

# Briefing Note



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## Changes to the Discrimination Disability Act 1995

The new Regulations which come into force on 1 October 2004 make a number of significant changes to the employment provisions of the Disability Discrimination Act 1995 ("DDA") including ending the exemption given to small employers from the scope of the DDA and ending a number of occupational exclusions (e.g. the police, prison officers, fire fighters, barristers in chambers and partners in business partnerships, including limited liability partnerships).

The Regulations have also brought practical work experience placements (whether paid or unpaid) within the scope of the DDA. The changes are, in part, to bring the DDA into line with legislation prohibiting other forms of discrimination.

This briefing note aims to provide a summary of the key changes. The Regulations make it unlawful for any employer (apart from the armed forces) of *any size* to discriminate against a disabled person because of his/her disability. Until now the law has only applied to employers with 15 or more employees.

### *Changes to the definition of Disability Discrimination*

Under the previous legislation there were 3 categories of disability discrimination:

- *Disability related discrimination:*

i.e. less favourable treatment for a reason related to the person's disability which was not justified.

- *Unjustified failure to make reasonable adjustments* to arrangements or premises so as not to place disabled employees at a substantial disadvantage.
- *Victimisation:* i.e. where a worker is punished or treated differently as a result of complaining about an act of discrimination or raising the issue or alleging in good faith that another person is in breach of the DDA.

The Regulations have introduced a 4<sup>th</sup> type of discrimination, namely *Direct Discrimination*. Under the legislation an employer's treatment of a disabled person may amount to direct discrimination if:

- The treatment is on the grounds of his/her disability and
- The treatment is less favourable than the way in which a person not having that particular disability is (or would be) treated.

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### *New provisions on Duty to Make "Reasonable Adjustments"*

Previously the employer was under a duty to make reasonable adjustments to avoid placing a disabled worker or job applicant at a substantial disadvantage owing to any arrangements made by the employer or any physical feature of the premises. The duty has now been extended by the Regulations to include adjustments to "a provision, criterion or practice" with the result that the duty on the employer has now increased.

Some examples of reasonable adjustments are:

- Making adjustments to premises
- Altering the person's working hours
- Allowing absences during the working hours for medical treatment
- Giving additional training
- Obtaining or modifying existing equipment
- Changing instruction or reference manuals
- Providing additional support and supervision.

### *Harassment*

There are now specific provisions on harassment which is defined as "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 him/her.

These new provisions to disability legislation extend the scope of the legislation and provide for increased protection to disabled employees and workers. Employers are therefore well advised to ensure that appropriate disability policies and practices are implemented.

*Should you wish for more detail on the above topic either contact Dominique Torode-Parker on +44 207 404 2121 or contact us via [info@key2law.co.uk](mailto:info@key2law.co.uk)*

*Note: this update is intended only as a general statement of the law and no action should be taken in reliance upon its contents.*