



Recommendations

This list of recommendations is intended to be used as a quick reference and handy reminder covering only the recruitment provisions. It should be read in conjunction with the main document "Code of Practice for the elimination of discrimination in the field of employment against disabled persons or persons who have had a disability".

Introduction

The Disability Discrimination Act 1995 protects disabled people from discrimination in the field of employment. As part of this protection employers may have to make "reasonable adjustments" if their employment arrangements or premises place disabled people at a substantial disadvantage compared with non-disabled people (page 3, para 2.1).

The Act does not prohibit an employer from appointing the best person for the job. Nor does it prevent employers from treating disabled persons more favourably than those without a disability (page 3, para 2.2).

Definition of Disability

The Act defines a disabled person as someone with a physical or mental impairment which has a substantial and long term adverse effect on his/her ability to carry out normal day-to-day activities (page 3, para 2.3).

Recruitment

The Act says that it is unlawful for an employer to discriminate against a disabled person:

- in the arrangements made for determining who should be offered employment;
- in the terms on which the disabled person is offered employment;
- by refusing to offer, or deliberately not offering, the disabled person employment (page 32, para 5.1).

1. Specifying the Job

- 1.1 The inclusion of unnecessary or marginal requirements in a job specification can lead to discrimination (page 32, para 5.3).
- 1.2 Blanket exclusions (i.e. exclusions which do not take account of individual circumstances) may lead to discrimination (page 33, para 5.4).
- 1.3 An employer may stipulate essential health requirements but may need to justify doing so, and to show that it would not be reasonable for him to have to waive them, in any individual case (page 33, para 5.5).
- 1.4 Stating that a certain personal, medical or health-related characteristic is desirable may also lead to discrimination if the characteristic is not necessary for the performance of the job. Like a requirement, a preference may be decisive against an otherwise well-qualified disabled candidate and may have to be justified in an individual case (page 33, para 5.6).

2. Publicising the Vacancy

- 2.1 Where the job is advertised, and a disabled person who applies is refused or deliberately not offered it, and complains to an industrial tribunal about disability discrimination, the Act requires the Tribunal to assume, unless the employer can prove otherwise that the reason the person did not get the job was related to his disability if the advertisement could reasonably be taken to indicate:
- that the success of the person's application for the job might depend to any extent on the absence of a disability such as the applicant's, or
 - that the employer is unwilling to make an adjustment for a disabled person (page 34, para 5.7).
- 2.2 According to the Act 'advertisement' includes every form of advertisement or notice, whether to the public or not. This would include advertisements internal to a company or office (page 34, para 5.8).
- 2.3 It may be a reasonable adjustment to provide information about jobs in alternative formats, in particular cases (page 34, para 5.9).
- 2.4 The Act does not prevent an employer saying that he would welcome applications from disabled people. It would be a positive and public statement of the employer's policy (page 35, para 5.10).
- 2.5 The Act does not prevent employers including a question on an application form asking whether someone is disabled. Employers can also ask whether the individual might need an adjustment and what it might be (page 35, para 5.11).

3. Selection Shortlisting

- 3.1 The Act says that the duty to make a reasonable adjustment does not apply where the employer does not know, and could not reasonably be expected to know, that the disabled person in question is or may be an applicant for the post, or, that a particular applicant has a disability which is likely to place him at a disadvantage (page 35, para 5.12).
- 3.2 Employers and their staff or agents must not discriminate against disabled people in the way in which they deal with applications. They may also have to make reasonable adjustments (page 35, para 5.13).
- 3.3 If an employer knows that an applicant has a disability and is likely to be at a substantial disadvantage because of the employer's arrangements or premises, the employer should consider whether there is any reasonable adjustment which would bring the disabled person within the field of applicants to be considered even though he would not otherwise be within that field because of that disadvantage. If the employer could only make this judgement with more information it would be discriminatory not to put the disabled person on the shortlist for interview if that is how he would normally seek additional information about candidates (page 35, para 5.14).

