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The Equality Act 2010, Disabled People and Carers (November 2010)

The Equality Act 2010, 90% of which was implemented on 1st October, replaces several different anti-discrimination laws. It simplifies the law, removes inconsistencies and streamlines processes. We explain here how the new Act affects disabled people and their carers¹.

The Act applies to all providers in the statutory, voluntary and community sectors, whether or not a charge is made for the service. (It does not apply to private clubs or associations with less than 25 members.)

Clause 1 on socio-economic disadvantage has not yet been enacted

The Government has not implemented a socio-economic duty on public bodies. If/When this happens government departments, local authorities, health bodies etc will be obliged to make strategic decisions in ways that reduce the inequalities of outcomes resulting from socio-economic disadvantage.

As it is well established that carers suffer economic disadvantage clause 1 will mean that public bodies must assess the "carers impact" of strategic initiatives. (Equality Impact Assessments are described in the Family Carer Support Service News Digest 17).

Disability Discrimination applies to disabled people, people who are mistakenly thought to be disabled and people linked to a disabled person

The Equality Act protects anyone who has, or has had, a disability. It also protects people from being discriminated against or harassed because of a disability they do not personally have, for example a person should not be treated less favourably because someone mistakenly thinks they are disabled or because they are linked or associated with a disabled person.

For the purpose of the Act disability is defined as a physical or mental impairment that has a substantial ("more than minor or trivial") and long-term adverse effect on the ability to carry out normal day-to-day activities. A disabled person no longer has to show their impairment affects a particular "capacity" such as mobility or speech, hearing or eyesight.

If you are caring for a disabled person you are protected by the Equality Act when you shop for goods, ask for services, get services or use facilities like public transport.

As a family carer you already have the right to ask for flexible working hours so you can fit your caring responsibilities with your work.

¹This article is based on Government Equalities Office Equality and Diversity Forum leaflets Equality Act 2010: What do I need to know? Disability Quick Start Guide, Equality Act 2010: What do I need to know as a carer?(see www.edf.org.uk) and Carers UK 2009 briefing The Equality Bill and Carers, by Luke Clements.)

Direct Disability Discrimination

Direct discrimination occurs when, because of a disability or being associated with someone who has a disability, a person receives worse treatment than someone who does not have a disability or is not associated with a disabled person. It is intended to stop people being denied a service or receiving a worse service because of prejudice.

In the past direct discrimination was only unlawful when it happened in relation to work, now access to goods and services are also covered.

Example of direct discrimination: Ahmed has a severely disfigured arm. A community centre refuses to serve him in the bar unless he wears long-sleeved clothing to cover the arm.

Direct discrimination as a carer of someone with a disability: is where you are treated less favourably than someone else because you are caring for an elderly or disabled person. At work this could include your employer:

- Refusing to offer you a job because of your caring responsibilities
- Treating you less favourably because of your caring responsibilities

You are also protected from discrimination outside work, which could include:

- Discouraging you from using a service because you care for someone with a disability
- Making it impossible for you to use a facility because you look after someone who is disabled
- Providing you with a worse service than someone else who is not caring for a disabled person.

Example of direct discrimination against a carer: Mrs B applies for a job that involves a lot of travelling. She has the best skills and experience but the company knows that she cares for her disabled son. The company make the assumption that she cannot manage because she has a disabled son and do not offer her the job. This is direct discrimination because Mrs B is associated with a disabled person – it is against the law to refuse to offer her the job for that reason.

Discrimination arising from disability

Discrimination arising from disability occurs when a disabled person is treated unfavourably because of something connected with their disability and the unfavourable treatment cannot be justified. Different treatment can be justified if it can be shown to meet a legitimate objective in a fair, balanced and reasonable way.

The provider of the service has to show there is a genuine reason for its less favourable treatment of a disabled person and that the treatment was appropriate.

If the provider of a service did not know, or could not reasonably be expected to know, a person was disabled then discrimination arising from disability would not be unlawful. This means that service providers should take reasonable steps to find out whether someone is disabled, without making enquiries that infringe a person's privacy or dignity.

Example of discrimination arising from disability: Sarah seeks admission to a crèche for her son whose disability means he does not have full bowel control. The crèche says they cannot admit him because all children at the crèche have to be toilet trained and he is not. The refusal to admit Sarah's son is not because of his disability but he is experiencing detrimental treatment as a consequence of his incontinence which arises from his disability. Sarah could challenge this exclusion on her son's behalf by making a claim in the county court. Unless the crèche could demonstrate to the court that they did not know the boy was disabled, or could demonstrate its action was justified, the exclusion would be unlawful.

Example of discrimination arising from a disability against a carer: John, a carer who runs a small business is denied a bank loan because he has a disabled son who lives with him. The Equality Act 2010 means John can make an application to the county court to seek damages for his distress and any loss because he has been denied a loan because of disability (though not his own.)

