The Disability Discrimination Act

Introduction

This chapter is intended as an introduction to the Disability Discrimination Act (DDA) 1995, amended in 2005 to take public authorities into its remit. It is not a statement of the law. You are advised to obtain legal advice concerning the legal obligations imposed by both the 1995 and 2005 Acts.

The DDA 1995 (also referred to as the Act) legally protects disabled people, or people who have had a disability, from discrimination and sits alongside the Government’s commitment which is set out in the report *Improving the Life Chances of Disabled People* (Strategy Unit 2005). This says that: “By 2025, disabled people in Britain should have full opportunities and choices to improve their quality of life and will be respected and included as equal members of society.”

Tackling inequality and discrimination is a key commitment in the Government’s drive to modernise health services. However, it is not possible to tackle discrimination in service delivery without first ensuring that the workforce reflects the community it serves.

The employment provisions of the DDA 1995 came into force on 2 December 1996. The Act gives disabled persons and persons who have had a disability rights in the field of employment.

Under the Act, it is unlawful for employers to treat a disabled person less favourably than someone else because of his or her disability without justification, or to fail to comply with a duty to make reasonable adjustments, without showing that the failure is justified.

The Act applies to most employment matters, including recruitment, promotion, transfer, development and training, and dismissal (including compulsory early retirement). NHS expertise puts it in a position to demonstrate to other employers the ways in which people with disabilities, including those with mental health problems, can effectively be accommodated into the workforce.

The 2005 Act applies to public authorities. In particular, the list includes such organisations as local authorities, the National Assembly for Wales, the National Audit Office, and the NHS.

The Disability Discrimination Act 2005 has further amended the 1995 Act so that it now places a duty on all public authorities to have due regard to the need to:
• promote equality of opportunity between disabled and other persons
• eliminate discrimination that is unlawful under the Act
• eliminate harassment of disabled persons that is related to their disabilities
• promote positive attitudes towards disabled persons in public life
• take steps to take account of disabled persons’ disabilities, even where that involves treating disabled persons more favourably than other persons.

The Disability Rights Commission (DRC) produced a Code of Practice on the disability equality duty for the public sector, which was introduced in the 2005 Act: The duty to promote disability equality: statutory code of practice for England and Wales is now available from www.equalityhumanrights.com/uploaded_files/PSD/ded_code_englandwales.doc

The Equality and Human Rights Commission was launched in October 2007, taking over the role and functions of the Commission for Racial Equality (CRE), the Disability Rights Commission (DRC) and the Equal Opportunities Commission (EOC) and assuming new responsibilities for sexual orientation, age, religion and belief, and human rights.

Definition of disability

According to the 1995 Act, a disabled person is someone who, at the relevant time:

• has a physical or mental impairment that has an adverse and substantial effect on his or her ability to carry out normal day-to-day activities
• the effect of the impairment is long term (has lasted for 12 months, is likely to last for at least that period, or is likely to last the rest of that person’s life, or in the case of a past disability, if the effect is likely to be recurrent).

The Act also prohibits discrimination against people who have had a disability as defined by the Act in the past, but no longer do so.

Physical impairments are not defined by the Act, but examples of conditions include diabetes, epilepsy, multiple sclerosis, cancer, cerebral palsy and heart disease.

Sensory impairments, such as blindness, having partial sight or hearing loss are also included within ‘physical and mental impairments’.

The Act does not include any impairment resulting from or consisting of a mental illness unless it is a clinically well-recognised illness. Examples of conditions include depression, schizophrenia, dyslexia, bi-polar disorder (manic depression) and learning disabilities.
The Government has published guidance on matters to be taken into account in determining whether an impairment has a substantial adverse effect on a person's ability to carry out normal day-to-day activities.

**The discrimination provisions**

The Act recognises two forms of unlawful treatment in the field of employment.

1. An employer discriminates against a disabled person if, for a reason that relates to the disabled person's disability, the employer treats that person less favourably than they treat or would treat others to whom that reason does not or would not apply; and the employer cannot show that the treatment in question is justified. Treatment is justified only if the reason for it is both material to the circumstances and substantial.

2. An employer also discriminates if it fails to comply with a duty to make reasonable adjustments and cannot show that this failure is justified.

