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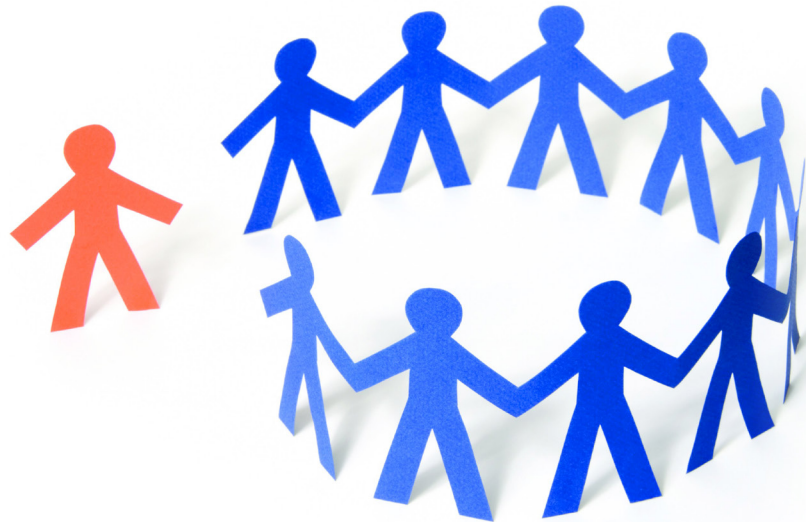
# **Obesity and Disability Discrimination**

Free Advice  
for Employers on

**0800 144 4050**

[www.employersdirect-uk.org](http://www.employersdirect-uk.org)

# Obesity and Disability Discrimination



## Introduction

The Equality Act 2010 aims to protect employees from less favourable treatment within the workplace because they have a disability.

[Disability discrimination](#) can arise in every stage of employment, from recruitment and selection to dismissal. Employers should be aware that a person does not have to be an employee to claim disability discrimination; it can occur before employment begins, for example job applicants can claim discrimination.

A recent European Court of Justice (ECJ) judgment on obesity has thrown the spotlight back on disability discrimination. This document will address the issue as it currently stands.

## What is a disability?

Under the Equality Act 2010 a person is classified as disabled if they have a physical or mental impairment which has a substantial and long-term effect on their ability to carry out normal day-to-day activities.

Substantial requires the impairment to be more than trivial or minor.

Long-term looks at whether the impairment is likely to last, or has lasted, for a minimum of 12 months.

Day-to-day activities include activities such as using a telephone, reading a book or using public transport.

There are certain conditions, named in the legislation, which are automatically a disability from day one of diagnosis, for example, cancer.

## What is disability discrimination?

There are different [types of disability discrimination](#).

- ▶ **Direct discrimination** – where a disabled employee is treated less favourably than a non-disabled employee and the reason for this treatment is because of their disability.
- ▶ **Indirect discrimination** – when a policy, criterion or practice the employer adopts applies equally to the whole workforce but puts disabled employees at a disadvantage.
- ▶ **Harassment** – where a person carries out unwanted conduct because of an employee's disability that violates the disabled person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive work environment.
- ▶ **Victimisation** – where an employee is treated unfairly because they have made, or supported, a complaint about disability discrimination
- ▶ **Associative discrimination** – treating an employee less favourably because they are associating with another person who is disabled
- ▶ **Perceptive discrimination** – treating an employee less favourably because you believe them to have a disability, they do not actually have to be disabled.
- ▶ **Discrimination arising from a disability** – when an employee is treated less favourably because of something arising in consequence of their disability. For example, if an employee is dismissed because of their slow typing speed but this is a consequence of their chronic arthritis.

## Reasonable adjustments

There is a duty on employers to make reasonable adjustments to the workplace where a disabled employee is placed at a disadvantage. This duty arises if an employer knows, or should know, that an employee is disabled.

The duty is to take reasonable steps to change policies, change a physical feature of the workplace or to provide an auxiliary aid. The employer only has to take reasonable steps to reduce the obstacles a disabled employee faces and whether the steps are reasonable will look at each individual case, the size and nature of the organisation and the resources available to them when introducing the adjustment.

If an employer fails to make reasonable adjustments then they have discriminated against the disabled employee and a claim for failure to make reasonable adjustments can be made in the Employment Tribunal.

## Claims for disability discrimination

Employees who have been discriminated against because of their disability can make a claim to an [Employment Tribunal](#).

A claim must be made within three months of the discriminatory act, or, within three months of the last event in a series of discriminatory acts. This time limit can be extended by a Tribunal.

## Justification

A Tribunal can make a declaration about the rights of the parties, award compensation and make a recommendation. The compensation that a Tribunal can award for a disability discrimination claim is unlimited. A Tribunal will usually award compensation for: any financial losses as a result of the discrimination, any injury to feelings and for any aggravated damages.

[Employers can justify discrimination](#), except direct discrimination, if they can show that their treatment was a 'proportionate means of achieving a legitimate aim'.

The legitimate aim, why the employee was discriminated against, needs to be a real, objective aim that is not in itself discriminatory. Cost alone may not be sufficient to justify discrimination but a legitimate aim could be cost plus another reason.

'Proportionate means' looks at whether the discriminatory treatment was an appropriate and necessary way of achieving the legitimate aim.

## Obesity and disability discrimination

### Decision by the court

The recent ECJ judgement on obesity in the workplace has put the spotlight on whether obesity is classed as a disability. This is not a new issue and has already been discussed within Employment Tribunals and domestic law.

The ECJ decided that EU law does not include the principle that employees are protected from discrimination on the grounds of obesity but that obesity may be a disability where it 'hinders a person's full and effective participation in professional life'. This could be, for example, if obesity reduces mobility.

### How this affects employees in the UK

The decision will have to be applied by UK employment tribunals, meaning that obesity can come under the heading of [disability discrimination](#) and should be treated as any other disability if it affects the way an employee carries out their job.

Employees should not be subjected to any forms of discrimination by reason of their obesity and, if they are, they may be able to bring a tribunal claim for disability discrimination. This will apply during all the same stages as other disabilities, for example, recruitment - refusing to employ an obese person has the potential to be direct discrimination on the grounds of disability by reason of obesity.

The cause of obesity is irrelevant, for example, obesity caused by over-eating rather than by a medical condition should be treated by the employer in the same way.

Employers should be aware that conditions associated with obesity may make the employee disabled regardless of their obesity, for example, asthma, diabetes, breathing problems and heart disease.

## Reasonable adjustments

If obesity places the employee at a disadvantage the employer will have a duty to make reasonable adjustments. These adjustments could include providing a car parking space near office buildings, supplying bigger desks and chairs or create more easily accessible fire escapes.

Failing to make these adjustments for any reason, especially the belief that obesity is not a disability, is likely to result in a claim being brought in a tribunal.



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