



Discrimination at work

Explains what laws protect you from discrimination at work, what you can do if you are discriminated against, and where you can get support and advice. Applies to England and Wales.

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Overview

Sometimes people who have mental health problems are treated worse at work because of their mental health condition. This is called [discrimination](#) and, if you experience discrimination at work, you may have a legal right to challenge it.

Quick facts

- The Equality Act [protects you from discrimination](#) when you are applying for a job, at work, made redundant or dismissed.
- To get protection under the Equality Act, you have to show that your mental health problem is a disability. ['Disability' has a special meaning](#) under the Act.
- If you have a mental health problem that is a disability, and you want the protection of the Equality Act, you do need to [tell your employer](#) about it.
- Generally, employers can't ask you questions about your mental health [before a job offer is made](#), though there are [some exceptions](#).
- If your employer is a public authority, they will have an additional duty to eliminate discrimination, called the [public sector equality duty](#).
- If you think you have experienced disability discrimination at work, there are several things you can do to [challenge the discrimination](#).
- If your work problems do not count as disability discrimination, you may still have [other employment rights](#).

Please note

- This guide covers discrimination at work from the point of view of a person with a mental health problem.
- This guide applies to England and Wales.
- This guide contains general legal information, not legal advice. We recommend you get advice from a specialist legal adviser or solicitor who will help you with your individual situation and needs. See [Useful contacts](#) for more information.

Terms you need to know

Term	Meaning
Advisory Conciliation and Arbitration Service (ACAS)	<p>ACAS is an organisation that provides information, advice, training, conciliation and other services for employers and employees to help prevent or resolve workplace problems.</p> <p>ACAS offers a free Early Conciliation service. If you want to take a disability discrimination challenge against your employer at the Employment Tribunal, you have to contact ACAS first and you need proof that you have done so before you can start a claim.</p>
Advocate	<p>An advocate is a person who can both listen to you and speak for you in times of need. Having an advocate can be helpful in situations where you are finding it difficult to make your views known, or to make people listen to them and take them into account. Find out more on our advocacy information page.</p>
Disability	<p>The Equality Act says that you have a disability if you have an impairment that is either physical or mental and the impairment has a substantial, adverse and long term effect on your normal daily activities.</p>
Disability discrimination	<p>This is when someone is treated worse because of their physical or mental health condition. The Equality Act explains:</p> <ul style="list-style-type: none"> • what a disability is, and • when worse treatment is discrimination <p>You have to show that you have a disability before you can challenge worse treatment as disability discrimination.</p>
Discrimination	<p>There are many situations in which you may feel treated unfairly because of your disability, but the Equality Act only covers these types of discrimination:</p> <ul style="list-style-type: none"> • direct discrimination • discrimination arising from disability • indirect discrimination • harassment

	<ul style="list-style-type: none"> • victimisation • the duty to make reasonable adjustments
Employment Tribunal	The Employment Tribunal decides disputes between employers and employees about employment rights. An Employment Tribunal is like a court but not always so formal.
Equality Act 2010	<p>This is the law that explains:</p> <ul style="list-style-type: none"> • what behaviour counts as unlawful discrimination • who has a right to challenge discrimination
Occupational health	<p>The job of an occupational health professional is to assess you to find out:</p> <ul style="list-style-type: none"> • how your work impacts your health • if you are fit for the work you do • what adjustments may need to be made to support you at work <p>Your employer can refer you to occupational health if you have a physical or mental health problem that is affecting your work or causing you to take time off sick, particularly if this is more than 2 or 3 weeks at once.</p> <p>If you disagree with their assessment, it is important to seek advice.</p> <p>There is also a government-funded initiative called Fit for Work which provides occupational health assessments and expert advice. If you have been off sick for four weeks or more, your employer or GP can refer you to Fit for Work for an occupational health assessment or a return to work plan (if you agree to this). You can also contact Fit for Work for work-related health advice.</p>
Prohibited conduct	Prohibited conduct is the special term used in the Equality Act to cover behaviour that counts as unlawful. It covers discrimination, harassment, failure to make reasonable adjustments and victimisation.

