work out what is reasonable a bit later in this part of the guide.

Changes to policies and the way an organisation usually does things

The first requirement involves changing the way things are done (equality law calls this a **provision, criterion or practice**).

This means the employer must look at whether they need to change some written or unwritten policies, and/or some of the ways they usually do things, to remove or reduce barriers that would place you at a substantial disadvantage, for example, by stopping you working for that employer or applying for a job with that employer or stopping you being fully involved at work.

This includes your employer's processes for deciding who is offered a job, criteria for promotion or training, benefits, working conditions and contractual arrangements.

For example:

- Supervisors in an organisation are usually employed on a full-time basis. The employer agrees to a disabled person whose impairment causes severe fatigue working on a part-time or job share basis. By doing this, the employer is making a reasonable adjustment.
- The design of a particular workplace makes it difficult for a disabled person with a hearing impairment to hear, because the main office is open plan and has hard flooring, so there is a lot of background noise. Their employer agrees that staff meetings should be held in a quieter place that allows that person to fully participate in the meeting. By doing this, the employer is making a reasonable adjustment.

Dealing with physical barriers

The second requirement involves making changes to overcome barriers created by the **physical features** of an employer's workplace.

This means your employer may need to make some changes to their building or premises.

Exactly what kind of change the employer makes will depend on the kind of barriers the premises present to you. The employer will need to consider the whole of their premises. They may have to make more than one change.

Physical features include: steps, stairways, kerbs, exterior surfaces and paving, parking areas, building entrances and exits (including emergency escape routes), internal and external doors, gates, toilet and washing facilities, public facilities (such as telephones, counters or service desks), lighting and ventilation, lifts and escalators, floor coverings, signs, furniture, and temporary or movable items (such as equipment and display racks). Physical features also include the sheer scale of premises (for example, the size of a building). This is not an exhaustive list.

- Physical features could be something to do with the structure of the actual building itself like steps, changes of level, emergency exits or narrow doorways.
- Or it could be something about the way the building or premises have been fitted out, things like heavy doors, inaccessible toilets or inappropriate lighting.
- It could even be the way things are arranged inside the premises such as fixtures and fittings like shelf heights in storage areas or fixed seating in canteens.

  For example:

> An employer has recruited a worker who is a wheelchair user and who would have difficulty negotiating her way around the office. In consultation with the new worker, the employer rearranges the layout of furniture in the office. The employer has made reasonable adjustments.

Providing extra equipment or aids

The third requirement of the duty involves providing extra equipment – which equality law calls **auxiliary aids** – and **auxiliary services**, where someone else is used to assist you, such as a reader, a sign language interpreter or a support worker.

This means an employer may need to provide some extra equipment, auxiliary aids or services for you if you work for them or apply for a job with them.

An auxiliary aid or service may make it easier for you to do your job or to participate in an interview or selection process. So the employer should consider whether it is reasonable to provide this.

The kind of equipment or aid will depend very much on:

- you as an individual disabled person and
- the job you are or will be doing or what is involved in the recruitment process.

You may well have experience of what you need, or you and your employer may be able to get expert advice from some of the organisations listed in Chapter 5: *Further sources of information and advice*.

Making sure an adjustment is effective

It may be that several adjustments are required in order to remove or reduce a range of disadvantages and sometimes these will not be obvious to the employer. So your employer should work, as much as possible, with you to identify the kind of disadvantages or problems that you face but also the potential solutions in terms of adjustments.

But even if you don’t know what to suggest, your employer must still consider what adjustments may be needed.

For example:

> A disabled employee has been absent from work as a result of depression. Neither the employee nor their doctor is able to suggest any adjustments that could be made. Nevertheless the employer should still consider whether any adjustments, such as working from home for a time or changing working hours or offering more day-to-day support, would be reasonable.

You and/or your employer may be able to get expert advice from some of the organisations listed in Chapter 5: *Further sources of information and advice*.

Who pays for reasonable adjustments?

If something is a reasonable adjustment, your employer or prospective employer must pay for it. The cost of an adjustment can be taken into account in deciding if it is reasonable or not.

However, there is a government scheme called Access to Work which can help you if your health or disability affect your work. They help by giving advice and support. Access to Work can also help with extra costs which would not be reasonable for your employer or prospective employer to pay.

For example, Access to Work might pay towards the cost of getting to work if you cannot use public transport, or for assistance with communication at job interviews.

You may be able to get advice and support from Access to Work if you are:

- in a paid job, or
- unemployed and about to start a job, or
- unemployed and about to start a Work Trial, or
- self-employed

and

- your disability or health condition stops you from being able to do parts of your job.

You should make sure your employer knows about Access to Work. Although the advice and support are given to you, your employer will obviously benefit too. Information about Access to Work is in Chapter 5: *Further sources of information and advice*.

What is meant by 'reasonable'

Your employer only has to do what is reasonable.

Various factors influence whether a particular adjustment is considered reasonable. The responsibility for making the decision about reasonableness rests with the employer, although you could challenge it if you felt this was necessary.

When deciding whether an adjustment is reasonable an employer can consider:

- how effective the change will be in avoiding the disadvantage you would otherwise experience
- its practicality
- the cost
- their organisation's resources and size
- the availability of financial support.

Your employer's overall aim should be, as far as possible, to remove or reduce any substantial disadvantage faced by you as a worker or job applicant which would not be faced by a non-disabled person.

Issues your employer can consider:

- Employers are allowed to treat disabled people better or 'more favourably' than non-disabled people and sometimes this may be part of the solution.
- The adjustment must be effective in helping to remove or reduce any disadvantage you are facing. If it doesn't have any impact at all or only a very minor one, then there is no point.
- In reality it may take several different adjustments to deal with that disadvantage but each change must contribute towards this.
- The employer can consider whether an adjustment is practical. The easier an adjustment is, the more likely it is to be reasonable. However, just because something is difficult doesn't mean it can't also be reasonable. The employer needs to balance this against other factors.

