



fieldfisher

ABI and the workplace

Your rights at work when you are affected by ABI

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Discussion points

- Your rights at work
- How can your employer help you
- Access to work
- If you are unable to work
- Resolving problems



Your rights at work

There are laws that protect people who have a disability from being discriminated against at work.

These laws do not just protect employees. They also protect people who are:

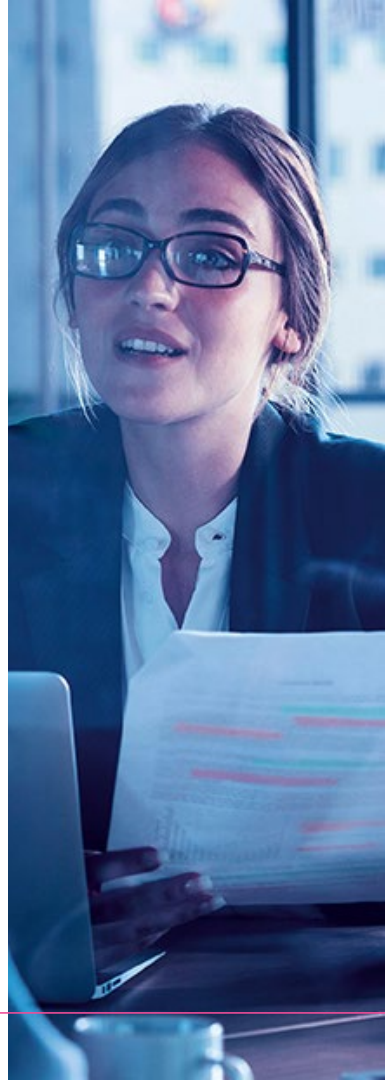
- Classified as workers – e.g. people who work for an agency
- Applying for jobs
- Self-employed – this is on a case-by-case basis

Carers are also protected from some types of discrimination.

Which areas of employment are covered?

The Equality Act covers all areas of employment. This includes:

- recruitment
- terms and conditions of employment (and any benefits)
- opportunities for promotion and training
- ending your employment



Disability and ABI

It is important to understand:

- Most disabled people are not born with their disability
- Anyone could become disabled at any stage of their working life
- Some disabilities are not obvious to others – often called non-visible, invisible or hidden disabilities
- Not everyone who is protected by the Equality Act will consider themselves to be disabled

What is a disability?

For someone to be classed as having a disability, it does not matter:

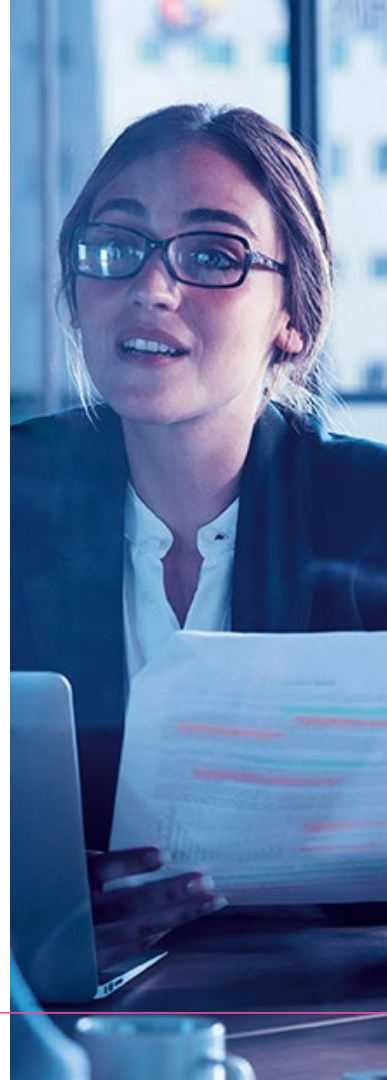
- whether the impairment is physical or mental
- what caused the impairment
- if the impairment does not affect them all the time or it changes at different times
- if it has not had a medical diagnosis
- The law says to discount the effects of medication, aids or treatment when considering whether someone has a disability.

What is a disability?