Protected characteristics	<p>'Protected characteristics' is the name for the nine personal characteristics that are protected by the Equality Act in certain situations. They are:</p> <ul style="list-style-type: none"> • age • disability (this can include mental health problems) • gender reassignment • marriage and civil partnership • pregnancy and maternity • race • religion or belief • sex • sexual orientation
Public authorities	<p>These are organisations whose role is of a public nature. This includes:</p> <ul style="list-style-type: none"> • Police • NHS hospitals and employees • Local authorities and their employees • Some nursing and personal care accommodation providers • Prison staff • Courts and tribunals, including Mental Health Tribunals • Government departments and their employees • Statutory bodies and their employees (for example the Information Commissioner's Office)
Public functions	<p>This means an act or activity taken by a public authority which is not a service. A public authority carries out a public function when it performs its particular legal duties and powers. Examples of public functions are licensing, planning and enforcement of parking.</p> <p>Public authorities can get private companies or voluntary organisations to carry out their public functions. So for example, a private company that runs prisons and takes prisoners into custody would be considered a private company carrying out a public function.</p>
Public sector equality duty	<p>This is the legal duty which public authorities like councils, NHS hospitals and government departments have to follow. It means they have to consider how</p>

	<p>their policies and practices affect people with protected characteristics, like people with mental health problems.</p> <p>Private or voluntary organisations also have to follow the public sector equality duty when they carry out a public function on behalf of public authorities. For example, a private firm that is employed by a local council to collect council tax arrears needs to follow the public sector equality duty.</p>
Reasonable adjustments	<p>These are changes that employers should make for you if you are at a major disadvantage in your workplace because of your mental health problems and it is reasonable. These include:</p> <ul style="list-style-type: none"> • making changes to the way things are organised or done • making changes to the built environment, or physical features like steps or doorways around you • providing aids and services for you

About discrimination at work

- [When am I protected from discrimination at work?](#)
- [Do I have a disability?](#)

When am I protected from discrimination at work?

The [Equality Act](#) provides protection when you are:

- applying for a job
- at work
- dismissed (including being made redundant)
- a former employee or worker in certain circumstances

It can protect you if you are:

- an employee
- an apprentice
- a contract worker

but it does not protect you if you are:

- a volunteer

Do I have a disability?

To get protection under the [Equality Act](#), you need to show that your mental health problem is a disability. 'Disability' has a special legal meaning under the Equality Act, and can include mental health problems: find out more on [our disability discrimination information page](#).

What are the different types of discrimination?

If you want to complain that your employer discriminated against you because of your mental health problem, you have to show that what happened to you is one of these types of discrimination:

- [Direct discrimination](#)
- [Discrimination arising from disability](#)
- [Indirect discrimination](#)
- [Harassment](#)
- [Victimisation](#)
- [Duty to make reasonable adjustments](#)

For more information on each of these types of discrimination, [see our disability discrimination information page](#).

Examples of direct discrimination



- Jon has bipolar disorder. He asks his employer if he can apply for a new post doing work he is able to do. His employer says he cannot apply because he has a mental health problem. This is an example of direct discrimination.
- Minoo does not have any mental health problems but she looks after her aunt who has mental health problems. Her employer treats her worse because of this. This is direct discrimination - discrimination by association.
- Najma does not have a mental health problem, but her employer treats her worse than her colleague because he thinks she has a mental health problem. This is likely to be direct discrimination - discrimination by perception.

- Aidan applies for a job and finds that his last employers have supplied a reference which includes negative comments about his mental health problem. They have discriminated against Aidan, even though they no longer employ him, because the reference arises out of and is closely connected to their former employment relationship.

Example of discrimination arising from disability



Sid has depression. He has worked for 2 years for his employer who knows he has depression. Recently he has had two periods of absence because of his depression. His employer disciplines him because of the amount of absences he has had.

Sid has been treated worse not because of his disability but because of something arising out of his disability - the time he has taken off sick. This may be discrimination arising from Sid's disability.

But Sid's treatment will not be discrimination arising from disability if his employer can show that:

- the treatment was for a good reason, and appropriate and necessary, or
- they did not know or could not reasonably have known that Sid had a disability

Example of indirect discrimination



An employer decides that all staff must start a new shift system that involves working late in the evening. No staff can opt out. Sarah takes medication for schizoaffective disorder that makes her feel sleepy and she will not be able to take on a late shift.

