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Nicky is the owner of HR Support Consultancy. She has a BA(Hons) in Business Studies, is a member of the Chartered Institute of Personnel and Development and has been a practising HR manager for more than 20 years. HR Support Consultancy has provided the BVNA Members Advisory Service (formerly known as the Industrial Relations Service) since it began in 2002.

Disability in the workplace

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You are considered to be disabled under the Equality Act 2010 if you have a physical or mental impairment that has a "substantial" and "long-term" negative effect on your ability to do normal daily activities or if you are diagnosed with cancer, multiple sclerosis or HIV infection. Substantial means more than trivial or minor and long term means twelve months or more.

If someone is deemed to be disabled within the terms of the Equality Act, they have additional employment rights not to be discriminated against because of their disability.

Disability discrimination is unlawful in the workplace. Discrimination can take different forms, it can be *direct*, *or indirect* (for example if there is a rule made that applies to everyone but affects one group of workers more than others) it can be by *association* (for example an employee may have a disabled child), or it can be by *perception* (if someone is perceived to be disabled when they aren't). Sometimes more than one type of discrimination can exist.

Very often it is not possible to know if someone has a disability within the terms of the Equality Act and an employer will need to take medical advice from a medical specialist.

Discrimination has the potential to happen at different times during employment from applying for a job, interviews, aptitude tests, terms of employment, training opportunities, redundancy, discipline and grievance procedures. The Equality Act makes it unlawful to ask job applicants about their health or disability before they have been offered a job (except if there is a specific requirement of the job).

The definition of a disability refers to normal day to day activities, but it can be difficult to determine what "normal" day to day activities are. Some work activities might be considered to be highly specialised and others will involve normal day to day tasks. Normal daily activities in the workplace will vary a lot but some examples might be remembering information, communicating with others, using a telephone and computer, any moving around that is necessary, climbing stairs, manual dexterity and doing calculations. Previous cases have said that a work activity is seen as "normal" if it is found in a range of different work situations, e.g., taking a phone call. A judge in a case at an Employment Tribunal (Banaszczyk v Booker) said that lifting a load that weighed 25 kg was a normal activity for many UK workers.

Employers have a duty to make "reasonable adjustments" in the workplace for any member of staff who is disabled if they are required. If an employer does not explore the options of reasonable adjustments for an employee who has a disability, and does not make them when they could have been put in place and does not consider alternatives to dismissal and the employee is dismissed, they are likely to be found to have discriminated against that disabled employee.

Reasonable adjustments can vary a lot - a ramp, specialist equipment, flexible hours or home working are all examples of what may be helpful and might be considered for the disabled employee. If an employer has considered adjustments but has decided they are not able to do this, they should document the process they have gone through so there is evidence that these have been taken into consideration. A larger employer is expected to make more adjustments for disabled staff than a smaller employer is expected to make.

If you would like further advice about this or any other employment topic, please contact us.

For further support with this or any other HR issue, BVNA members can call the BVNA Advisory Service Helpline on 01822 870270 or email AdvisoryService@bvna.co.uk

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