



Disability Justice Project
Discrimination guide

Your rights at work



Disability
Justice
Project

Inclusion
London

Supporting London's Deaf and
Disabled People's Organisations

About this guide

We experience discrimination on a daily basis. Many of us don't always realise that what is happening is against the law, when others feel unable to do anything about it.

That's why we put this guide together. It will help you to understand how the law protects you from discrimination at work and what you can do if you feel you have been discriminated against.

This guide covers what to do if you have experienced discrimination in employment. Please refer to our other guides for support when you:



[have difficulties with physical access, getting into buildings, lack of accessible toilets](#)



[have difficulties getting information in the format you need](#)



[cannot get adaptations made to your home](#)



[have difficulties accessing public engagement and consultations](#)

Your rights at work

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How you are protected from discrimination at work

What the law says

The Equality Act 2010 makes it unlawful for employers to discriminate against Disabled people when in work, including their terms and conditions, benefits, opportunities for promotion, performance review(s), the handling of any absence(s), pay, training and development, and the termination of employment.

It is important to note that the Equality Act 2010 has a definition of disability and therefore you are only protected if you meet the criteria set out in the definition. When we talk about Disabled people in this guide, we mean those who meet the definition in the Equality Act 2010.

Below we look in more detail at the different types of discrimination that Disabled people may experience in a workplace.

As any other worker or employee, Disabled people have other rights, besides those mentioned in this guide. The following are websites with public guidance on general rights at work.



www.gov.uk/browse/working



www.citizensadvice.org.uk/work/rights-at-work/



www.acas.org.uk/article/4663/Rights-and-responsibilities-at-work

Who is disabled under the Equality Act 2010?

A person is considered Disabled under the Equality Act 2010 if

- they have a physical or mental impairment, and
- the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
- Impairment has a long term effect if it has lasted or is likely to last for more than 12 months. If you have a fluctuating condition, you would be covered as long as the effects of it reoccur for 12 months or more

You have to satisfy the above criteria to qualify for protection. People with some impairments are automatically protected by the Equality Act 2010, for example blind and visually impaired people, people with HIV, cancer, MS. If a person has a progressive conditions they are protected even at early stages when their impairment does not yet have an impact on day-to day life.

The Equality and Human Rights commission has more detailed information on what disability means under the Equality Act 2010 and who is protected. www.citizensadvice.org.uk/law-and-courts/discrimination/protected-characteristics/what-counts-as-disability/

Direct disability discrimination

It is unlawful for an employer to treat you, a Disabled person worse than they would a non-Disabled person who shares the same circumstances. This means prospective employers should not treat you worse compared to other non-Disabled members of staff who are in the same situation just because you are a Disabled person.

Knowledge is important here and your employer must know (or ought to have known) that you are Disabled when the alleged discriminatory act took place.

Examples of what could amount to direct discrimination:

- not providing you with opportunities for promotion or training because you are Disabled;
- subjecting you to a performance or capability review because you are Disabled;
- paying you differently or not giving a bonus because you are Disabled;
- not inviting you to a team event because you are Disabled.

Discrimination arising from disability:

it is unlawful for your employer to treat you badly because of something arising from your disability, unless they can justify that treatment by showing there is a good reason for it and it is proportionate. Proportionate means there are no other 'less discriminatory' ways for your employer to achieve the outcome they want. When deciding this they have to consider what reasonable adjustments they can make.

Again knowledge is important, and your employer must know (or ought to have known) you are Disabled. However, your employer does not have to know about the 'something' arising from your disability" which contributed to or caused the unfavourable treatment.

For example, suppose that your employer knows that you have autism, what they might not know is that as a consequence of this you might have difficulty interacting with and responding to certain requests.