This is likely to be indirect discrimination as it puts Sarah and anyone else with a mental health problem like this at a disadvantage.

But it will not be discrimination if her employer is able to justify the arrangement by showing that it is:

- for a good reason, and
- appropriate and necessary

Example of harassment



Mary has an eating disorder. Mary's manager knows she has an eating disorder and she makes offensive remarks in the open plan office about people with anorexia. This is likely to be harassment.

Example of victimisation



Jibin's colleague has bipolar disorder. Jibin supports her colleague to complain to their employer about [disability discrimination](#). After this, Jibin's manager refuses her promotion on the basis that her loyalty to the company is in question. This is likely to be victimisation.

Example of duty to make reasonable adjustments



Sylvie is working in an office and has depression. She is taking part in a supported employment scheme from the [workplace mental health support](#) scheme. Her employer lets her make private phone calls to her support worker in the working day as a reasonable adjustment.

Read more about [reasonable adjustments you can ask for](#) in the workplace.

If you are not happy with the way you have been treated at work, but your experience does not fit into these types of discrimination, you can check your [other employment rights](#).

Telling my employer

- [Should I tell my employer about my mental health problem?](#)
- [How do I show my employer that I have a disability?](#)
- [What kinds of adjustments can I ask my employer to make?](#)

Should I tell my employer about my mental health problem?

If you have a mental health problem, you might not want to tell your employer about it because you are worried about confidentiality or how you may be treated. However, if you have a mental health problem that is a [disability](#) and you want the protection of the [Equality Act](#), your employer needs to know this.

If you do decide to tell your employer, think about:

- **how and when to do it.** It can be helpful to have a note from your doctor to help explain your situation.
- **how much information you want to give.** You don't have to go into personal details, just focus on how your mental health problem impacts on your job.
- **whom to share it with.** For example, the human resources department may know your diagnosis, but they don't have to tell your supervisor or colleagues.

For more information about telling your employer about your mental health problem, see also [How to be mentally healthy at work](#).

If your employer has asked you questions in the past about your health or disability and you did not tell them about your mental health problem then, and now you do want to tell them, you should get some specialist legal advice. See [Useful contacts](#) for more information.

How do I show my employer that I have a disability?

Sometimes your employer may accept what you say without asking for more information. But, because mental health problems aren't visible, it may be hard to explain your situation to your employer.

It is helpful to have a note from your doctor or another professional to explain:

- what mental health problems you have
- how they may affect you
- what adjustments might help you to manage your work

You could also show your employer our information on different [types of mental health problems](#).

What is the occupational health service?

Your employer can refer you to [occupational health](#) if you have a mental health problem that is affecting your work or causing you to take time off sick, particularly if this is more than 2 or 3 weeks at once. Occupational health referrals will help your employer understand what adjustments need to be made to support you at work.

Occupational health services may also make an assessment of your ability to do your job. If you disagree with this it is important to get specialist legal advice. See [Useful contacts](#) for more information.

What kinds of adjustments can I ask my employer to make?

To get any adjustments you have to tell your employer about your mental health and how it impacts on your job.

Examples of adjustments you could ask for include:

- changes to your working area
- changes to your working hours
- spending time working from home
- being allowed to take time off work for treatment, assessment or rehabilitation
- temporarily re-allocating tasks you find stressful and difficult
- getting some mentoring

The adjustments have to be **reasonable**, and you have to show that you are experiencing **substantial disadvantages** because of your disability.

Whether a change is reasonable or not depends on the circumstances of each case, but may include:

- if the change deals with the disadvantage
- how practicable it is to make the change
- your employer's size and financial and other resources
- what financial or other assistance may be available to make the change

It can be useful to discuss with your GP or another health or social care professional who knows about your mental health problem what changes to your workplace could help you at work. You should also get a letter to back up any request you want to make.

Employers can sometimes get financial help with making reasonable adjustments including cost of transport from the government's Access to Work service: find out more on the [Gov.uk website](#). This also offers a workplace mental health support service for employees and prospective employees with mental health problems: find out more on [Remploy's website](#).