**Employer responsibilities**

Employers have a duty to make reasonable adjustments where any arrangements made by or on behalf of an employer, or any physical feature of the employer's premises, place a disabled person at a substantial disadvantage in comparison with persons who are not disabled.

The Act gives a number of examples of steps that an employer may have to take in order to comply with that duty:

- making adjustments to premises
- allocating some of the disabled person's duties to another person
- transferring the disabled person to fill an existing vacancy
- altering the disabled person's working hours
- allowing the disabled person to be absent during working hours for rehabilitation, assessment or treatment
- giving, or arranging to give, the disabled person training
- acquiring or modifying equipment
- modifying instructions or reference manuals
- modifying procedures for testing or assessment
- providing a reader or interpreter
- providing supervision.

Nothing in the Act imposes any duty on an employer if the employer does not know, and could not reasonably be expected to know, that that person has a
disability and is likely to be at a substantial disadvantage by reason of the arrangements and so on made by or on behalf of the employer.

The Act states that less favourable treatment cannot be justified where the employer is under a duty to make reasonable adjustments but fails, without justification, to do so unless that treatment would have been justified even after having made that adjustment.

The Act lists a number of exhaustive factors for an employer to consider when determining whether it is reasonable to make a particular adjustment. These are:

• the extent to which taking the step would prevent the effect in question
• the extent to which it is practicable for the employer to take the step
• the financial and other costs which would be incurred by the employer in taking the step and the extent to which taking it would disrupt any of the employer’s activities
• the extent of the employer’s financial and other resources
• the availability to the employer of financial and other assistance with regard to taking the step.

The Government has published a Code of Practice “for the Elimination of Discrimination in the Field of Employment against Disabled Persons or Persons who have had a Disability”, which is intended to give practical guidance and assistance to employers and to others in eliminating discrimination: www.opsi.gov.uk/si/si2004/uksi_20042300_en.pdf

Scope of the Act

The Act is intended to cover all members of staff, full- or part-time, and contract workers who perform work personally – whether they are hired from an employment agency or are directly self-employed.

Disability Equality Scheme

The DDA 2005 requires public authorities to publish a Disability Equality Scheme, this should include a statement of:

• the ways in which such disabled people have been involved in its development
• that authority’s methods for assessing the impact of its policies and practices, or the likely impact of its proposed policies and practices, on equality for disabled persons
• the steps which that authority proposes to take towards the fulfilment of its section 49A(1) duty
that authority’s arrangements for gathering information on the effect of its policies and practices on disabled persons and in particular its arrangements for gathering information on:

(i) their effect on the recruitment, development and retention of its disabled employees

(ii) their effect, in the case of an authority specified in Part II, III or IV of Schedule 1, on the educational opportunities available to, and on the achievements of, disabled pupils and students

(iii) the extent to which, in the case of an authority specified in Part I of Schedule 1, the services it provides and those other functions it performs take account of the needs of disabled persons; and

that authority’s arrangements for making use of such information to assist it in the performance of its section 49A(1) duty and, in particular, its arrangements for:

(iv) reviewing on a regular basis the effectiveness of the steps referred to in sub-paragraph (c), and

(v) preparing subsequent schemes.

The Act requires NHS trusts to publish a yearly report on the information gathered and the use this has been put to, it also expects the Scheme to be revised and republished at three yearly intervals.

More information

Copies of both the 1995 and the 2005 Disability Discrimination Acts can be obtained from the Office of Public Sector Information: www.opsi.gov.uk

For information about the legislation, relevant guidance and codes of practice, see the Equality and Human Rights Commission at www.equalityhumanrights.com

Advice from the Equality and Human Rights Commission. can be obtained by telephoning their helplines: England 0845 604 6610, Scotland 0845 604 5510, Wales 0845 604 8810

Disability Law Service (DLS): www.dls.org.uk
Free legal advice to disabled people and representation where appropriate: Ground floor, 39-45 Cavell Street, London E1 2BP Telephone 020 7791 9800, Text 020 7791 9801, Fax 020 7791 9802, Email advice@dls.org.uk Open 10am to 1pm and 2 to 5pm, Monday to Friday

Disability Gov
Information about UK disability legislation and disabled people’s rights
Website www.disability.gov.uk

For more information on employing people with mental health problems, please see the chapter on Mental health and employment.