Here are some examples of what could amount to discrimination arising from disability:

- a decision to dismiss or review your performance because you are (or have been) absent from work due to sickness;
- introducing and enforcing strict targets knowing it genuinely takes you longer to do some tasks;
- starting disciplinary proceedings against you because you had an emotional outburst at work, knowing that you have an underlying mental health condition;
- holding training sessions or important meetings at an inaccessible venue, causing you to have to join remotely and missing out on face to face discussions and personal contact with colleagues / clients;
- not offering you a promotion opportunity because your employer assumed the increased responsibility would be too difficult for you to manage now you have been diagnosed with MS;
- being required to return to work following a period of sickness absence on a different contract, to include a fixed-term contract;
- not being offered a role because your performance at an interview was judged to lack energy and your employer is aware that you have ME and often feel tired in the afternoon.

Action: if you believe your employer has policies or does things in a way that put you at a disadvantage because of something arising from your disability, you should raise this with your employer and inform your employer about your impairment.

Whilst it would help if you could think of any steps that could be taken to resolve the problem, this is ultimately your employer's responsibility. How you raise your concerns depends upon your situation – further information is set out under [What to do if things go wrong](#) below.

Indirect disability discrimination:

It is unlawful for employers to apply a policy, a rule or do things in a way that has a worse impact on Disabled people compared to non-Disabled people, and has that negative impact on you as a Disabled person. However your employer can justify that policy, rule or way of doing things by showing there is a good reason for it and it is proportionate. Proportionate means there are no other 'less discriminatory' ways for them to achieve

the outcome they want (including when considering reasonable adjustments – see further below).

The following are examples of what could amount to indirect disability discrimination:

- the practise of prioritising full time staff for promotion and training opportunities. Such a practise could potentially place disabled people who need to work part time to manage their impairment at a particular disadvantage compared to non-disabled people.
- the policy of awarding bonuses dependent on attendance at work could place disabled people who are absent from work due to their impairment or at a particular disadvantage compared to non-disabled persons.
- a policy of assessing performance based upon the number of hours of work recorded when at work could place disabled persons who are absent from work or whose impairment means they are unable to record the same hours or consistency of hours at a particular disadvantage in comparison to non-disabled persons.

Duty to make reasonable adjustments:

Employers are required by law to take steps to remove barriers Disabled employees face at work. This is called duty to make reasonable adjustments. This duty means if your employer has rules, policies or does things in a way that put you as a Disabled person at a disadvantage or if there are physical barriers in the work environment it has to take reasonable steps to remove the disadvantage. This duty also means your employer may have to provide equipment or support which can help to remove barriers (such as a screen reader or an ergonomic chair or an interpreter).

Here are examples of what could amount to reasonable adjustments:

- changing your work pattern, working hours or your responsibilities;
- counting and recording disability related absence separately to sick leave;
- making the office more accessible (such as relocating your desk, or installing a ramp a lift or a hearing loop);
- paying for a BSL interpreter so you could go on a training course;
- providing a support worker;

- allocating you a desk in a quieter part of the office;
- giving you an allocated parking space;
- purchasing software or providing other devices (such as a screen reader);
- adjusting any recruitment, performance, capability or redundancy process;
- allowing you to come in late or take breaks at work, and/or work from home;
- paying for a taxi to take you to meetings;
- providing information in an alternative format.

Your employer will only be required to implement adjustments which would be 'reasonable' for them to implement in the circumstances. This includes reference to their resources, the cost involved, the impact on others / their business, and whether the adjustments have a real prospect of being effective.

Your employer is responsible for paying for the cost of the adjustment(s). The Government's Access to Work scheme may be able to contribute towards the cost of adjustments you need at work. Find out more information here: www.gov.uk/access-to-work

Action: If you feel there are barriers that make it difficult for you to do your job or have the same opportunities as other staff have, you could consider raising this with your employer (see further under What to do if things go wrong below) It would be helpful if you could consider and suggest what reasonable adjustments may help remove the disadvantage(s) you face. However, it is ultimately your employer's responsibility to identify and put in place reasonable adjustments for you.

If your employer is unaware you are Disabled and does not know of the disadvantage(s) you face, their duty to make reasonable adjustments will not arise.