- If an adjustment costs little or nothing and is not disruptive, it would be reasonable unless some other factor (such as impracticality or lack of effectiveness) made it unreasonable.
- Your employer's size and resources are another factor. If an adjustment costs a significant amount, it is more likely to be reasonable for your employer to make it if your employer has substantial financial resources. Your employer's resources must be looked at across their whole organisation, not just for the branch or section where you are or would be working. This is an issue which the employer has to balance against the other factors.
- In changing policies, criteria or practices, the employer does not have to change the basic nature of the job, where this would go beyond what is reasonable.
- What is reasonable in one situation may be different from what is reasonable in another situation, such as where you are already working for your employer and face losing your job without an adjustment, or where you are a job applicant. Where you are already working for an employer, or about to start a long-term job with them, they would probably be expected to make more permanent changes (and, if necessary, spend more money) than for someone who is attending a job interview for an hour.
- If they are a larger rather than a smaller organisation, the employer is also more likely to have to make certain adjustments such as redeployment or flexible working patterns which may be easier for an organisation with more staff.
- If advice or support is available, for example, from Access to Work or from another organisation (sometimes charities will help with costs of adjustments), then this is more likely to make the adjustment reasonable.
- If making a particular adjustment would increase the risks to the health and safety of anybody, including yours, then the employer can consider this when making a decision about whether that particular adjustment or solution is reasonable. But the employer's decision must be based on a proper assessment of the potential health and safety risks.

If, having taken all of the relevant issues into account, the employer decides that an adjustment is reasonable, then they must make it happen.

If you do not agree with them about whether an adjustment is reasonable or not, in the end, only an Employment Tribunal can decide this. You can read more about what to do if you believe you've been discriminated against in Chapter 4. This includes if an employer has failed to make what you believe are reasonable adjustments to remove barriers you are facing.

Providing information in an alternative format

Equality law says that where providing information is involved, the steps which it is reasonable for the employer to take include steps to make sure that the information is provided in an accessible format.

For example:

- A job applicant asks for information about the job to be read onto an audio CD and sent to them. This is likely to be a reasonable adjustment that the employer must make.

Reasonable adjustments in practice

Examples of steps it might be reasonable for an employer to have to take include:

- **Making adjustments to premises.**

  For example:

  An employer makes structural or other physical changes such as widening a doorway, providing a ramp or moving furniture for a wheelchair user; relocates light switches, door handles, or shelves for someone who has difficulty in reaching; or provides appropriate contrast in decor to help the safe mobility of a visually impaired person.

- **Allocating some of your duties to another person.**

  For example:

  An employer reallocates minor or subsidiary duties to another employee as a disabled person has difficulty doing them because of their disability. For example, the job involves occasionally going onto the open roof of a building the employer transfers this work away from an employee whose disability involves severe vertigo.

- **Transferring you to fill an existing vacancy.**

  For example:

  > An employer should consider whether a suitable alternative post is available for a worker who becomes disabled (or whose disability worsens), where no reasonable adjustment would enable the worker to continue doing the current job. This might also involve retraining or other reasonable adjustments such as equipment for the new post or a transfer to a position on a higher grade.

- **Altering your hours of working or training.**

  For example:

  > An employer allows a disabled person to work flexible hours to enable them to have additional breaks to overcome fatigue arising from their disability. It could also include permitting part-time working, or different working hours to avoid the need to travel in the rush hour if this is a problem related to an impairment. A phased return to work with a gradual build-up of hours might also be appropriate in some circumstances.

- **Assigning you to a different place of work or training.**

  For example:

  > An employer relocates the work station of a newly disabled employee (who now uses a wheelchair) from an inaccessible third floor office to an accessible one on the ground floor. If the employer operates from more than one workplace, it may be reasonable to move the employee's place of work to other premises of the same employer if the first building is inaccessible and the other premises are not.

- **Allowing you to be absent during working or training hours for rehabilitation, assessment or treatment.**

  For example:

  > An employer allows a disabled person who has recently developed a condition to have more time off work than would be allowed to non-disabled workers to enable them to have rehabilitation. A similar adjustment would be appropriate if a disability worsens or if a disabled person needs occasional treatment anyway.

- **Giving, or arranging for, training or mentoring (whether for you or for other people). This could be training in particular pieces of equipment which you will be using, or an alteration to the standard employee training to reflect your particular impairment.**

  For example:

  - All workers are trained in the use of a particular machine but an employer provides slightly different or longer training for an employee with restricted hand or arm movements, or training in additional software for a visually impaired person so that they can use a computer with speech output.
  - An employer provides training for employees on conducting meetings in a way that enables a Deaf staff member to participate effectively.
  - A disabled person returns to work after a six-month period of absence due to a stroke. Their employer pays for them to see a work mentor, and allows time off to see the mentor, to help with their loss of confidence following the onset of their disability.

- **Acquiring or modifying equipment.**

  For example:

  An employer might have to provide special equipment (such as an adapted keyboard for someone with arthritis or a large screen for a visually impaired person), an adapted telephone for someone with a hearing impairment, or other modified equipment for disabled workers (such as longer handles on a machine).

The employer does not have to provide or modify equipment for personal purposes unconnected with your job, such as providing a wheelchair if you need one in any event but do not have one. This is because in this situation the disadvantages you are facing do not flow from things your employer has control over.

- **Modifying instructions or reference manuals.**

  For example:

  The format of instructions and manuals might need to be modified for some disabled people (such as being produced in Braille or on audio CD) and instructions for people with learning disabilities might need to be conveyed orally with individual demonstration or in Easy Read.

- **Modifying procedures for testing or assessment.**

  For example:

  > A person with restricted manual dexterity would be disadvantaged by a written test, so the employer gives that person an oral test instead.

- **Providing a reader or interpreter.**

  For example:

  > An employer arranges for a colleague to read hard copy post to a person with a visual impairment at particular times during the working day. Alternatively, the employer might hire a reader.

- **Providing supervision or other support.**

  For example:

  > An employer provides a support worker or arranges help from a colleague, in appropriate circumstances, for someone whose disability leads to uncertainty or lack of confidence.

- **Allowing you to take a period of disability leave.**

  For example:

  > A worker who has cancer needs to undergo treatment and rehabilitation. Their employer allows a period of disability leave and permits them to return to their job at the end of this period.