Interviews

- 3.4 Employers should think ahead for interviews. Giving applicants the opportunity to indicate any relevant effects of a disability and to suggest adjustments to help overcome any disadvantage the disability may cause, could help the employer avoid discrimination in the interview and in considering the applicant, by clarifying whether any reasonable adjustments may be required (page 36, para 5.15).

- 3.5 Nevertheless, if a person, whom the employer previously did not know, and could not have known, to be disabled, arrives for interview and is placed at a substantial disadvantage because of the arrangements, the employer may still be under a duty to make a reasonable adjustment from the time when he first learns of the disability and the disadvantage. However, what the employer has to do in such circumstances might be less extensive than if advance notice had been given (page 36, para 5.16).
- 3.6 An employer is not required to make changes in anticipation of applications from disabled people in general. It is only if the employer knows or could reasonably be expected to know that a particular disabled person is, or may be, applying and is likely to be substantially disadvantaged by the employer's premises or arrangements, that the employer may have to make changes (page 37, para 5.19).
- 3.7 The Act does not prohibit an employer from seeking information about a disability but an employer must not use it to discriminate against a disabled person. An employer should only ask about a disability if it is, or may be, relevant to the person's ability to do the job – after a reasonable adjustment if necessary. Asking about the effects of a disability may be important in deciding what adjustments ought to be made. The employer should avoid discriminatory questions (page 38, para 5.20).

Aptitude or other tests

- 3.8 The Act does not prevent employers carrying out aptitude or other tests in the recruitment process. Routine testing of all candidates may still discriminate against particular individuals or substantially disadvantage them. If so, the employer may need to revise the tests – or the way the results of such tests are assessed – to take account of specific disabled candidates, except where the nature and form of the test were necessary to assess a matter relevant to the job. It may, for instance, be a reasonable adjustment to accept a lower “pass rate” for a person whose disability inhibits performance in such a test. The extent to which this is required would depend on how closely the test is related to the job in question and what adjustments the employer might have to make if the applicant were given the job (page 38, para 5.21).

Qualifications

- 3.9 An employer is entitled to specify that applicants for a job must have certain qualifications. However, if a disabled person is rejected for the job because he lacks a qualification, the employer will have to justify that rejection if the reason why the person is rejected (i.e. the lack of a qualification) is connected with his disability (page 39, para 5.22).

Medical examinations

- 3.10 An employer can insist on a disabled person having a medical examination. However, if an employer insists on a medical check for a disabled person and not others, without justification, he will probably be discriminating unlawfully (page 40, para 5.23).
- 3.11 In most cases, having a disability does not adversely affect a person's general health. Medical evidence about a disability can justify an adverse employment decision (such as dismissing and/or not promoting). It will not generally do so if there is no effect on the person's ability to do the work (or any effect is less substantial), however great the effects of the disability are in other ways. The condition or effects must be relevant to the employer's decision (page 40, para 5.24).

Selection for appointment

- 3.12 In deciding to select a particular disabled person, an employer must take into account any adjustments that it is reasonable for him to have to make. Suggestions made by the candidate at any stage may assist in identifying these (page 41, para 5.25).
- 3.13 An employer must not discriminate against a disabled candidate, but there is no requirement (aside from reasonable adjustment) to treat a disabled person more favourably than he treats or would treat others. An employer will have to assess an applicant's merits as they would be if any reasonable adjustments required under the Act had been made. If, after allowing for those adjustments, a disabled person would not be the best person for the job the employer would not have to recruit that person (page 41, para 5.26).

4. Terms and Conditions of Service

- 4.1 Terms and conditions of service should not discriminate against a disabled person. An employer should consider whether any reasonable adjustment need be made to the terms and conditions which would otherwise apply (page 42, para 5.27).

5. Induction

- 5.1 Employers must not discriminate in their induction procedures. An employer may have to make adjustments to ensure a disabled person is introduced into a new working environment in a clearly structured and supported way with, if necessary, an individually tailored induction programme (page 43, para 6.3).