You can also contact Access to Work, they can help identify the support you need and may pay for some of it as well. www.gov.uk/access-to-work/apply

Deaf Access to Work has detailed information on how to apply here www.deafatw.com

Harassment related to disability

It is unlawful for your employer to act in a way, which relates to your disability and creates a hostile or intimidating environment or violates your dignity. Your employer also has a legal duty to do what is reasonable to protect you from being harassed by your colleagues.

In most cases the acts of your fellow employees will be deemed to be the acts of your employer. This duty can extend to harassment by third parties (i.e. people who are not your colleagues), although this is more of a grey area. In general, however, this means employers must not create or tolerate an environment that is intimidating and violates your dignity as a Disabled person.

The following are examples of what could amount to harassment related to disability:

- colleagues making derogatory comments or jokes about you or about Disabled people;
- forcing you to do things knowing that you are unable to;
- violating your physical space;
- not taking action when customers or other third parties subject you to disability attacks or comments;
- telling your colleagues of your disability.

An employer might attempt to defend this actions by arguing that it was not reasonable for you to be affected by the harassment complained about, effectively saying that you have been too sensitive. This is a difficult argument for an employer to make, but we flag it up so that you are aware that it is possible.

We reference below how you could keep a record of what is happening and its impact on you, such a record would make it harder for an employer to succeed with such a defence.

Victimisation

It is unlawful for your employer to retaliate against you and treat you differently because you complained about discrimination or helped others to do so, or because you might complain about discrimination, or help others to do so.

An Employer should not victimise you because you:

- a) brought tribunal proceedings under the Equality Act, or
- b) done anything in connection with the Equality Act, or

- c) given evidence or information in relation to proceedings under the Equality Act, or
- d) made an allegation that someone has breached the Equality Act.

Doing any of the above is known as performing a 'protected act'.

You are also protected if your employer believes you may have taken such steps or that you may take such steps in the future.

Here are examples of what could amount to victimisation:

- in response to you asking for reasonable adjustments, your employer marginalises you.
- in response to you complaining about harassment at work, you are passed over for promotion or micro-managed.
- in response to you raising concerns about how your employer treats Disabled people or supporting another Disabled person you are treated badly.

Employers can treat you better than others because you are Disabled

For example they can support and encourage peer-support and mentoring schemes for Disabled employees, they can create training opportunities for Disabled employees only.

How you are protected from discrimination when your employment ends

Whilst there are various potentially ‘fair’ reasons your employer can rely upon to end your employment, in some situations termination of employment may amount to discrimination. For example, if the motivation for ending of employment is your Disability or the way in which the termination process is handled disadvantages you as a Disabled employee.

This section looks at the potentially fair reasons most often relied upon by employers to dismiss their employees and we describe how your disability may make the dismissal or decision discriminatory.

This section covers:



[Redundancy](#)



[Performance](#)



[Capability \(often ill health\)](#)



[Conduct](#)



[Resigning](#)



[Further information and resources](#)

Redundancy

Employers are often required to make strategic business decisions regarding how they operate, how they respond to changing market conditions, how they structure their business or the size of the workforce it can afford. Such decisions often result in employees being placed at risk of redundancy.

In such a situation an employer must follow a fair redundancy procedure, which includes a reasonable consultation process and consideration of any alternative roles that the 'at risk employee' could fill so as to avoid being made redundant.

In some instances, however, the alleged business need for redundancies may be a sham to remove a Disabled employee. Or the manner in which the redundancy consultation process is handled may place a Disabled employee at a disadvantage.

The following are examples of discriminatory treatment that can happen in a redundancy situation:

- using period(s) of absence from work as one of the scoring criteria (with higher absences resulting in a lower score). This may place Disabled employees at a disadvantage in comparison to non-Disabled employees because they may be more likely to be absent from work as a consequence of their disability, and may have longer periods of absence.
- not considering a Disabled employee for an alternative role because they are Disabled or they may assume that it will be difficult for them to perform the alternative role because of their impairment, without first having considered if the role can be adjusted to remove the perceived difficulty or make other reasonable adjustments.
- going through a restructure process in which the only person affected and at risk is a Disabled person, and the reason relied upon for the restructure is not genuine.