- **Participating in supported employment schemes, such as Work step.**

  For example:

  > A person applies for a job as an office assistant after several years of not working because of depression. They have been participating in a supported employment scheme where they saw the job advertised. As a reasonable adjustment the person asks the employer to let them make private phone calls during the working day to a support worker at the scheme.

- **Employing a support worker to assist a disabled worker.**

  For example:

  > An adviser with a visual impairment is sometimes required to make home visits to clients. The employer employs a support worker to assist them on these visits.

- **Modifying disciplinary or grievance procedures.**

  For example:

  > A person with a learning disability is allowed to take a friend (who does not work with them) to act as an advocate at a meeting with the person's employer about a grievance. The employer also makes sure that the meeting is conducted in a way that does not disadvantage or patronise the disabled person.

- **Adjusting redundancy selection criteria.**

  For example:

  > A person with an autoimmune disease has taken several short periods of absence during the year because of the condition. When their employer is taking the absences into account as a criterion for selecting people for redundancy, they discount these periods of disability-related absence.

- **Modifying performance-related pay arrangements.**

  For example:

  > A disabled person who is paid purely on their output needs frequent short additional breaks during their working day – something their employer agrees to as a reasonable adjustment. It is likely to be a reasonable adjustment for their employer to pay them at an agreed rate (e.g. their average hourly rate) for these breaks.

It may sometimes be necessary for an employer to take a combination of steps.

For example:

A woman who is blind is given a new job with her employer in an unfamiliar part of the building. The employer:

- arranges facilities for her assistance dog in the new area
- arranges for her new instructions to be in Braille, and
- provides disability equality training to all staff.

In some situations, a reasonable adjustment will not work without the co-operation of other workers. Your employer's other staff may therefore have an important role in helping make sure that a reasonable adjustment is carried out in practice. Your employer must make this happen. It is unlikely to be a valid 'defence' to a claim under equality law for a failure to make reasonable adjustments for an employer to argue that an adjustment was unreasonable because other staff were obstructive or unhelpful when the employer tried to make an adjustment happen. The employer would at least need to be able to show that they took all reasonable steps to try and resolve the problem of the attitude of their other staff.

For example:

An employer makes sure that a worker with autism has a structured working day as a reasonable adjustment. As part of the reasonable adjustment, it is the responsibility of the employer to make sure that other workers co-operate with this arrangement.

If you do not want your employer to involve other workers, the employer must not breach your confidentiality by telling them about your situation.

But if you are reluctant for other staff to know about your impairment, and your employer believes that a reasonable adjustment requires the co-operation of your colleagues, it may not be possible for the employer to make the adjustment unless you are prepared for some information to be shared. It does not have to be detailed information, just enough to explain to other staff what they need to do.

Specific situations

Employment services

An **employment service provider** must not unlawfully discriminate against people who are using or want to use its services. There is more information about what this means in the list of words and key ideas.

In addition, an employment service provider has a duty to make reasonable adjustments, except when providing a **vocational service**.

For employment service providers, unlike for employers, the duty is 'anticipatory'. If an organisation is an employment service provider, this means they cannot wait until you or another a disabled person wants to use their services, but must think in advance (and on an ongoing basis) about what disabled people with a range of **impairments** might reasonably need, such as people who have a visual impairment, a hearing impairment, a mobility impairment, or a learning disability.

For example:

> An employment agency makes sure its website is accessible to disabled people and that it can provide information about job opportunities in a range of **alternative formats**. It also makes sure its staff are trained to assist disabled people who approach it to find out about job opportunities.

Occupational pensions

Occupational pension schemes must not unlawfully discriminate against people. There is more information about what this means in the Equality and Human Rights Commission guide: *Your rights to equality at work: pay and benefits*.

In addition, an occupational pension scheme must make reasonable adjustments to any provision, criterion or practice in relation to the scheme which puts you at a substantial disadvantage in comparison with people who are not disabled.

For example:

> The rules of an employer's final salary scheme provide that the maximum pension receivable is based on the member's salary in the last year of work. Having worked full-time for 20 years, a worker develops a condition which leads them to reduce their working hours two years before their pension age. The scheme's rules put them at a disadvantage as a result of their disability, because their pension will only be calculated on their part-time salary. The trustees decide to convert the worker's part-time salary to its full-time equivalent and make a corresponding reduction in the period of their part-time employment which counts as pensionable. In this way, their full-time earnings will be taken into account. This is likely to be a reasonable adjustment to make.

Questions about health or disability

Except in very restricted circumstances or for very restricted purposes, employers are not allowed to ask any job applicant about their health or any disability until the person has been:

- offered a job either outright or on conditions, or
- included in a pool of successful candidates to be offered a job when a position becomes available, where more than one post is being recruited to (for example, if an employer is opening a new workplace or expects to have multiple vacancies for the same role).

This includes asking such a question as part of the application process or during an interview. Questions relating to previous sickness absence are questions that relate to health or disability.

This applies whether or not you are a disabled person.

No-one else can ask these questions on the employer's behalf either. So an employer cannot refer you to an **occupational health practitioner** or ask you to fill in a questionnaire provided by an occupational health practitioner before the offer of a job is made (or before you have been included in a pool of successful applicants) except in very limited circumstances, which are explained next.

The point of stopping employers asking questions about health or disability is to make sure that all job applicants are looked at properly to see if they can do the job in question, and not ruled out just because of issues related to or arising from their health or disability, such as sickness absence, which may well say nothing about whether they can do the job now.

The employer can ask questions once they have made a job offer or included you in a group of successful candidates. At that stage, the employer could make sure that your health or disability would not prevent you from doing the job. But the employer must also consider whether there are reasonable adjustments that would enable you to do the job.

What happens if an employer asks questions about health or disability?

You can bring a claim against an employer if:

- the employer asked health or disability-related questions of a kind that are not allowed, and
- you believe there has been direct discrimination as a result of the information that you gave (for failed to give) when answering the questions.

