

A guide to the Disability Discrimination Act for people with HIV, cancer and MS

DRC December 2005

1. Introduction

The Disability Rights Commission (DRC) is an independent body, established by Act of Parliament. We enforce the Disability Discrimination Act 1995 (DDA), tackle discrimination and promote the benefits of an inclusive society.

The Disability Discrimination Act aims to end the discrimination and prejudice which many disabled people and people with long term health conditions face in their everyday lives.

If you have cancer, MS (multiple sclerosis) or HIV you have important rights under the DDA. You have these rights whether you consider yourself 'a disabled person' or not.

This briefing is aimed at people with MS, cancer or HIV. It is designed to give you a basic idea about how the DDA protects you whatever stage you are at – newly diagnosed or someone who has been living with the condition for some time.

2. Rights for people with MS, cancer or HIV from the point of diagnosis

The rules about who is protected against unfair treatment under the DDA are very complicated. Some people with cancer, HIV and MS have had problems in the past showing that they are protected under the DDA. There have always been special rules for people with 'progressive conditions' such as these. It used to be that people in these groups were covered from the moment the condition leads to an impairment which has **some** effect on ability to carry out normal day-to-day activities. **But from December 5, 2005 the rules got a lot simpler and clearer. Anyone with cancer, MS or HIV is now protected against unfair treatment in the workplace, education, housing or in accessing services from the point of diagnosis.** It doesn't matter whether you have any symptoms.

These changes have been made in recognition of the stigma that is often associated with a diagnosis of these conditions.

In the case of certain cancers which may not always involve substantial treatment you may have heard that the Government was considering excluding these from the 'point of diagnosis' rule. They decided not to because they realised that to do so would be unworkable since there are no uniform treatment protocols. So it does not matter what kind of cancer you have – you are covered.

If you are treated unfairly because of a past disability – for example because you had cancer in the past – you are also protected under the DDA.

Lots of other people are protected under the DDA. If you have a different disability or health problem that affects your everyday life a lot of the information in this briefing will be helpful to you. Another important change that has just been made to the rules about who counts as a disabled person under the DDA is that people with mental health problems will no longer have to show they have a "clinically well recognised" condition which is often quite difficult (people with mental health problems still have to meet other conditions – to check those out visit our website www.drc-gb.org).

3. What does the DDA say?

The Disability Discrimination Act (DDA) makes it unlawful for you to be discriminated against in:

- employment and occupation
- trade organisations and qualifications bodies
- access to goods, facilities and services
- the management, buying or renting of land or property
- education

There are also DDA regulations dealing with buses, coaches and trains which set out access standards for those vehicles to help people with mobility impairments, sensory impairments or learning disabilities.

The DDA 2005 also made some changes to the scope of what is covered under the Act, some of which are coming into force in December this year, others of which are coming into force in December 2006.

4. How does the Act affect me?

At work

Protection against direct discrimination

You are protected against direct discrimination – that means less favourable treatment on the grounds of disability – mainly treatment based purely on prejudice and blanket assumptions. This kind of discrimination cannot be justified.

For example, an employer refuses to employ you because of your HIV status. This would amount to direct discrimination.

Employers cannot have blanket policies of not taking on people with HIV (or any other impairment/health condition) because they believe they are a health and safety risk.

Someone with cancer or MS could not be turned down for promotion or denied access to training simply because of their condition.

It would be unlawful for an employer to exclude you from the company pension scheme because they assume you may draw on it early.

Less favourable treatment

It is also unlawful for your employer to treat you less favourably than someone else for a reason relating to your disability without justification.

For example, your employer is looking to make redundancies. They cannot make you redundant for a reason relating to your condition, unless they can justify it. They can only justify it if there is a material and substantial reason for the treatment but they cannot justify it if there is a reasonable adjustment that they could make which would make a difference to the reason for making you redundant. So they may need to discount any disability-related absences for example.

Reasonable adjustments

Employers also have to make 'reasonable adjustments' to their employment practices and premises if these place you at a substantial disadvantage. This duty applies to the recruitment process and to the terms and conditions of your employment. It is designed to overcome many of the barriers disabled people face to participating in employment.