- scoring a Disabled person lower than a non-Disabled person when objectively the Disabled person has outperformed or had comparable performance to the non-Disabled person across the relevant criteria.
- not making reasonable adjustments to the redundancy process, such as its timing, the location of consultation meetings, and how the information about the redundancy is provided (such as providing a BSL interpreter).

Performance

It is common for employers to review their employee's performance and, where it is seen to be lacking, to initiate a performance review process. However, where the reason for the review is because of an employee's disability or because of a consequence of their disability, then this may give rise to discriminatory treatment.

The following are examples of discriminatory treatment that can occur in a performance situation:

- the Disabled employee's performance is objectively good or at least as good as or better than non-Disabled employees in the same circumstances, but only the Disabled employee is subjected to a performance review.
- the employee's performance is not as good as it should be but the reason for this is having to manage impairment and take time off for medical

appointments or because the employer, has not made reasonable adjustments which may have resulted in a better performance or which would adjust the actual performance required for that employee (such as having different targets to non-Disabled employees. For example, an employer receives sales enquiries via email only and requires its employees to record a certain amount of sales per day. Due to an employee having a visual impairment, they may not be able to as quickly respond to sales enquiries, and as such, that employee's sales target is adjusted to be 25% less sales than non-Disabled employees).

- an employer fails to consider if the way in which they review performance should be adjusted in light of the Disabled person's needs (such as how and when they hold performance reviews).

Capability (often ill health)

It is not uncommon for an employer to review an employee's capability to perform their role when the employee has had a period (or periods) of sickness absence from work. Where this absence is because of the employee's disability, then an employer must not treat the employee unfavourably and may have a duty to implement reasonable adjustments.

Before making any decisions about a Disabled employee's capability an employer should obtain and consider any relevant medical evidence, including obtaining an Occupational Health assessment if they can, and they should arrange to meet with the employee, either in person or by telephone, to discuss their absence and if appropriate to see if a return to work may be possible in the future.

As part of this process an employer should consider any reasonable adjustments which may help to enable a return to work, and potential adjustments to how they

assess the absence (including how/when they make contact with the absent employee).

Please remember that Access to Work can help pay for the cost of support modifications you need to do your job which goes beyond the reasonable adjustments duty of your employer, and so you should raise this with your employer if they are concerned about the cost of making adjustments.

The following are examples of discriminatory treatment that can occur in a capability situation:

- an employer decides to dismiss an employee because they have been absent for a certain period of time, and that absence is related to the person's disability.
- There are naturally some situations where it may be apparent that the disabled employee is unlikely to be able to return to work even with adjustments, and in those circumstances the employer may be justified in terminating that person's employment.

- An employer that has a policy which means capability is automatically reviewed after a certain period (or periods) of absence may on the face of it place Disabled employees at a disadvantage when compared to non-Disabled employees. An employer may be able to justify this approach to absence, including in reference to the likelihood of the employee being able to return to work and the impact their absence is having on the business / their colleagues.

Conduct

An employer will review an employee's behaviour where they genuinely believe that employee has committed an act of misconduct. If the conduct is related to the person's impairment or disability, then the decision to review or impose any sanction may amount to disability discrimination. An employer should take into account any medical information, the employee's explanation, and whether any adjustments could have been implemented to avoid the conduct from occurring, and, if implemented, could prevent it from happening again.

The following is an example of discriminatory treatment that can occur in a conduct situation:

- an employee's alleged misconduct relates to how they interact with others or respond to orders. The employee has autism, a consequence of which is how they communicate with others and/or respond to directions given.

Resigning

If at any time during the employment relationship an employer commits a fundamental breach of the employee's employment contract, which would include subjecting that employee to discriminatory treatment, then that employee could resign in response to that breach and claim discriminatory (constructive) dismissal.