Separately, the Equality and Human Rights Commission can take legal action against the employer if they ask job applicants any health or disability-related questions that are not allowed by equality law. Contact details for the Equality and Human Rights Commission are at the end of this guide.

When an employer is allowed to ask questions about health or disability

An employer can ask questions about health or disability when:

- They are asking the questions to find out if you need reasonable adjustments for the recruitment process, such as for an assessment or an interview.

  For example:

  > An application form states: 'Please contact us if you need the application form in an alternative format or if you need any adjustments for the interview'. This is allowed.

- They are asking the questions to find out if you (whether you are a disabled person or not) can take part in an assessment as part of the recruitment process, including questions about reasonable adjustments for this purpose.

  For example:

  > An employer is recruiting play workers for an outdoor activity centre and wants to hold a practical test for applicants as part of the recruitment process. It asks a question about health in order to ensure that applicants who are not able to undertake the test (for example, because they are pregnant or have an injury) are not required to take the test. This is allowed.

- They are asking the questions for **monitoring** purposes to check the **diversity** of applicants.

- They want to make sure that any applicant who is a disabled person can benefit from any measures aimed at improving disabled people's employment rates. For example, the **guaranteed interview scheme**. The employer should make it clear to job applicants that this is why they are asking the question.

- They are asking the question because having a specific impairment is an **occupational requirement** for a particular job.

  For example:

  > An employer wants to recruit a Deafblind project worker who has personal experience of Deafblindness. This is an occupational requirement of the job and the job advert states that this is an occupational requirement. The employer can ask on the application form or at interview about the applicant's disability.

- Where the questions relate to a requirement to vet applicants for the purposes of **national security**.
- Where the question relates to a person's ability to carry out a function that is intrinsic (or absolutely fundamental) to that job. Where a health or disability-related question would mean the employer would know you can carry out that function with reasonable adjustments in place, then the employer can ask the question.

  For example:

  > A construction company is recruiting scaffolders. The company can ask about health or disability on the application form or at interview if the questions relate specifically to an applicant's ability to climb ladders and scaffolding to a significant height. The ability to climb ladders and scaffolding is intrinsic or fundamental to the job.

In practice, even if a function is intrinsic to the job, the employer should be asking you (if you are a disabled person) about your ability to do the job with reasonable adjustments in place. There will be very few situations where a question about a person's health or disability needs to be asked.

Most of the time, whether on an application form or during an interview, an employer should ask you a question about whether you have the relevant skills, qualities or experience to do the job, not about your health or about any disability you may have.

For example:

> An employer is recruiting a person as a cycle courier. They ask applicants to send in a CV setting out their relevant experience and a covering letter saying why they would be suitable for the job. The employer will score candidates on their experience of and enthusiasm for cycling. It is not necessary to ask applicants questions about health or disability. If the employer considers a health check is necessary, for example, for insurance purposes, this can be carried out once an applicant has been offered the job, and the job offer can be made conditional on the health check.

4. What to do if you believe you've been discriminated against

If you believe you have been **unlawfully discriminated** against by your **employer**, or their **employee** or **agent**, in a **work situation**, what can you do about it? Or if you have applied for a job (or been stopped from applying) and believe you have been unlawfully discriminated against during the application process, what can you do about it?

This part of this guide covers:

- Your choices
- Was what happened against equality law?
- Ways you can try to get your employer to sort out the situation by complaining directly to them:
  - Making a complaint informally
  - Using your employer's grievance procedures
  - Alternative dispute resolution (getting more information about involving other people in sorting the situation out)
  - What your employer can do if they find that there has been unlawful discrimination
  - What your employer can do if they find that there wasn't any unlawful discrimination
  - Monitoring the outcome
- The questions procedure, which you can use to find out more
- Key points about discrimination cases in a work situation:
  - Where claims are brought
  - Time limits for making a claim
  - The standard and burden of proof
  - What the Employment Tribunal can order your employer to do.
- Where to find out more about making a tribunal claim

Read the whole of this part of the guide before you decide what to do, so you know all the options you have.

It is especially important that you work out when the last day is that you can tell the Employment Tribunal about your complaint, so that you don’t miss that deadline, even if you are trying to work things out with your employer first.

Your choices

There are three things you can do:

- Complain informally to your employer.
- Bring a grievance using your employer’s grievance procedures.
- Make a claim to the Employment Tribunal.

You do not have to choose only one of these. Instead, you could try them in turn. If you cannot get your employer to put things right, then you can make a claim to the Employment Tribunal.

Just be aware that if you do decide to make a claim to the Employment Tribunal, you need to tell the tribunal about your claim (by filling in a form) within three months (less one day) of what happened.

You do not have to go first to your employer before making a claim to the Employment Tribunal.

But there are two reasons for doing this:

- You should think carefully about whether making a claim to the Employment Tribunal is the right thing for you personally.

Making a claim may be demanding on your time and emotions, and before starting the process you may want to look at whether or not you have a good chance of succeeding. You may also want to see if there are better ways of sorting out your complaint.

- If you do not use your employer’s procedures for solving a problem before you make a claim to the Employment Tribunal, and you win your case, the tribunal can reduce any money it tells your employer to pay you by up to a quarter if it thinks you acted unreasonably.

Was what happened against equality law?

Write down what happened as soon as you can after it happened, or tell someone else about it so they can write it down. Put in as much detail as you can about who was involved and what was said or done. Remember, the problem will sometimes be that something was not done.

For example:

- If you are a disabled person and you asked for a **reasonable adjustment** which was not made.
- If someone did not change a decision they had made or stop applying a rule or way of doing things and this had a worse impact on you and other people with the same protected characteristic (**indirect discrimination**).

Read the rest of this guide. Does what happened sound like any of the things we say a person or organisation must or must not do?

Sometimes it is difficult to work out if what happened is against equality law. You need to show that your protected characteristics played a part in what happened. The rest of this guide tells you more about what this means for the different types of unlawful discrimination or for harassment or victimisation.

If you think you need more information from the person or organisation before deciding what to do, then you can use the questions procedure, which we explain at page 72.

