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The UK Disability Discrimination Act 2005

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The U.K. Disability Discrimination Act 2005

The Disability Discrimination Act 2005 (DDA 2005) - a Civil Rights Legislation has been enacted by the United Kingdom for its civilians. It builds on and extends earlier Disability Discrimination Legislation, namely the Disability Discrimination Act, 1995 (DDA). The majority of the DDA 2005 provisions have come into force on 5th December 2005 and the other provisions become effective from 4th December 2006. The salient features of the Act are as follows:

Definition of Disability

Under the DDA 1995 a person is defined to have a disability for the purposes of the DDA when he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities. It also allows this basic definition to be modified for people who have mental impairments and progressive conditions, so that it sets out when people are to be treated as disabled.

The DDA 2005 changes some of the requirements in the earlier DDA wherein the government removed the stipulation that a mental illness must be 'clinically well recognised' before it amounts to as an impairment for the purposes of the DDA. People with a mental illness will still need to show that their impairment has a long term and substantial adverse effect on their ability to carry out normal day-to-day activities. By removing the 'clinically well-recognised' requirement, the Government has also brought DDA coverage for people with mental illnesses into line with coverage for all other mental and physical impairments. People with HIV, cancer and multiple sclerosis (MS) will be deemed to be covered by the DDA effectively from the point of diagnosis, rather than from the conditions that the disability has some adverse effect on their ability to carry out normal day-to-day activities. Extending the coverage of the DDA in this broad way means that the protection of the DDA is afforded to another 250,000 disabled consumers.

Under the existing employment duties, employers will have to consider as to what are the reasonable adjustments that they have to make in their employment conditions, recruitment policies and procedures that they need to be made for people who they know, or could be reasonably expected to know, have one of these disabilities. For example, that it will be unlawful for an employer to discriminate against a job applicant or employee who has one of these disabilities.

These provisions makes it unlawful for the service providers to refuse to serve or to provide service on worse terms to, a person who has one of these conditions or to fail to make a reasonable adjustment for such a person if they have one of these conditions.

The Disability Equality Duty

Despite the rights that exist under the DDA, ignorance, thoughtlessness and prejudice still result in institutional discrimination which adversely affects the lives of disabled people. Disadvantaged people are often unlikely to take legal action, which in any case only challenges the individual discrimination, not the outcomes across groups. Plus, those with duties under the DDA often only permit for the minimum required to avoid litigation, without looking at the outcomes of their policies.

To overcome these discrepancies, the DDA 2005 introduces a duty on all public bodies to promote equality of opportunity for disabled people. This means that they must take account of the needs of disabled people as an integral part of their policies, practices and procedures, and not
as something separate or as a tag-on. They will have to have due regard to the need to eliminate unlawful discrimination and disability-related harassment, promote equality of opportunity and positive attitudes to disabled people, and encourage disabled people to participate in public life.

These duties apply to anyone carrying out functions of a public nature. If a public body was perceived as failing to comply with these duties then anyone, including the Disability Rights Commission (DRC), could apply to the High Court for judicial review. In addition to this, many public bodies, including Government departments and local councils, will be subject to specific duties, which include having to produce a Disability Equality Scheme explaining how they intend to fulfil the duty to promote equality. This will mean that public bodies will have to think through the implications of the duty, and gather appropriate evidence to demonstrate the effectiveness of their schemes. They will also need to demonstrate that disabled people have been involved at the centre of planning all their policies. The Compliance with these specific duties can be enforced by DRC. If the DRC feels that a public body was failing to comply with one of these specific duties, it would be able to issue a compliance notice, followed by an application to a County Court for an order requiring the body to comply.

**Public Functions**

Prior to the new DDA 2005 the public bodies, such as Government Departments, local councils, and the police are covered by the DDA when they provide any service to the public (for example, a library or a sports centre) or in their capacity as an employer. However this is exempted whenever they carry out a function of government, such as assessing a benefit claim, issuing a licence, or carrying out an arrest.

The DDA 2005 extends to cover discrimination by public bodies so that when carrying out a function they will not be able to treat disabled people less favourably. That means they will not be able to treat a disabled person differently simply because he has a disability. For example, a local council will not be able to refuse a trader’s licence to a disabled person for a reason related to his disability. Further they will have to make reasonable adjustments for disabled people. For example the police have to make arrangements for a deaf person to have a BSL signer present to explain to the deaf person his rights. This provision is similar to the duty to make reasonable adjustments that already exists for service providers and employers. For example, a tax-return form may have to be provided in Braille or large-print so that it can be used by a visually impaired person.

These new provisions will apply to anyone carrying out functions of a public nature, even if they are in themselves a private company. For example, a private secure transport firm that is contracted by a prison to transport prisoners to and from court.

The public authorities which are excluded from the application of these new provisions are Parliament, the Security Services, the armed forces when assisting Government Communications Head Quarters, the Courts or other bodies when carrying out judicial acts, Ministers carrying out legislative functions (includes members of the Scottish Executive and the National Assembly for Wales) because it would either be inappropriate to their duties or compromise their ability to make laws or act independently.

**Local Councillors**

The DDA 2005 also inserts a section into the DDA which makes it unlawful for a local authority (which includes the Greater London Authority) to discriminate against its disabled members when they are carrying out their official business. This new provision gives disabled local councillors similar rights not to be discriminated against just for a reason related to their
disability. They have made reasonable adjustments for themselves with the other disabled people who are covered by those parts of the DDA relating to employment - even though councillors are not employees of local authorities.

Private Clubs

The Act extends to the private members’ club that selects its members on the basis of genuine personal criteria under the rules of its constitution (whether written down or unwritten) providing goods, facilities or services to the public. For example a club that allows the public to hire its dining facilities.

The DDA 2005 covers the private clubs with 25 or more members in respect of their members, associates, guests, and prospective members and guests. It will be unlawful for a club to discriminate by treating a disabled person less favourably for a reason relating to their disability compared to a person who is not disabled, unless justified in limited circumstances. This part of the law is implemented from 5 December 2005. Further it also makes unlawful, the club when fails to make a reasonable adjustment, unless justified in limited circumstances, so that a disabled person can access their facilities. This part of the law will be implemented from 4 December 2006.

These duties will be equivalent to the duties in the DDA relating to providers of goods and services. The duty to make reasonable adjustments will be anticipatory – that is, the club must anticipate the needs of disabled people and change things in advance. The duty to make reasonable adjustments can only be enforced by an individual disabled person who has experienced discrimination. Infact clubs will only ever be required to do what is reasonable and may take into account factors like the resources of the club.

Contributed by

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