To be successful with a such a claim the employee would have to prove that the employer committed the breach (i.e. the act of discrimination), that it went to the heart of the employment relationship (and so was beyond repair), and that they resigned in response to that breach (i.e. that action was the trigger and they did not unduly delay their resignation).

If the discriminatory act which the Disabled employee resigns in response to occurs during an 'ordinary' dismissal process (i.e. redundancy, performance, capability or conduct) which has otherwise been fair up until that point, then the employer may be able to argue that they would have fairly dismissed the employee in any event (and the employee effectively jumped before they were pushed). If so, then this would likely limit the amount of compensation the employee could seek in loss of earnings for the period between their resignation up to when they would have been fairly dismissed.

Further information and resources



The Equality Act 2010

www.legislation.gov.uk/ukpga/2010/15/contents



Employment: Statutory Code of Practice issued by the Equality and Human Rights Commission:

www.equalityhumanrights.com/en/publication-download/employment-statutory-code-practice



Disability Rights UK's Right to Participate guide with template letters and key information

righttoparticipate.org/take-action/employment/



ACAS

<https://www.acas.org.uk/index.aspx?articleid=1461>

What to do if things go wrong

This section will guide you through the steps you can take if you feel you have been discriminated at work or experienced problems with getting support from Access to Work.

This section covers:



[Time limits](#)



[Raising the issue with your employer](#)



[Raise a grievance](#)



[Collect evidence](#)



[Lodging a claim with the employment tribunal](#)



[Complaining about Access to Work](#)

Time limits

Strict time limits apply to pursuing a claim in the employment tribunal in respect of any discriminatory treatment you may have encountered when at work or looking for work. In general terms, the time limit for pursuing a claim is three months less one day from the act complained of (which could, for example, be when you were not promoted, when your colleague made a discriminatory comment about you, when your employer failed to implement reasonable adjustments, or your last working day).

Before pursuing a claim you must apply for Early Conciliation via ACAS (further details below), and this process can impact on the time limit to pursue a claim. You must keep this time limit in mind when deciding what to do next. Time limits are complicated and so, if in doubt, it would best to take advice promptly.

Action you could take

- Raise the issue with your employer informally.
- Raise a grievance.
- Collect evidence – Data Subject Access Requests and ACAS Questions.
- Apply for ACAS Early Conciliation
- Pursue a claim in the employment tribunal.
- Take legal advice and / or seek support.

Raising the issue with your employer

Sometimes employers do not know their duties under the Equality Act and many are ignorant of the fact that some of their policies might discriminate.

If you feel as if you have been disadvantaged in any way because of your disability, then you could write to your employer or ask to meet with them in person so that you can constructively point out your concerns, their obligations, and ask them to put things right. Sometimes a meeting in person with your line manager or HR or someone you trust can be helpful, but how you approach your employer will entirely depend upon the particular circumstances and what you feel comfortable doing.

For example, if you asked for reasonable adjustments, but the employer did not respond to this request, you could remind the HR department or your line manager that the Equality Act 2010 requires them to consider implementing reasonable adjustments. If there is no response, you could follow up your concerns in writing and consider your next steps (as set out below).



The Equality Advisory and Support Service have a template letter you could use, to remind your employer of their duty to make reasonable adjustments:

www.equalityadvisoryservice.com/app/answers/list

Raise a grievance

If you think you will be or have been disadvantaged at work because of your disability, then you could consider raising a grievance with your employer. Each employer will have their own grievance policy and so you should read this to see what it says about the process involved in raising a grievance.



If your employer does not have a grievance process, then it should in any event follow the approach suggested by ACAS: www.acas.org.uk/media/1047/Acas-Code-of-Practice-on-Discipline-and-Grievance/pdf/11287_CoP1_Disciplinary_Procedures_v1__Accessible.pdf

You should try to ensure that your grievance is clear and focussed on the concerns you have, providing facts that are relevant and which will help your employer investigate your concerns.