If you feel you need to get more advice on whether what happened was against equality law, you will find information on places where you can get help in Chapter 5: *Further sources of information and advice.*

Is your complaint about equality law or is it about another sort of problem at work?

This guide focuses on making a complaint about something that is against equality law.

You may have a complaint (which is often called ‘bringing a grievance’) about something else at work, which is not related to a **protected characteristic**.

Sometimes it is difficult to work out which laws apply to a situation.

If you are not sure what to do, you can get advice about your situation from other organisations, particularly the Arbitration and Conciliation Service (Acas) or Citizens Advice or your trade union. Contact details for these and other organisations who may be able to help you are in Chapter 5: *Further sources of information and advice*.

Ways you can try to get your employer to sort out the situation by complaining directly to them

Making a complaint informally

It may be that your employer can look into what has happened and decide what to do without it being necessary for you to make a formal complaint.

Often all it needs to stop something happening is for the other person to understand the effect of what they have done or that the situation is being taken seriously by your – and their – employer.

This is especially the case if they did not intend something to have the impact it did – for example, if what has happened is indirect discrimination or discrimination arising from disability.

Making a complaint informally means talking to the person at your workplace who can make the situation better. This may be your manager or, if it is your manager who is behaving in the way you believe is unlawful discrimination, someone higher up. In a small organisation, it may be your employer themselves.

It is a good idea to ask your manager or employer for a meeting, so that there is enough time for you to talk about what has happened and to say what you’d like them to do.

The meeting needs to be somewhere where you can talk to your manager or employer without other people hearing what you are saying.

Even though it is an informal meeting, you can still prepare for the meeting by writing down what you want to say. This can help you make sure you have said everything you want to say to your manager or employer.

This may be especially important if you work for a small organisation and it is the person in charge (who may be the only manager) who has done what you want to complain about. If you can, you may get a better result from the meeting if you can explain what has happened in a way that does not immediately make your employer feel you are blaming them for doing something wrong.

If you need help with this, you could contact one of the organisations listed in Chapter 5 or you could ask your trade union if you have one or a colleague or friend. It may help to practise what you want to say.

Tell the person you are meeting:

- what has happened
- what effect it had or is having on you
- what you want them to do about it, for example, talking informally to the person or people who have done something

Your manager or employer may need time to think about what has happened and what to do about it. They may need to talk to other people to find out if they saw or heard anything. Tell your manager or employer if you agree to them doing this. If you do not agree, this may make it harder for them to find out what happened.

Your manager or employer should tell you what they are going to do, and then later what the result was.

If after investigating what has happened, your manager or employer decides:

- no unlawful discrimination took place, or
- that they are not responsible for what has happened (see page 38)

then they should tell you this is what they have decided within a reasonable time.

If they don't explain why they decided this, you can ask them to explain. They do not have to explain, but if they do it may help you to decide what to do next: for example, if it is worth taking things further.

You then have two options:

- accepting the outcome
- taking things further by making a formal complaint using any procedures your employer has for doing this.

If your employer or manager agrees with you that what happened was unlawful discrimination, then they will want to make sure it does not happen again.

This may mean you don't need you to do anything other than carry on with your job as usual. Or they may want you to do something such as meeting the person who discriminated against you. In any case, you may need to go on working with that person.

Don't feel that you have to do anything you are not comfortable with. But it may help sort things out to do what your employer suggests, if necessary with some expert help, for example, from your trade union or from another person or organisation, such as a mediator. You can read more about this on page 71: Alternative dispute resolution.

If the discrimination was serious or just one of a series of events, your employer may want to take disciplinary action against the person who discriminated against you. You would probably have to explain to a disciplinary hearing what happened. You may be able to get help or support in doing this from your trade union if you have one or from one of the organisations listed in Chapter 5: *Further sources of information and advice*.

If your employer does not tell you what they have decided, even after you have reminded them, then you can either make a formal complaint or make an Employment Tribunal claim. Make sure you know when the last day is for bringing your claim so you don't miss this deadline.

Using your employer's grievance procedures

If you are not satisfied with the result of your informal complaint, then you can make a formal complaint, using the set procedures your employer has. It is the use of the set procedures that makes it 'formal'.

If you make a formal complaint, this is often called a 'grievance'.

Your employer should be able to tell you what their procedures are.

If they don't have any information they can give you, there is a standard procedure which you can get from Acas. Your employer can use this too, if, for example, they don't have their own procedures. Contact details for Acas are in Chapter 5: *Further sources of information and advice.*

If you are not happy about the outcome of a grievance procedure, then you have a right to appeal.

Alternative dispute resolution

If you or your employer want to get help in sorting out a complaint about discrimination, you can agree to what is usually called 'alternative dispute resolution' or ADR. ADR involves finding a way of sorting out the complaint without a formal tribunal hearing. ADR techniques include mediation and conciliation.

In complaints relating to work situations, this can happen:

- as part of an informal process
- when formal grievance procedures are being used, or
- before an Employment Tribunal claim has been brought or finally decided.

There are different organisations who may be able to help with this:

- your trade union
- Acas
- ADRnow, an information service run by the Advice Services Alliance (ASA).

There is more information about the options at Directgov.

Acas in particular runs a free conciliation service.

Details of how to contact these organisations are in Chapter 5: *Further sources of information and advice*.

What your employer can do if they find that there has been unlawful discrimination

The action your employer can take will depend on the specific details of the case and its seriousness. Your employer should take into consideration any underlying circumstances and the outcome of previous similar cases. Actions your employer could take include:

- Some form of alternative dispute resolution (which is explained above), which may be especially useful where you and the person who discriminated have to carry on working together.
- **Equality training** for the person who discriminated.
- Appropriate disciplinary action (your employer can find out more about disciplinary procedures from Acas).

What your employer can do if they find that there wasn't any unlawful discrimination

If your employer hears your grievance and any appeal but decides that you weren't unlawfully discriminated against, they still need to find a way for everyone to continue to work together.

Your employer may be able to do this themselves, or it may be better to bring in help from outside as with alternative dispute resolution (which is explained above).