For example,

- If you need to undergo treatment and rehabilitation your employer should consider allowing you a period of disability leave and permit you to return to your job at the end of this period.
- If you needed more flexible working arrangements – maybe working from home, or changing your hours - because your condition fluctuates a lot or because you are anxious and depressed about your diagnosis, again this could be a reasonable adjustment.
- If you have physical problems because of your MS and maybe need extra computer equipment, staff support, help getting in to the office or easier access around the building, these could all be part of the reasonable adjustments your employer makes for you. The Access to Work Scheme covers many of the costs of extra support so even a small employer would need to look at making changes.

Harassment

If you are harassed at work because of your condition you are also protected under the DDA.

For example: An employee with HIV uses a colleague's mug. The colleague then makes a point of being seen washing the mug with bleach, which is not something she would do if anyone else used her mug. She also makes offensive comments about having her mug used by someone with HIV. This is likely to amount to harassment.

Victimisation

There is also protection for non-disabled people who are victimised because they support a colleague with a disability discrimination case.

Say an employee with HIV, cancer or MS complains of discrimination, having been refused promotion at work. A colleague gives evidence at the tribunal hearing on his behalf. The employer makes the disabled person's colleague redundant because of this. This amounts to victimisation.

In education...

It is unlawful for schools, colleges and universities to discriminate against disabled pupils or students by treating them less favourably than others. In addition, responsible bodies have to provide certain types of reasonable adjustments to provision where disabled pupils or students might otherwise be substantially disadvantaged. There are particular rules about when an

education provider is discriminating if they do not know that a person is disabled.

Less favourable treatment

Say your condition had caused you to take time off and miss three sessions of your college course. Normally students who miss three lessons would be told to take the whole course again. But you only missed them because of your condition so making you do the whole thing again could amount to less favourable treatment.

Say you are HIV-positive and are very open about this. You take an evening course in Tai Chi at your further education college. The tutor for the class spends time with all the students individually helping them with their technique. The tutor does not spend any time individually with you because he feels uncomfortable with you. Because no other student has been treated in this way, and because the less favourable treatment is related to your disability, the treatment is likely to be unlawful.

Reasonable adjustments

If you need time off for treatment or rehab or counselling and will miss lectures it could be reasonable for a college to provide you with notes from those you missed.

If you need rest breaks during exams because of fatigue relating to your condition, this could also be a reasonable adjustment.

Schools don't have to provide additional services to disabled children (these are supposed to be covered by the special educational needs system) or change physical features of their premises which make access hard. They do, though, need to consider changes to the way in which they work (for example, moving a particular lesson to an accessible classroom). Further and higher education colleges do need to consider these things.

The duties on all educational providers are 'anticipatory'. This means that they need to plan change in advance. That could be providing staff with disability awareness and equality training for example.

In 2006, there will be some changes to discrimination in post-16 education (such as the introduction of direct discrimination).

In housing....

People who manage, lease or sell premises cannot treat you less favourably than others for a reason relating to your disability.

For example, a landlord could not refuse to let a property or try to evict someone because they find out they have HIV.

From December 2006 landlords will also be under duties to make reasonable adjustments to their practices and procedures and consider providing extra help to disabled tenants. From this date there will be more help too for disabled people seeking permission from their landlords to make access improvements to their home. Commonholds will also be covered from this date.

Accessing services....

It is unlawful for service providers to discriminate against a disabled person by:

- Refusing to provide (or deliberately not providing) any service.
- Providing service of a lower standard or in a worse manner – this would cover things like harassment of disabled customers, or being offhand or rude towards you
 - Providing service on worse terms. For example, someone with MS is booking a holiday. The travel agent asks her for a larger deposit than required from other customers. The travel agent believes, without good reason, that because of her disability she is more likely to cancel her holiday. This is likely to be unlawful.

Service providers also have to make reasonable adjustments to enable you to use their services.

If you are feeling weak after chemo and need assistance at the supermarket, that could be a reasonable adjustment they would need to make for you.

Service providers have to plan to make their services more accessible and they should do this in advance of customers approaching them about it. That includes providing extra help or making changes to their premises to help people with mobility problems for example.