Whilst it is right that you should be able to express your concerns, and it may be unlawful for an employer to treat you differently because you have done so, it is possible that doing so could cause difficulties for you at work and/or make your working environment uncomfortable. You should seek advice if you have any doubts or are unsure about how to raise a grievance. Please also remember the time limit referred to above as the raising of a grievance will not change the time limit that applies to the act complained of.

Collect evidence

If you decide to take your case to an employment tribunal, then the burden will be on you to show you were subjected to discriminatory treatment by the employer because you are a Disabled person. You will have to establish facts which show that it is more likely than not that the discrimination occurred. Unless your employer accepts that you are 'disabled' for the purposes of the Equality Act, you will initially have to show that you satisfy the legal definition of disability. This will usually be done in reference to medical records and so you may need to seek help from your GP and/or clinician(s). Provided this is established, the tribunal will then consider the other elements of the type of discrimination complained about.

It is very important to try to obtain as much evidence as possible to help you show that there could well have been discriminatory treatment, and to try to undermine any alternative explanation or justification defence put forward by the employer

Therefore, you should keep a copy / record of all communication you have with the employer, and any documents or information relating to the events at work. Try to be accurate – write down names, dates, times and addresses, and try to keep your records in date order. A well-ordered file is a great asset.

Whilst there is a temptation to covertly record a meeting or phone-call, this can be frowned upon by the tribunal and can amount to a dismissible offence (if discovered by your employer), it would be better to instead either ask if you can record the meeting/phone-call or take a detailed note either at the time or immediately after, and, if you can, type the note and save it so that there is a date stamp. It can also help to email the employer with a copy of what you say occurred so that, again, there is a record of you having communicated the factual position at the time.

You could also speak to colleagues about the situations you encounter so that there is a second-hand witness to the events, and they could corroborate your version of events at a later date if required (including at a tribunal). You should proceed with caution, however, and only confide in those colleagues who you have complete confidence. As you might not want your situation to become common knowledge and your employer may not like you discussing matters openly (albeit, again, it would be unlawful to victimise you for the fact you shared concerns over discriminatory treatment – see Victimisation above).

There are ways in which you can seek further information which may help you understand your treatment, including possibly providing you with evidence which shows that you were not, in fact, subjected to discriminatory treatment, or vice versa. It is, however, quite rare to find a ‘smoking gun’ when seeking information from an employer.

The following are ways in which you could try to obtain this information:

Data Subject Access Request

You have a right to a copy of personal data held by the employer about you. This includes all records in which you are identified, such as emails, documents, phone / CCTV recordings, and minutes / notes of any meetings.



More information and a template letter you could use can be found on the Information Commissioner’s Office website: ico.org.uk/your-data-matters/your-right-of-access/

ACAS Questions and Answers

An alternative way of trying to obtain a better understanding of the reason(s) for the treatment you encountered is to ask questions of the employer. You can do this by asking questions under the ACAS Questions and Answers process. Further information can be found here: Asking and responding to questions of discrimination in the workplace.

Whilst there is no obligation to respond to the questions, an employment tribunal can draw inferences from a failure to do so.

Lodging a claim with the employment tribunal

If you feel your employer has acted unlawfully, whether or not you have had the time to be able to collect the evidence referred to above, you could consider pursuing a claim in the employment tribunal. As referred to above, a claim must be lodged with the employment tribunal within three months less one day of when the discriminatory act occurred.

You must apply for ACAS Early Conciliation before commencing a claim as you must reference the Early Conciliation Certificate number (which is issued to you at the end of the Early Conciliation process) when you lodge your claim.

You must ensure that you include the correct name(s) for the employer when you apply for Early Conciliation. Your employer's correct name is usually that shown on your payslip or contract of employment. If you want to ensure you have the correct name you could email your

employer to ask them what is the correct name to use. If they refuse or do not respond you will be able to at least show this to the tribunal should the name you use prove to be inaccurate.