Monitoring the outcome

Whether your employer decides that there has been unlawful discrimination or not, you must not be treated badly for having complained. For example, if your employer made you transfer to another part of their organisation (if it is big enough) this may be **victimisation**. However, you could ask be transferred, and your employer should do this if you are sure this is what you really want.

Your employer should monitor the situation at your workplace to make sure that the unlawful discrimination (if your employer found there was discrimination) has stopped and that there is no victimisation of you or anyone who helped you.

If you are not satisfied with what has happened, whether that is with

- your employer's investigation
- their decision
- the action they have taken to put the situation right
- how you have been treated after you made the complaint

you could bring a claim in the Employment Tribunal. This is explained in the next part of this guide.

The questions procedure

If you think you may have been unlawfully discriminated against, then you can get information from your employer to help you decide if you have a valid claim or not.

There is a set form to help you do this which you can see at: www.equalities.gov.uk, but your questions will still count even if you do not use the form, so long as you use the same questions.

If you send the questions to your employer, they are not legally required to reply to the request, or to answer the questions, but it may harm their case in the Employment Tribunal if they do not.

The questions and the answers can form part of the evidence in a case brought under the Equality Act 2010 (in other words, the law explained in this guide).

You can send your employer the questions before you make your claim to the Employment Tribunal, or at the same time, or after you have sent your claim.

If it is before, then you must send the questions to your employer so that they receive them no later than three months after what happened which you believe was unlawful discrimination.

If you have already sent your claim to the Employment Tribunal, then you must send the questions to your employer so that they receive them:

- within 28 days of your claim being sent to the Employment Tribunal if the claim involves disability discrimination (including a failure to make **reasonable adjustments**) or
- within 21 days of the claim being sent to the Employment Tribunal in all other cases.

If your employer does not respond to the questionnaire within eight weeks of your sending it to them, the Employment Tribunal can take that into account when making its decision. The Employment Tribunal can also take into account answers which are evasive or unclear.

- There is an exception to this. The Employment Tribunal cannot take the failure to answer into account if a person or organisation states that to give an answer could prejudice criminal proceedings and this is reasonable. Most of the time, breaking equality law only leads to a claim in a civil tribunal or court. Occasionally, breaking equality law can be punished by the criminal courts. In that situation, the person or organisation may be able to refuse to answer the questions, if in answering they might incriminate themselves and it is reasonable for them not to answer. If your employer says this applies to them, you should get more advice on what to do.

If you send your employer the questions, your employer must not treat you badly because you have done this. If your employer did, it would almost certainly be **victimisation**.

Key points about discrimination cases in a work situation

The key points this guide explains are:

- Where claims are brought
- Time limits for bringing a claim
- The standard and burden of proof
- What the Employment Tribunal can order your employer to do.

Where claims are brought

An Employment Tribunal can decide a complaint involving unlawful discrimination in a **work situation**.

Employment Tribunals can also decide cases about:

- Collective agreements, which can cover any terms of employment, such as pay or other benefits or working conditions.
- Equal pay and occupational pensions cases, which you can read more about in the Equality and Human Rights Commission guide: *Your rights to equality at work: pay and benefits*.
- Requirements an employer places on someone to discriminate against people as part of their job, for example, if someone works in a shop, telling them not to serve customers with a particular protected characteristic.

If you want to complain about questions being asked about your health or disability when you were applying for a job, you can bring a claim in the Employment Tribunal if you believe you were discriminated against because of disability, or for a reason connected with your disability and it relates to the answers you gave to those questions.

For example:

> A job applicant who is a disabled person is asked questions about their health and disability during their interview. They do not get the job. They believe this is because of the answers they gave to the questions. They can bring a claim in the Employment Tribunal.

You cannot bring a case against the employer just for asking the questions if these had no impact on you personally, for example, if it is clear why you did not get the job and this does not relate to the answers you gave to those questions. Of course, if other unlawful discrimination happened, you can still bring a case.

Only the Equality and Human Rights Commission can take up the wider case (in the County Court in England or Wales, and the Sheriff Court in Scotland) to challenge the employer just for asking the questions if no individual was unlawfully discriminated against.

If you are a member of the armed services, you can only bring your complaint to the Employment Tribunal after your **service complaint** has been decided.

Time limits for bringing a claim

You must bring your claim within three months (less one day) of the claimed unlawful discrimination taking place.

For example:

> An employer unlawfully discriminates against a worker. The discrimination took place on 5 May. The worker must tell the Employment Tribunal about their claim using the proper form by 4 August at the latest.

There are two situations where this is slightly different:

- in equal pay cases, different time limits apply – see the Equality and Human Rights Commission guide: *Your rights to equality at work: pay and benefits*, and
- for cases involving the armed forces, the time limit is six months (less one day).

If you bring your a claim after the date has passed, it is up to the Employment Tribunal to decide whether it is fair to everyone concerned, including both you and your employer, to allow your claim to be brought later than this.

Do not assume they will allow you to bring a late claim. They may not, in which case, you will have lost any chance to get the situation put right by the Employment Tribunal.

When a claim concerns something that was not a one-off incident, but which has happened over a period of time, the time limit starts when the period has ended.

For example:

> An employer operates a mortgage scheme for married couples only. Someone who is a civil partner would be able to make a claim for unlawful discrimination because of sexual orientation to a tribunal at any time while the scheme continues to operate in favour of married couples or within three months of the scheme ceasing to operate in favour of married couples.

If you are complaining about a failure to do something, for example, a failure to make **reasonable adjustments**, then the three months begins when your employer made a decision not to do it.

If there is no solid evidence of when they made a decision, then the decision is assumed to have been made either:

- when the person who failed to do the thing does something else which shows they don't intend to do it, or
- at the end of the time when they might reasonably have been expected to do the thing.

  For example:

  > A wheelchair-user asks their employer to install a ramp to enable them to get over the kerb between the car park and the office entrance more easily. The employer indicates that it will do so but no work at all is carried out. After a period in which it would have been reasonable for the employer to commission the work, even though the employer has not made a positive decision not to install a ramp, it may be treated as having made that decision anyway.