Examples of reasonable adjustments

Jorge has generalised anxiety disorder. He told his employer about this, and together they came up with a plan to help him with his work. This plan includes:

- letting him work from home when he is feeling anxious
- giving him a flexible approach to start and finish times
- giving him a work mentor who he can get support from during stressful periods at work
- allowing slightly longer periods of absence before taking action under the sickness policy than would apply to other employees

Letter asking your employer to make changes at work

If you want your employer to make changes at your work, you may want to write a letter setting this out.

Draft letter asking your employer for changes

Here is a draft letter ([Word](#) or [PDF](#)) which you can use as a starter.

To help you draft your letter, you may want to get some:

- informal help or support from a friend, family member or [advocate](#), or
- [legal advice](#) from a specialist legal adviser or solicitor

Applying for jobs

- [Can I be asked about my mental health problem when I apply for a job?](#)
- [When can an employer ask me about my health before a job offer?](#)
- [What questions can I be asked if I am offered the job?](#)

Can I be asked about my mental health problem when I apply for a job?

Generally employers can't ask you questions about your mental health before a job offer is made.



Example

Benny has schizophrenia. He is applying for a job as a shop manager. The recruitment agent asks Benny if he has any history of mental illness.

The recruitment agent has acted unlawfully by asking Benny health questions in the recruitment process. Benny does not need to answer this question. But if he does choose to answer it, our advice would be that he should answer honestly.

- **If an employer asks you health questions before a job offer is made,** you cannot bring a legal claim against them. Only the Equality and Human Rights Commission can do this. Read more about this on their [Dealing with Discrimination](#) page. You could also report this to the Equality Advice and Support Service by [filling out their form](#) for reporting pre-employment health questions (scroll to the bottom of the page).
- **If you are asked questions about your health at the interview stage then don't get the job,** you may want to [challenge the discrimination](#). A court or [tribunal](#) will look very carefully at the employer's decision not to employ you. An employer must prove that the decision not to employ you was not linked to your [disability](#).

When can an employer ask me about my health before a job offer?

There are some situations when an employer is allowed to ask you questions about your health before a job offer is made. For example to:

- find out whether you will be able to take an assessment for the job
- find out whether you need [reasonable adjustments](#) to the application process
- find out whether you will be able to do tasks that are central to the job (though they should also consider the reasonable adjustments that you might need)
- find out if they are receiving job applications from a diverse range of people
- establish if you have the particular [disability](#) required for the job
- assess you for national security purposes



Examples of lawful questions before employment

- An employer is recruiting and sends out an application form that says, "Please contact us if you are disabled and need any adjustments for the interview."
- An employer is recruiting employees who have to erect scaffolding. In their application form they ask questions about disability and health and whether the applicant has a fear of heights.

Example of unlawful question before employment

Sid applies for a job as an advice worker. During his interview, he is asked about his mental health history.

What questions can I be asked if I am offered the job?

If you are successful in your job application, then your prospective employer can ask you about your health. If, as a result of these questions, a prospective employer is concerned that your mental health problems may affect your ability to perform the job, they should seek more information or advice from your doctor or [occupational health](#).

If your job offer is taken away when you explain your mental health status, and without further assessment or investigation, this may be [direct discrimination](#).

What if I work for a public authority?

If you work for a [public authority](#) and you think they have discriminated against you:

- You might be able to complain that they have not followed the public sector equality duty.
- You might also be able to complain that they haven't followed their duties under the Human Rights Act.

Public sector equality duty

Public sector employers (like NHS hospitals, government departments, local authorities or the police) have a special duty to eliminate discrimination, called the [public sector equality duty](#). To find out more, [see our information on disability discrimination](#).

If you have a public sector employer, think about whether they have followed their public sector equality duty.

Human rights and public sector employers

Public sector employers must also respect your human rights, and follow the Human Rights Act 1998: [see our information on the Human Rights Act 1998](#).

Make a complaint

- [How can I make a complaint about discrimination at work?](#)
- [Raise the issues informally](#)
- [Formal grievance procedures](#)
- [Complain to an Employment Tribunal](#)

How can I make a complaint about discrimination at work?

If you think you have experienced [disability discrimination](#) at work, there are a number of things you can do. What is best for you will depend on exactly what has happened, but generally it is best to try to sort it out informally if you can.