You must also ensure that you apply for Early Conciliation, and obtain a certificate, for each respondent to a claim. For example, if you are alleging that you have been subjected to harassment related to your disability, it would be best to apply for Early Conciliation against the people who committed the harassment as well as your actual employer. This is because an employer can defend a harassment claim if they can show that they took all reasonable steps to prevent the people from harassing you. In such a situation it is important that you could continue with your claim against those individuals who actually subjected you to harassment. You would then include them all as separate respondents on the claim form, including the individual Early Conciliation Certificate numbers.



You can start your claim online employmenttribunals.service.gov.uk/apply.

Further resources:



Information about the employment tribunal on GOV.UK

www.gov.uk/employment-tribunals



CAB's guide on preparing an employment tribunal case:

www.citizensadvice.org.uk/work/problems-at-work/employment-tribunals/preparing-an-employment-tribunal-case/



EHRC's guide about dealing with discrimination in employment

www.equalityhumanrights.com/en/multipage-guide/dealing-discrimination-employment

What will you get as a result?

Here are the things an employment tribunal could do if you win your case:

- make declaration(s) that your employer has subjected you to discriminatory treatment.;
- award compensation for any financial loss caused by the discriminatory treatment, which is principally for any loss of earnings but can include expenses;
- award damages for injury to feelings, which is assessed against set guidelines and essentially determined by the severity and number of discriminatory acts, and the impact they had on you;
- award damages for injury to health, if the discriminatory acts caused you psychiatric harm;
- award aggravated damages, which essentially looks at any aggravating feature(s) of the discrimination, such as behaviour which was high-handed or oppressive;
- interest on any compensation awarded;
- an ACAS uplift on any compensation awarded,
- make recommendation(s) which would require the employer to take certain steps to remove or reduce the impact of discrimination.

Risks and Costs

There are no fees to start a claim in the employment tribunal.

Unless you benefit from legal expenses cover (principally found in your home or motor insurance policy) or are a member of a Trade Union (see further below), you would have to pay for your legal costs associated with obtaining representation in the employment tribunal.

Employers will also have to pay for their legal representation, albeit some may benefit from insurance or have in-house legal support.

Costs orders are very rare in the employment tribunal. This means that if you win your case you are unlikely to recover your costs, and similarly if you lose you are unlikely to be liable for the employer's costs. Costs can be awarded where a party pursues a claim or a defence which has 'no reasonable prospects of succeeding' or where they act vexatiously, abusively, disruptively or otherwise unreasonably. You should therefore take any

costs threat made by an employer seriously and take advice before proceeding.

Please also be aware that any judgment made during the tribunal process will be on the public record. This means that the fact you pursued a claim and potentially the details of that claim (depending on when/if you settle the claim), will be in the public domain and will likely appear as a result should anyone Google your name.

It is possible to seek anonymity in tribunal proceedings but this is generally difficult to achieve and the exception to the norm. If your case settles after it is issued but before your trial concludes, then a judgment will still be entered onto the tribunal database. Unlike if your case concludes following trial (when all details / facts of the claim and the tribunal's decision will be included in the judgment), a settlement judgment will likely be limited to saying the case is withdrawn following a settlement, without any actual details of what was in dispute. It will still, however, be published, as will the type of claim(s) pursued (e.g. harassment, unfair dismissal etc.).



See more information and tips on costs on [CAB's website](#)

Further help and advice



As referred to above, if you are a Trade Union member, you could get free legal advice from your Union. Get in touch with your workplace representative or regional office to find out how they can help.



You should also check your household / motor insurance as it could include cover for the cost of obtaining legal advice for employment tribunal claims.