“A person (P) has a disability if –

- (a) P has a physical or mental impairment, and*
- (b) the impairment has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities”*

Section 6, Equality Act 2010



Normal day-to-day activities



Potential long-term effects of ABI

- Impaired memory
- Poor impulse control
- Mental health problems
- Impaired communication skills
- Poor initiation and planning
- Reduced concentration and attention
- Lack of self-monitoring
- Sleep disturbances
- Poor judgment
- Impaired social skills
- Motor and sensory impairments
- Other medical conditions: e.g. post traumatic epilepsy

Reasonable adjustments

- Your employer must make reasonable adjustments when the workplace or work practices put you at a 'substantial disadvantage'
- These are changes to the workplace or your job that allow you to keep working or return to work
- You do not have to tell your employer you have ABI. But they do not have to make reasonable adjustments unless they know or should reasonably know that you have ABI

Reasonable adjustments

There is no fixed description of what a reasonable adjustment should be. It will depend on:

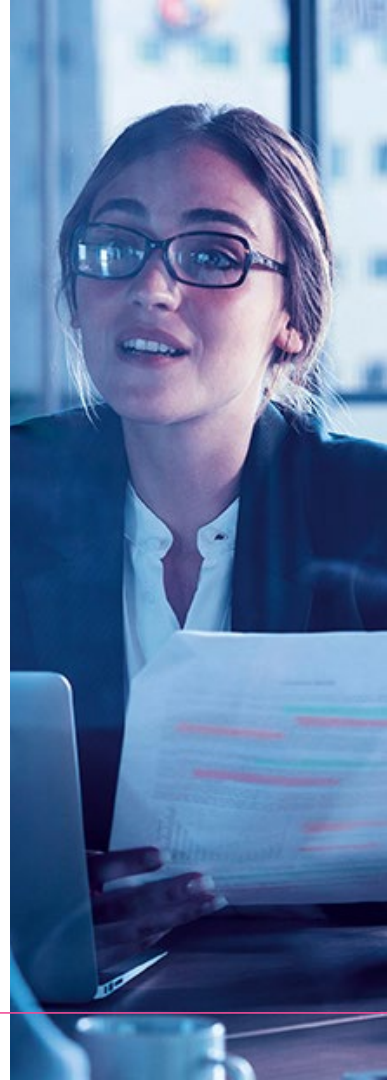
- how much the adjustment will help you
- how practical it is to make the adjustment
- the cost of making the adjustment
- how the adjustment will affect your employer
- the size of your employer and the resources it has.

Examples of reasonable adjustments

- A phased return to work
- Different working hours, such as working part-time or having a flexible start or finish time
- Giving you time off to go to medical appointments or for rehabilitation
- Allowing you to do light duties for a time
- Moving you to a job with more suitable duties
- Changing performance targets to allow for any sick leave or long-term effects

Types of disability discrimination

- Direct disability discrimination
- Discrimination arising from disability
- Indirect disability discrimination
- Failure to make reasonable adjustments
- Harassment
- Victimisation



Questions about your health during recruitment

- Generally, it is unlawful for employers to ask about an applicant's health or disability before make a job offer
- An employer can ask you for information about your health after they have offered you a job
- They must also think about any reasonable adjustments they could make to allow you to do the job

Confidentiality

- Your medical information is protected under the **Human Rights Act 1998**, **Data Protection Act 2018** and **UK GDPR**.
- **The Access to Medical Reports Act 1988** also says that your employer must ask for your permission to get a medical report on your health from your doctor or other health professional.

How are carers protected?

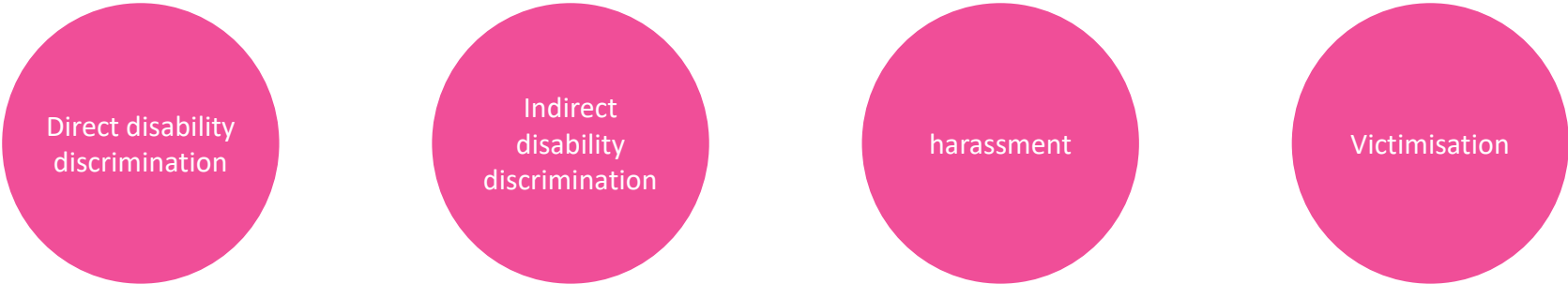
Carers may be protected against associative discrimination in situations where they have experienced:

- direct disability discrimination
- Indirect disability discrimination
- harassment
- victimisation

Carers also have a legal right to request flexible working. This right applies from the first day of employment.