Raise the issues informally

You could start by speaking to your colleagues, manager or HR department. The aim is to resolve your problem without having to follow a formal process, as this will be more relaxed and also helps to keep good working relationships.

If you don't get the result you're looking for by talking, you can consider the next two options.

Formal grievance procedures

Your employer may already have formal grievance procedures in place for exactly this kind of situation.

If you want to do this, you should:

- write down what the problems are that you are experiencing, how it makes you feel and suggestions as to how your employer can support you
- have a supporting letter from your GP or any health or social care professional helping you
- ask for a written reply after you have spoken or written to your employer. Always keep a copy of any letter you write or any reply.

You have the right to take a work colleague or trade union representative to any grievance hearing.

If you can, it is a good idea to get legal advice from a union or specialist legal adviser before you do this. It is very likely that you would have to pay for specialist legal advice.

Complain to an Employment Tribunal

If you cannot sort your problems informally or by raising a grievance, then you may want to consider complaining to the Employment Tribunal.

How to complain to an Employment Tribunal

Step 1. Contact ACAS as soon as possible. See their [contact details](#).

Step 2. Complete the ET1 form. You can download this from the [Gov.uk website](#).

Step 3. Pay the Tribunal fee.

If you want to do this, you should:

- **Seek advice.** It is always important to get good legal advice about your situation before going to court. See [Useful contacts](#) for information on how to find legal help.
- **Make sure you complain within 3 months less 1 day of the discrimination.** There are very strict deadlines for bringing a claim. It is very important that you get advice as soon as possible.
- **See how much the Tribunal fee is.** There is an initial fee of £250 which has to be paid before you can start your claim, and before you can have a hearing you have to pay a hearing fee of £950.

If you have a low income, you may be able to pay a reduced amount, or none at all, by filling out an EX160A form from the [Justice.gov.uk website](#). Any fee remission has to be sorted out before you can start your claim.

- **See if you can get help paying your legal fees.** [See our information on disability discrimination](#) to find out more.
- **See if you can get support.** Taking legal action can be complicated and stressful. If you want assistance and support, you could ask a friend or an advocate to help you. Read more about advocacy, and other ways you can get support and assistance, in [Useful contacts](#).

If you are successful, the Tribunal has power to award you compensation (like money), make a recommendation (for example, recommending that your employer makes reasonable adjustments to help you at work) and/or order your employer to pay your Tribunal fees.

What other employment rights do I have?

If your work problems do not count as [disability discrimination](#), you may still have other employment rights.

For example:

- employees with two years' service have rights related to redundancy and unfair dismissal
- employers also have a legal responsibility to make sure that employees have a safe system at work

To find out more about your other employment rights, you can:

- check with [ACAS](#) or
- see a [specialist legal adviser](#)

Useful contacts

Mind Legal Line

PO Box 277
Manchester
M60 3XN
0300 466 6463 (Monday to Friday, 9.00 am to 5.00 pm)
legal@mind.org.uk

The Mind Legal Line can provide you with legal information and general advice.

Advisory Conciliation and Arbitration Service (ACAS)

0300 123 1100 (8am-8pm Monday to Friday and 9am-1pm Saturday)
[acas.org.uk](https://www.acas.org.uk)

ACAS provides information, advice, training, conciliation and other services for employers and employees to help prevent or resolve workplace problems. They offer a free [Early Conciliation service](#).

If you want to take a [disability discrimination](#) challenge against your employer at the [Employment Tribunal](#), you will need to go to ACAS and get a conciliation certificate to show that you have tried to reach agreement over the dispute.

You can call their telephone helpline to get advice about your employment rights.

Civil Legal Advice (CLA)

0845 345 4345
[gov.uk/civil-legal-advice](https://www.gov.uk/civil-legal-advice)

The Civil Legal Advice can tell you if you're eligible for legal aid and can give you free and confidential legal advice in England and Wales.

Employment Tribunal

Public enquiry line (England and Wales): 0300 123 1024
Postal address for sending fees and ET forms:
Employment Tribunal Central Office
PO Box 10218
Leicester
LE1 8EG
[justice.gov.uk/tribunals/employment](https://www.justice.gov.uk/tribunals/employment)

The [Employment Tribunal](#) decides disputes between employers and employees about employment rights. They have a public enquiry line to answer general queries,

provide information about tribunal publications and explain how the tribunal system works.