Insurance might be a particular concern. There are special rules about this in the DDA. If you apply for life insurance, private health insurance or car

insurance, for example, you cannot be refused or have worse terms applied to you unless the company bases this on reliable and relevant information and acts reasonably having looked at all the relevant factors. Insurers cannot rely on untested assumptions or stereotypes or generalisations. So it might be reasonable for a life insurance company to refuse someone with cancer life insurance if they base that decision on clear medical evidence that the person only has 6 months to live. On the other hand if someone has a type of cancer which all the statistical evidence and medical evidence shows is either curable or manageable then an insurer could be acting unlawfully by refusing insurance or indeed by making you pay an additional premium. If someone with MS or HIV applies for private health insurance it could be reasonable for the insurer to only insure for treatment not related to the MS or HIV.

NB. From Dec 5 this year it will also be unlawful for private clubs with over 25 members to treat you less favourably for a reason relating to your condition. And local authorities will also be prohibited from treating disabled members (i.e. councillors) less favourably too.

5. Frequently Asked Questions

Do I have to tell my employer I have MS/Cancer/HIV?

The DDA does not require you to tell anyone about your condition. But if you don't tell your employer they won't be able to make any 'reasonable adjustments' you require. It's probably best to let them know at the outset, for example once you have accepted a job, because if they find out later, by accident, it could affect your working relationship with them. We know this can be worrying– we are encouraging employers to be positive about disability so people feel more comfortable disclosing a health condition or impairment.

There are some advantages to disclosure. Say you apply for a college course and you tell the institution about your condition on the application form. From that point on they should bear that in mind – for example if they ask you for interview they should ask you if you need any reasonable adjustments to get to and take part in the interview. If they don't and you make a complaint about this they can't escape redress by claiming ignorance.

If I tell my employer or my college about my condition can I insist that they keep the information confidential?

Yes. They should agree with you who needs to have this information. For example at work your line manager would need to know if you needed flexible working arrangements because your MS means you have good periods and bad ones. But if you don't want colleagues to know they should honour that. Similarly at school there is no reason why other children or their parents should be told a child is HIV positive. A confidentiality request may affect the way in which reasonable adjustments are made for you though.

You say that we are covered by the DDA from the point of diagnosis. But do we need to show proof and if so to whom, and when?

Your employer or an education provider might ask for proof before they make reasonable adjustments for you so you might need to show them a letter from your doctor. Insurers might need more detailed information.

What does 'reasonable' mean?

The DDA only requires employers, education providers and service providers to do what is reasonable in terms of their resources (including financial support available to them) and other factors like disruption to other people. Most adjustments for disabled people cost nothing and for those that do help is often available at work through Access to Work and in education via the

local education authority or FE/HE funding bodies. Large service providers are expected to do more than small ones because they have more resources. But it costs nothing to treat someone with dignity. Similarly treating disabled people fairly rarely inconveniences others and changes made for disabled people often make things better for other employees/students or service users.

What do you mean when you say discrimination can be justified?

There are some circumstances where an employer or someone else with duties might be able to justify their treatment of you or a failure to make adjustments. These are quite limited though – for more details see our website.

What should I do if I think I have been discriminated against?

First of all get some advice – from your Union, the DRC, or an organisation for people with cancer, HIV or MS. Most problems can be resolved early on but as a last resort the DDA gives you the right to bring a discrimination claim at employment tribunal or to the courts.

6. Want to know more?

This is just a brief overview of how the DDA is relevant to you. If you are worried about unfair treatment do get some more information.

There will be more changes to the DDA from December 2006 extending rights not to be discriminated against on public transport and giving rights to reasonable adjustments in housing. Public sector bodies will also have duties to promote disability equality.

If you have a question about the DDA you can contact our Helpline. You can contact the DRC Helpline in the following ways:

Telephone: 08457 622 633

Textphone: 08457 622 644

(You can speak to an operator at any time between 8am and 8pm, Monday to Friday)

Fax: 08457 778 878

Post: DRC Helpline
FREEPOST MID02164
Stratford upon Avon
CV37 9BR

The DRC Language Line service offers an interpretation facility providing information in community languages and is available on the DRC Helpline telephone number.

To find out more about your rights under the DDA on the web go to www.drc-gb.org/knowyourrights/index.asp

If you think you have been discriminated against at work because you have MS, Cancer or HIV and need step-by-step advice about what to do go to www.drc.org.uk/usingyourrights

We're afraid we can't help with benefit enquiries or other kinds of enquiries.

Every effort has been made to make sure the information in this booklet is correct. However, it is not intended to be an authoritative statement of the law, and the DRC cannot accept any legal responsibility or liability.