

Disability Under The Equality Act 2010



One in five adults in Great Britain has a disability or long-term health condition, so understanding what constitutes a disability is of great significance to many. Although disability is defined in different ways for different purposes, in employment law the important definition is contained within the Equality Act 2010.



Alan Masson - WS, Employment Law

What Constitutes A Disability?

To understand this, we need to look at the general requirements and how these are characterised. Disability is an impairment that must have a substantial and long-term affect on a person's ability to carry out normal day-to-day activities.

Turning to question one, both 'physical' and 'mental' are given their ordinary meanings and their scope is far-reaching. A mental illness need not be clinically well recognised. The emphasis is on the impairment, that is the impact of the symptoms, not the label. Impairments with fluctuating or recurring effects such as rheumatoid arthritis or depression are also covered, even although at times the individual may be free of any impairment.

This can be summarised into four questions:

1. Does the person have a physical or mental impairment?
2. Does that impairment have an adverse affect on their ability to carry out normal day-to-day activities?
3. Is that affect substantial?
4. Is that affect long-term?

To have a 'substantial adverse effect' reflects the general understanding of disability as a limitation going *beyond* the normal differences in ability which may exist among people. Therefore, it must be more than minor or trivial. The time taken to complete an activity, the way in which the activity is conducted, or the cumulative effects of an impairment are all relevant factors. Day-to-day activities are things people do on a regular or daily basis. Examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. They are not specific to work such as typing or using a computer. Finally, any impairment must have lasted, or be expected to last, for at least a year or is terminal.

Special rules exist for those with progressive, fluctuating or recurring conditions. People with HIV infection, cancer and multiple sclerosis, and some visual impairments or disfigurements are automatically regarded as disabled from the date of diagnosis, regardless of the impact the illness has on their life at the time of the diagnosis.



Whether PBC can be classified as a disability, depends upon its affect on each individual. PBC is a physical impairment, given the symptoms associated with the condition.

However, answers to questions 2 & 3 above will differ for each individual. If you have no symptoms or your PBC does not interfere with your ability to carry out normal day-to-day activities, such as those above, then it is unlikely you will be considered to be disabled. If it does, you are likely to be disabled for the purposes of the legislation.

Obviously it is long-term and it can be a progressive condition. Therefore, if the answers to questions 1, 2 and 3 are 'yes', then the answer to 4 is probably a given and it will be a disability. Meeting all four factors is crucial to being classified as disabled.



In the context of an employment claim, it is the Employment Tribunal which decides whether a claimant is disabled or not. In the vast majority of cases there is unlikely to be any doubt whether or not a person has or has had a disability and, as a matter of practice, employers often concede this point in clear cases. Otherwise, the onus is on the claimant to show that they are disabled. This would involve medical evidence being given by your doctor and may involve you giving evidence as to the affect of any impairment on your normal day to day activities.



Employers are under a duty to make reasonable adjustments for the benefit of employees with disabilities so that a disabled person does not experience a substantial disadvantage compared to non-disabled people in recruitment and the workplace. The onus is not on you to suggest these, but on your employer to take reasonable steps to find out.

Reasonable adjustments can include providing additional aids or services, altering workstations or processes, allowing rest periods, allowing a phased return to work from a period of ill health absence, changing working hours, allowing flexible working or providing help with transport to and from work.

The use of pre-employment health questionnaires has been generally prohibited by the Equality Act 2010. When applying for jobs, there are limitations on the health-related questions that an employer may ask before the point of making a job offer, or before being placed in a pool of successful applicants who are to be offered a job when a vacancy arises.

Job offers can be made conditional upon satisfactory responses to pre-employment disability or health enquiries or satisfactory health checks. However, having received results which reveal a disability, employers must not then discriminate against a job applicant. Employers who have made job offers subject to satisfactory health checks are expected to ensure that the health enquiries are relevant to the job and that where these disclose an impairment, reasonable adjustments are made for disabled applicants.

Further Information:

The Equality Act 2010:

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

The Equality & Human Rights Commission:

www.equalityhumanrights.com/advice-and-guidance/guidance-for-workers/the-employers-duty-to-make-reasonable-adjustments-to-remove-barriers-for-disabled-people/

ACAS:

www.acas.org.uk/index.aspx?articleid=1859

CAB:

www.adviceguide.org.uk/wales/your_rights/discrimination/disability_discrimination.htm