The standard and burden of proof

The standard of proof in discrimination cases is the usual one in civil (non-criminal) cases. Each side must try to prove the facts of their case are true on the balance of probabilities, in other words, that it is more likely than not in the view of the tribunal that their version of events is true.

If you are claiming unlawful discrimination, harassment or victimisation against your employer, then the burden of proof begins with you. You must prove enough facts from which the tribunal can decide, without any other explanation, that the discrimination, harassment or victimisation has taken place.

Once you have done this, then, in the absence of any other explanation, the burden shifts onto your employer to show that they or someone for whose actions or omissions they were responsible did not discriminate against, harass or victimise you.

What the Employment Tribunal can order your employer to do

What the tribunal can order if you win your case is called a 'remedy'.

The main remedies available to the Employment Tribunal are to:

- Make a declaration that your employer has discriminated.
- Award compensation to be paid for the financial loss you have suffered (for example, loss of earnings), and damages for injury to your feelings.
- Make a recommendation, requiring your employer to do something specific within a certain time to remove or reduce the bad effects which the claim has shown to exist on the individual.

  For example:

  > Providing a reference or reinstating you to your job, if the tribunal thinks this would work despite the previous history.

The Employment Tribunal can also make a recommendation requiring your employer to do something specific within a certain time to remove or reduce the bad effects which the claim has shown to exist on the wider workforce (although not in equal pay cases). This might be particularly applicable where you have already left that employer so any individual recommendation would be pointless.

For example:

> - introducing an equal opportunities policy
> - ensuring its harassment policy is more effectively implemented
> - setting up a review panel to deal with equal opportunities and harassment/grievance procedures
> - re-training staff, or
> - making public the selection criteria used for transfer or promotion of staff.

If your employer does not do what they have been told to do in a recommendation relating to you, the tribunal may order them to pay you compensation, or an increased amount of compensation, instead.

In cases of **indirect discrimination**, if your employer can prove that they did not intend what they did to be discriminatory, the tribunal must consider all of the remedies before looking at damages.

The tribunal can also order your employer to pay your legal costs and expenses, although this does not often happen in Employment Tribunal cases.

Where to find out more about making a tribunal claim

You can find out more about how to bring an Employment Tribunal case against your employer from the Employment Tribunal itself. They have information that tells you how to fill in the right form, and what to expect once you have made a claim.

This applies to England, Scotland and Wales, although occasionally tribunal procedures themselves are different in England and Wales and in Scotland.

You can find contact details for the Employment Tribunal in Chapter 5: *Further sources of information and advice*.

5. Further sources of information and advice

Equality and Human Rights Commission:

The Equality and Human Rights Commission is the independent advocate for equality and human rights in Britain. It aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights. The Equality and Human Rights Commission helplines advise both individuals and organisations such as employers and service providers.

Website: www.equalityhumanrights.com

Helpline – England

Email: info@equalityhumanrights.com
Telephone: 0845 604 6610
Textphone: 0845 604 6620
Fax: 0845 604 6630
08:00–18:00 Monday to Friday

Helpline – Wales

Email: wales@equalityhumanrights.com
Telephone: 0845 604 8810
Textphone: 0845 604 8820
Fax: 0845 604 8830
08:00–18:00 Monday to Friday

Helpline – Scotland

Email: scotland@equalityhumanrights.com
Telephone: 0845 604 5510
Textphone: 0845 604 5520
Fax: 0845 604 5530
08:00–18:00 Monday to Friday

Acas – The Independent Advisory, Conciliation and Arbitration Service:

Acas aims to improve organisations and working life through better employment relations. It provides impartial advice, training, information and a range of problem resolution services.

Website: www.acas.org.uk
Telephone: 08457 47 47 47 (Monday–Friday: 08:00–20:00;Saturday: 09:00–13:00)

Access to Work:

Access to Work can help disabled people or their employers if their condition or disability affects the ease by which they can carry out their job or gain employment. It gives advice and support with extra costs which may arise because of certain needs.

Website:
www.direct.gov.uk/en/disabledpeople/employmentsupport/workschemesandprogrammes

London, East England and South East England:
Telephone: 020 8426 3110
Email: atwosu.london@jobcentreplus.gsi.gov.uk

Wales, South West England, West Midlands and East Midlands:
Telephone: 02920 423 29
Email: atwosu.cardiff@jobcentreplus.gsi.gov.uk

Scotland, North West England, North East England and Yorkshire and Humberside:
Telephone: 0141 950 5327
Email: atwosu.glasgow@jobcentreplus.gsi.gov.uk

Advicenow:

An independent, not-for-profit website providing accurate, up-to-date information on rights and legal issues.

Website: http://www.advicenow.org.uk/

Advice UK:

A UK network of advice-providing organisations. They do not give out advice themselves, but the website has a directory of advice-giving agencies.

Website: www.adviceuk.org.uk
Telephone: 020 7469 5700
Fax: 020 7469 5701
Email: mail@adviceuk.org.uk

Association of Disabled Professionals (ADP):

The ADP website offers advice, support, resources and general information for disabled professionals, entrepreneurs and employers.

Website: www.adp.org.uk
Telephone: 01204 431638 (answerphone only service)
Fax: 01204 431638
Email: info@adp.org.uk

Carers UK:

The voice of carers. Carers provide unpaid care by looking after an ill, frail or disabled family member, friend or partner.

England

Website: www.carersuk.org
Telephone: 020 7378 4999
Email: info@carersuk.org

Scotland

Website: www.carerscotland.org
Telephone: 0141 445 3070
Email: info@carerscotland.org

Wales

Website: www.carerswales.org
Telephone: 029 2081 1370
Email: info@carerswales.org

ChildcareLink:

ChildcareLink provides details of local childcare providers for employees and employers, as well as general information about childcare.

Website: www.childcarelink.gov.uk
Telephone: 0800 2346 346

Citizens Advice:

Citizens Advice Bureaux provide free, confidential and independent advice in England and Wales. Advice is available face-to-face and by telephone. Most bureaux offer home visits and some also provide email advice. To receive advice, contact your local Citizens Advice Bureau, which you can find by visiting the website.

