

Moving Forward

Disability Discrimination in the force



What is "disability"?

The Disability Discrimination Act 1995 ("The DDA") has applied to police officers since October 2004. The DDA protects you from discrimination if you have a disability. This is defined as a physical or mental impairment which has a substantial and long term adverse effect on normal day to day activities.

Long term means having lasted or being likely to last for at least 12 months. Normal day to day activities are affected if one of the following is affected: mobility, manual dexterity, physical co-ordination, continence, ability to lift/carry, speech, hearing or eyesight, memory or the ability to concentrate, and the perception of the risk of physical danger. For the purposes of establishing whether a person has a disability, the effect of medical treatment is disregarded.

There is no definition of impairment under the DDA and a mental impairment does not need to be clinically well recognised. Some conditions are deemed to be disabilities such as cancer, HIV, multiple sclerosis.

Discrimination in employment

There are various kinds of discrimination under the DDA which are unlawful in an employment context. These include:

Direct discrimination - This occurs where a disabled person is treated less favourably on the ground of their disability, than a person not having that particular disability.

Disability related discrimination - This occurs where, for a reason which relates to the disabled person's disability, a disabled person is treated less favourably than others to whom that reason does not or would not apply is or would be treated, and the treatment cannot be justified.

Failure to make reasonable adjustments - Broadly speaking, a duty to make reasonable adjustments to remove or reduce disadvantage to the disabled person arises where an aspect of the force's arrangements and practices set up places a disabled person at a substantial disadvantage.

Harassment - this occurs where, for a reason which relates to a person's disability, a person engages in unwanted conduct which has the purpose or effect of violating the disabled person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the disabled person.

The duty to make reasonable adjustments

The law requires your force to make reasonable adjustments to your working practices or work environment to ensure you aren't disadvantaged compared to other officers. However, unless the force is on notice of the disability they will not be under a legal obligation to consider reasonable adjustments.

It would suffice if it could be shown that the force ought to have been aware of the disability, but it is safest to ensure that a line manager or HR are aware of the condition.

Adjustments include adapting premises, reallocating duties, altering hours, modifying or acquiring equipment, or transferring you to an existing vacancy. When deciding whether adjustments are reasonable, your force can take their resources and the cost into account, as well as the impact of the adjustment.

Enforcement and compensation

A DDA claim must be lodged within 3 months less one day of the act of discrimination complained of. The DDA also contains provisions for a questionnaire to be served to try to elicit further information.

A questionnaire can be served at any time prior to a claim being lodged or up to 28 days after the claim is lodged. If successful, compensation can be awarded under general legal principles including damages for loss of earnings and injury to feelings. Tribunals can also recommend your force makes specific adjustments in your workplace.

Police cases

RJW has acted for a number of officers in disability discrimination claims and advised many others on how to improve their position at work. The Home Office has produced detailed guidance, "Disability and the Police: The Complete Works". This contains some useful examples of how the law protecting you from disability discrimination might work in practice.

Remedies

If a complainant is successful in their complaint of unlawful discrimination, the Tribunal may grant whichever of the following remedies it considers "just and equitable":

- A declaration on the rights of the parties
- A recommendation that the Respondent takes a particular course of action
- Compensation (plus interest)

Compensation may include awards for injury to feelings, aggravated damages, loss of congenial employment, and any actual and/or future financial loss, for example loss of earnings and pension losses.

There is no limit on the amount of compensation that can be awarded, but a complainant will only be compensated for the losses which they can show were directly caused by the unlawful discrimination as found by the Tribunal.

Contact Us

If you need further assistance, please contact your JBB in the first instance.

Regulated by The Solicitors Regulation Authority.
Prepared by Russell Jones & Walker Solicitors 2009.

This fact sheet is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more details or information about the matters referred to in this fact sheet please seek independent formal legal advice. This information was correct at time of going to press October 2009.