Equality Advisory and Support Service can give you general information and template letters you can use. <https://www.equalityadvisoryservice.com/>



ACAS can also advise about employment law and your rights: <https://www.acas.org.uk/>



Find lawyers specialising in employment discrimination claims: <https://www.lawsociety.org.uk/for-the-public/common-legal-issues/problems-at-work/>



Some barristers can take instructions directly from individuals; this sometimes might be a cost effective way to obtain representation at tribunal hearing: <https://www.directaccessportal.co.uk/search/1/barrister>



Advocates can help some people to access pro bono advice and representation from barristers <https://weareadvocate.org.uk/>



The Free Representation Unit may be able to represent you at a hearing, albeit it operates as a referral system which means you would have to be referred to FRU and could not make a direct approach for support - <http://www.thefru.org.uk/>

Complaining about Access to Work

It is always helpful to make sure you raise any concerns or try to resolve disagreements with your Access to Work adviser as early as possible. Raise concerns, ask questions, make your views known, ask for copies of policies or guidance they refer to.

How you challenge decisions made by Access to Work will depend on what kind of decision it is. If you disagree with the decision about the level of your Access to Work award: such as what kind of support Access to Work agreed to, how much they agreed to pay for this support, you should ask for a reconsideration of this decision. If you are not happy with Access to Work's customer service or ways of working you should make a complaint in accordance with the DWP's general complaints procedure/

Reconsideration

If after your initial application and after the review you disagree with Access to Work's decision about the kind of support they are going to provide and how much they will pay for it, you can ask them to look at their decision again. During the reconsideration process a different person at Access to Work will look at your case and the decisions. You have 4 weeks from the date of the original decision to ask for reconsideration. You can send additional evidence to support your request.

You should send your reconsideration request to the person who dealt with your case and made the original decision.

In your letter or email you should make it clear that you are asking for reconsideration, explain why you disagree with the original decision and attach any extra evidence you have.

When writing your reconsideration request letter think of the following:

- Why the support offered does not meet your minimum needs;
- What difficulties you will have doing your job with the proposed package;
- Did anything go wrong during the assessment process?
- Can you argue the estimates that Access to Work used to calculate the cost is not realistic? For example making a case that you need qualified support and it won't be possible to recruit for the price they used.
- What level of support do you need and why.

The official you send the reconsideration request to should acknowledge the receipt and let you know what to expect the response. The reconsideration process should take no more than 10 working days.

If you are not happy with the reconsideration outcome you can use the complaints procedure below. Alternatively if you feel the decision discriminated against you or was based on a discriminatory policy, you should consider getting legal advice, as some decisions can be challenged through the process called judicial review.

You can find lawyers specialising in Disability Discrimination on Disability Justice Project's [website](#)

Complaining about Access to Work service

Access to Work does not have its own specific complaints procedure. Therefore your complaint would be dealt under The DWP's general procedure.

You should send your complaint letter to the contact details you will find in your decision letters or to the staff member you were in contact with, making it clear that you wish to raise a complaint about how they handled your Access to Work application. If you don't get a positive outcome, you could consider complaining to the Parliamentary and Health Service Ombudsman: www.ombudsman.org.uk/

Further help and advice



Access to Work factsheet www.gov.uk/government/publications/access-to-work-factsheet/access-to-work-factsheet-for-customers



Access to Work staff guide assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/772080/access-to-work-staff-guide.pdf



Deaf Access to Work has useful information on how Access to Work works and how to complain about its services and decisions www.deafatw.com/frequently-asked-questions-faqs.html

Letters



Disability Rights UK's Right to Participate guide with template letters and key information

righttoparticipate.org/take-action/employment/



The Equality Advisory and Support Service can give you general information and template letters you can use.

www.equalityadvisoryservice.com/

- For example, this letter to remind your employer of their duty to make reasonable adjustments:

www.equalityadvisoryservice.com/app/answers/list



Data Subject Access Request. You have a right to a copy of personal data held by the employer about you. This includes all records in which you are identified, such as emails, documents, phone / CCTV recordings, and minutes / notes of any meetings. More information and a template letter you could use can be found on the Information Commissioner's Office website: ico.org.uk/your-data-matters/your-right-of-access/

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