Indirect disability discrimination

Indirect disability discrimination occurs when there is a rule, a policy or a practice that applies to everyone but which particularly disadvantages people with a particular disability compared with people who do not have that disability, and it cannot be shown to be justified as being intended to meet a legitimate objective in a fair, balanced and reasonable way. (A lack of resources is unlikely to be sufficient justification on its own.)

Example of indirect disability discrimination against a disabled person: An outdoor centre provides a variety of activities. On safety grounds, it requires a medical certificate of good health for all participants in any activities. Jane complains that she cannot get a certificate as her doctor does not consider her “in good health” because she has severe depression. Although ensuring her health and safety is a legitimate aim, the blanket application of the policy is unlikely to be justified because some conditions, such as mental health do not in practice impede the ability to undertake strenuous exercise safely.

Example of indirect disability discrimination against a carer: A GP practice that has inflexible appointment arrangements would affect all people but have a disproportionate negative impact on carers whose responsibilities make it particularly difficult to fit into such rigid arrangements. If as a result a carer was unable to see a GP and their health was compromised, such that the disabled person’s care or wellbeing was jeopardised, then a claim of indirect discrimination could arise.

Reasonable adjustments for disabled people

Providers of services have to make reasonable changes to improve services for disabled customers or potential customers when, without them, they would be at a substantial disadvantage. Rather than wait until a disabled person has difficulties, service providers must think ahead and take steps to address barriers that impede disabled people.

There is a legal requirement to make reasonable changes to how things are done (eg to change a policy), to the built environment (eg changes to the access to a building) and to provide auxiliary aids and services (eg providing information in accessible formats, induction loops, special computer software or additional staff support when using a service).

If a building cannot be made accessible through reasonable adjustments the service might be provided at a different venue, including a home visit. What is reasonable will depend on circumstances including the cost of an adjustment, the potential benefit it might bring other customers, the organisation’s resources and how practical the changes are.

Example of reasonable adjustments: Sandra is arranging a conference for her charity to discuss new ways of fundraising. She looks at a number of venues to find one that has good physical adaptations with accessible toilets, an induction loop and places for people to eat their lunch at tables if they want to. She contacts speakers and participants beforehand to ask if they have any disability-related requirements, such as a sign language interpreter or information in alternative formats.

Harassment

If you are disabled disability harassment is unwanted behaviour related to disability or age that hurts your pride or creates an intimidating, degrading or offensive environment for you. It is against the law to harass you a carer of a disabled person at work, or when they buy goods or get services.

Example of harassment: Andrew attends a day centre for adults with learning difficulties. Some of the staff make fun of him by mimicking him. He could bring a claim of harassment related to disability.

Example of harassment of a carer of a disabled person: You’re a carer for your disabled husband who uses a wheelchair. When you are trying to shop an assistant makes rude remarks about wheelchair users to a colleague, which you find offensive and upsetting. You may have

a claim of harassment related to disability, even though you are not disabled.

Victimisation

If someone has made a complaint about discrimination or harassment under the Equality Act 2010, or helped someone else to, (or the service provider thinks they are doing or may do these things), it is unlawful for the service provider to victimise them (ie treat them badly).

A victim now only needs to show that they have been treated badly – in the past they would have had to show they were treated less favourably than someone who had not made, or supported someone to make, a complaint under the Act.

As a family carer, if you complain about direct discrimination or harassment and are treated unfavourably because of your complaint, the law will protect you – provided you believe your complaint is true.

Example of victimisation: In the above example, if one of the other staff at the centre supported Andrew to make his complaint about harassment, and was as a consequence ostracised by her manager, this would constitute victimisation.

What do voluntary and community organisations need to do?

Voluntary and community organisations should ensure staff (paid and voluntary) understand the new Act. It would be good practice to

- Inform staff and management committee about the new provisions
- Regularly review accessibility of services to disabled people
- Provide regular staff training
- Implement and review equality policy
- Have easy-to-use, well publicised complaints procedure and use it to identify problems to be addressed
- Consult disabled customers and organisations

representing disabled people and staff about how services could be more inclusive.

Taking action about discrimination

Employment tribunals

You can take your case to an employment tribunal if you cannot sort out a problem of discrimination at work with your employer. If you win your case you might get compensation and the tribunal could recommend that your employer stops discriminating against you. If you have been sacked the tribunal could recommend that your employer allows you back to work. (You need to meet deadlines for taking a case to the employment tribunal).

Employment tribunals can now make things fairer for other workers as well as the person who has made a successful claim of discrimination.

County court claims

If you have been discriminated against when buying goods or getting services you may want to bring a claim in the county court in England or Wales (or the sheriff court in Scotland.)

An expert in discrimination might help the judge to hear the case and you might get legal aid. If you win your case you could get compensation and whoever has discriminated against you could be ordered to stop. Again there are deadlines to bring a claim.

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