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Disability discrimination: Employee guide

Description

Introduction

Disability discrimination could come in various forms. Here is a guide on key things you need to be aware of.

Disability

In order to claim **disability discrimination** itâ??s necessary to show that the person (or in some cases someone else) has or had a â??**disability**â??. Some conditions are specifically deemed to be **disabilities** (for example blindness/sight impairment, severe disfigurements, cancer, multiple sclerosis and HIV infection). Some conditions are expressly stated not to be **disabilities** (for example addiction to alcohol or nicotine, voyeurism and body piercings and tattoos).

In cases which do not concern deemed or excluded disabilities the test for disability is if a person has a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.



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Types of unlawful disability discrimination

a) Discriminating directly by treating a job applicant or employee less favourably than others because of disability.

b) Discriminating by treating a job applicant or employee unfavourably because of something arising as a result of disability without justification.

c) Failing to comply with the duty to make reasonable adjustments where a disabled job applicant or employee is placed at a substantial disadvantage.

d) Discriminating indirectly by applying a provision, criterion or practice which disadvantages job applicants or employees with the same disability without justification.

e) Subjecting a job applicant or employee to harassment related to disability.

f) Victimising a job applicant or employee because they have alleged discrimination, brought a discrimination claim or given evidence information in relation to discrimination proceedings.

g) Asking job applicants pre-employment health questions unless for a permitted reason.

Discrimination by way of perception or association is prohibited too.



Knowledge

An employer cannot be liable for direct discrimination, discrimination arising from disability, failure to make reasonable adjustments or harassment unless it knew or should reasonably have known about the employeeâ??s **disability**.

Bringing a claim

Job applicants or employees who believe that they have suffered from **disability discrimination** could consider bringing a claim in the employment tribunal. Prior to issuing a claim the job applicant or employee would be required to follow the Advisory Conciliation and Arbitration Services (Acas) early conciliation process. In certain cases it may also be appropriate to have raised a grievance beforehand.

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Any claims must normally be filed within three months (less a day) from when the discriminatory act occurred. The time limit is subject to the early conciliation rules for extending time.

This guide is intended for guidance only and should not be relied upon for specific advice.

If you need any advice on **disability discrimination** or have queries on other employment law issues please do not hesitate to contact me on 020 3797 1264.

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