The Equality and Advisory Support Service (EASS)

Tel: 0800 444 205

Text: 0899 444 206

Skype video BSL calls can access the helpline at radlegalservices.org.uk.

Monday to Friday 9am-8pm

Saturday 10am-2pm

equalityadvisoryservice.com

The helpline can advise and assist you on issues relating to equality and human rights, across England, Scotland and Wales.

There is a special [form](#) on its website for reporting employers who ask pre-employment questions.

Equality and Human Rights Commission (EHRC)

equalityhumanrights.com

The EHRC is responsible for monitoring and protecting human rights in Britain. It has useful advice and information about legal rights and [discrimination](#) on its website.

The website also has copies of the [Equality Act 2010](#) Statutory Code of Practice for services and the Equality Act 2010 Statutory Code of Practice for Employment which give helpful guidance on how to apply the Equality Act.

Law Centres Network

For non-legal advice enquiries

Law Centres Network

Floor 1

Tavis House

1-6 Tavistock Square

London WC1H 9NA

020 3637 1330 (office line - not an advice line)

For legal advice enquiries

Visit the [I am looking for advice](#) page on their website.

lawcentres.org.uk

Law Centres offer legal advice, casework and representation to individuals and groups. To find your local Law Centre, you can look at their [interactive Google map](#) or see the [Law Centres list](#).

The Law Society

020 7242 1222 (England)

029 2064 5254 (Wales)

lawsociety.org.uk

The Law Society provides details of solicitors in your area that you can contact for specialist legal advice.

LawWorks

lawworks.org.uk

LawWorks is a legal charity that lists on its website the Free Legal Advice Clinics in England and Wales. These clinics can give you one-off, face-to-face advice if you have legal problems about consumer disputes, housing, social welfare law or employment.

Office for Disability Issues

gov.uk/government/organisations/office-for-disability-issues

This is part of the Department of Work and Pensions and supports the development of policies to remove inequality between disabled people and non-disabled people. It has produced useful guidance on how you work out whether you have a disability.

Where can I get support?

Local Mind

Local Minds support over 280,000 people across England and Wales. Their services include supported housing, crisis helplines, drop-in centres, employment and training schemes, counselling and befriending. They may be able to help you find advocacy services in your area.

Find your local Mind [here](#).

Find an advocate

An advocate is a person who can both listen to you and speak for you in times of need. Having an advocate can be helpful in situations where you are finding it difficult to make your views known, or to make people listen to them and take them into account.

For information on advocacy services and groups in your area, you could start by contacting the [Mind Legal Line](#) and your [local Mind](#).

Read more about how [advocacy](#) might help you.

Draft letter asking your employer for changes

Please note:

- Always remember to keep a copy of any letter you send.
- If you can get one, include a letter from your doctor or community psychiatric nurse (CPN) or other professional confirming your mental health problem. Make sure they note down how your mental health problem is affecting you at work and how the changes you want could help you to work better.

[Name of the manager/HR officer
Address of the organisation]

Date

Dear [name of your manager/HR officer]

Request for reasonable adjustments

I am writing this letter to ask for some changes to my work schedules and arrangements. I want to be able to do my job well and making these changes will support me to do it well.

[Describe your mental health problem and how this is making it more difficult for you at work at the moment.

Explain

- what changes you would like to have made to your working condition
- how these changes would help you to do your job better
- if you can, set out how these changes can be done without causing problems for the employer.]

I understand that the Equality Act 2010 says that employers have a duty to take positive steps to ensure that people can access and progress in their employment by making reasonable adjustments for disabled employees when a person is at a substantial disadvantage compared with an employee who is not disabled.

Employers must take reasonable steps to make address the substantial disadvantage and this can include:

- changes to the way things are organised - policies, procedures and practices
- changes to the physical environment
- providing extra aids and services.

If it is reasonable for the employer to make a change then it should be made.

I do hope you will be able to make the changes I am asking for.

I would be happy to discuss this request in more detail but it would be helpful if I could have a written response within 14 days.

Thank you very much.

Yours sincerely,

[Your signature
Your name in print]

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