How are carers protected?

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Direct disability
discrimination

Indirect
disability
discrimination

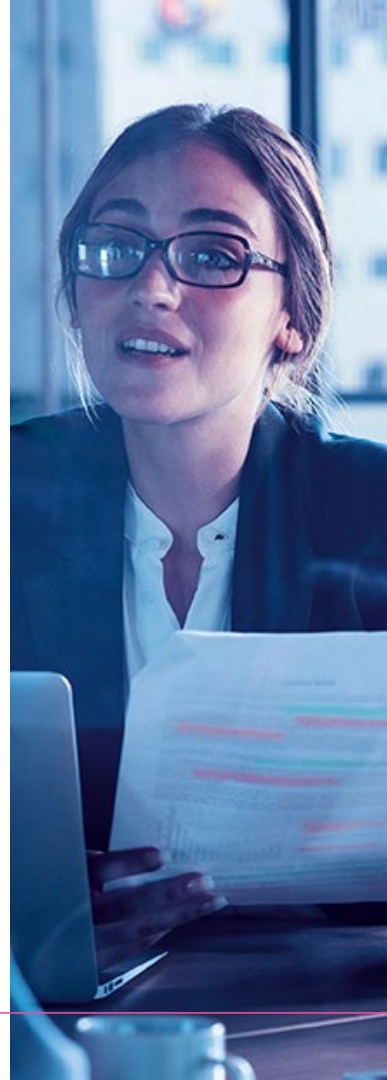
harassment

Victimisation

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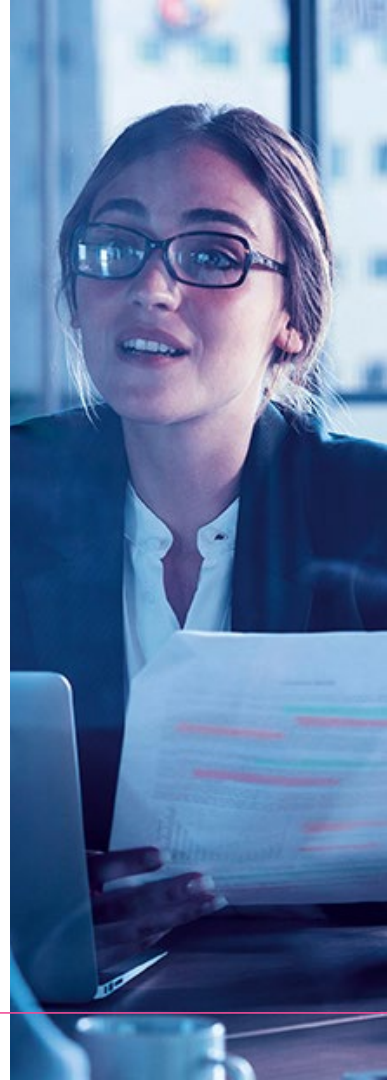
How can your employer help you?

- Talking to your employer
- Who to talk to – your manager, HR, Occupational Health, TU representation
- Talking to other people at work
- Keeping in touch
- Reasonable adjustments



How can your employer help you?

- Sick pay (Company sick pay / SSP)
- Time off work
- Occupational health
- Employee assistance programme (EAP)
- Group income protection / permanent health insurance



Other support



Stopping work

- When you give up work, you lose any employment rights you might have had
- These include: company sick pay, statutory sick pay, death in service benefit, pension rights, and any private medical insurance linked with your employer / employment
- Early retirement
- Insurance pay-out
- Negotiated exit

Resolving problems

- What you can do for yourself
- Raising a grievance
- Consult your union representative, Equality Advisory Support Service (EASS), specialist employment lawyer
- ACAS – Early conciliation
- Employment Tribunal claim