Website: www.citizensadvice.org.uk
Telephone: (admin only) 020 7833 2181
Fax: (admin only) 020 7833 4371

The Adviceguide website is the main public information service of Citizens Advice. It covers England, Scotland and Wales.

Website: www.adviceguide.org.uk/

Citizens Advice Scotland:

Citizens Advice Scotland is the umbrella organisation for bureaux in Scotland. They do not offer advice directly but can provide information on Scottish bureaux.

Website: www.cas.org.uk

Community Legal Advice:

Community Legal Advice offers free, independent and confidential legal advice in England and Wales.

Website: www.communitylegaladvice.org.uk
Telephone: 0800 0856 643

Directgov:

Directgov is the UK government's digital service for people in England and Wales. It delivers information and practical advice about public services, bringing them all together in one place.

Website: www.direct.gov.uk

Disability Law Service (DLS):

The DLS is a national charity providing information and advice to disabled and Deaf people. It covers a wide range of topics including discrimination, consumer issues, education and employment.

Website: www.dls.org.uk
Telephone: 020 7791 9800
Minicom: 020 7791 9801

Government Equalities Office (GEO):

The GEO is the Government department responsible for equalities legislation and policy in the UK.

Website: www.equalities.gov.uk
Telephone: 020 7944 4400

Law Centres Federation:

The Law Centres Federation is the national co-ordinating organisation for a network of community-based law centres. Law centres provide free and independent specialist legal advice and representation to people who live or work in their catchment areas. The Federation does not itself provide legal advice, but can provide details of your nearest law centre.

Website: www.lawcentres.org.uk
Telephone: 020 7842 0720
Fax: 020 7842 0721
Email: info@lawcentres.org.uk

The Law Society:

The Law Society is the representative organisation for solicitors in England and Wales. Their website has an online directory of law firms and solicitors. You can also call their enquiry line for help in finding a solicitor. They do not provide legal advice.

Website: www.lawsociety.org.uk
Telephone: 020 7242 1222 (general enquiries)

They also have a Wales office:
Telephone: 029 2064 5254
Fax: 029 2022 5944
Email: wales@lawsociety.org.uk

Scottish Association of Law Centres (SALC):
SALC represents law centres across Scotland.
Website: www.scotlawcentres.blogspot.com
Telephone: 0141 561 7266

Mindful Employer:

Mindful Employer provides information, advice and practical support for people whose mental health affects their ability to find or remain in employment, training, education and voluntary work.

Website: www.mindfulemployer.net
Telephone: 01392 208 833
Email: info@mindfulemployer.net

NHS Carers Direct:

NHS Carers Direct gives information about carers' rights in employment and beyond, as well as the services available to them.

Website: www.nhs.uk/carersdirect
Telephone: 0808 802 0202

The Office of the Pensions Advisory Service (OPAS):

OPAS provides free advice on pensions including help with problems.

Website: www.opas.org.uk
Telephone: 0845 601 2923
Email: enquiries@opas.org.uk

Pay and Work Rights Helpline:

The Pay and Work Rights Helpline provides advice on government enforced employment rights.

Website: www.payandworkrightscampaign.direct.gov.uk/index.html
Telephone: 0800 917 2368

People First Ltd:

People First is a charity run by and for people with learning difficulties. It provides information on self advocacy and provides training and consultancy for organisations and employers.

Website: www.peoplefirstltd.com
Telephone: 020 7820 6655
Email: general@peoplefirstltd.com

Press for Change (PfC):

PfC is a political lobbying and educational organisation. It campaigns to achieve equality and human rights for all Trans people in the United Kingdom, through legislation and social change. It provides a free legal advice service for Trans people.

Telephone: 0161 432 1915 (10:00–17:00, Thursdays only until further notice)
Website: www.transequality.co.uk / www.pfc.org.uk
Email: transequality@pfc.org.uk

Sainsbury Centre for Mental Health:

The Sainsbury Centre for Mental Health works to improve the quality of life for people with mental health conditions. They carry out research, policy work and analysis to improve practice and influence policy in mental health as well as public services.

Website: www.scmh.org.uk
Telephone: 020 7827 8300
Email: contact@scmh.org.uk

Stonewall:

Stonewall is the UK's leading lesbian, gay and bisexual charity and carries out campaigning, lobbying and research work as well as providing a free information service for individuals, organisations and employers.

Website: www.stonewall.org.uk
Telephone: 08000 50 20 20
Email: info@stonewall.org.uk

TUC – the Trades Union Congress (England and Wales):

With 59 member unions representing over six and a half million working people, the TUC campaigns for a fair deal at work and for social justice at home and abroad.

Website: www.tuc.org.uk
Telephone: 020 7636 4030

Scottish Trades Union Congress (STUC):

Website: www.stuc.org.uk
Telephone: 0141 337 8100
Email: info@stuc.org.uk

Working Families:

Working Families is a work–life balance organisation, helping children, working parents and carers and their employers find a better balance between responsibilities at home and work.

Website: www.workingfamilies.org.uk
Telephone: 0800 013 0313
Email: office@workingfamilies.org.uk

WorkSMART:

WorkSMART aims to help everyone at work – whether or not they are union members – to get a good deal from their working life. Available to help when things go wrong at work or simply to give help for planning for the future.

Website: www.worksmart.org.uk

Contact us

The Equality and Human Rights Commission aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights.

You can find out more or get in touch with us via our website at www.equalityhumanrights.com or by contacting one of our helplines below. If you require this publication in an alternative format and/or language please contact the relevant helpline to discuss your needs.

Equality and Human Rights Commission helpline – England
Telephone: 08456 046 610
Textphone: 08456 046 620
Fax: 08456 046 630
8am–6pm, Monday to Friday

Equality and Human Rights Commission helpline – Scotland
Telephone: 08456 045 510
Textphone: 08456 045 520
Fax: 08456 045 530
8am–6pm, Monday to Friday

Equality and Human Rights Commission helpline – Wales
Telephone: 08456 048 810
Textphone: 08456 048 820
Fax: 08456 048 830
8am–6pm, Monday to Friday

www.equalityhumanrights.com

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