

#71 HR Newsletter

November 2015:

Reasonable Adjustments

Reasonable Adjustments

If an employee is classed a “disabled” (meaning: they have a long term (> 12 months) condition that affects their ability to carry out normal day to day activities) then the employer has a legal obligation to make reasonable adjustments that allows the employee to carry out their duties and to compensate for their disability. This duty arises from Sec 20 of the Equality Act 2010.

The Equality 2101 sec 20 says (in summary):

If a person is disabled and informs the employer of this fact, then the employer must:

- a. Ensure that any policies or practices do not place the disabled person at a substantial disadvantage (e.g. the requirement to make all staff complete expense reports by hand where an employee cannot hold a pen due to a wrist condition)
- b. Ensure that there are no physical barriers that place the disabled person at a substantial disadvantage (install a ramp alongside existing steps for staff with mobility difficulties)
- c. Ensure that any auxiliary aids are provided so that the disabled person is not placed the disabled person at a substantial disadvantage (a large screen and big-key keyboard for partially sighted person)
- d. Not ask the disabled person to pay for these adjustments/modifications.

(“substantial” in this sense means more than simply trivial or minor)

So the **first action** to take when an employee informs you that they are disabled is to ask them what adjustments or modifications do they think you could consider to allow them to function normally?

Proportionality

The duty to make reasonable adjustments has been the subject of much litigation to date, and the boundaries of reasonableness are continually being tested.

Whether or not they have gone far enough in making adjustments for their disabled employees can be a concern for employers. What is ‘reasonable’ depends on a range of factors, including how practicable it is for the employer to make the adjustment, the cost of making it, the extent of any disruption to its business activities, the organisation’s financial resources and how effective the adjustment would be in overcoming the individual’s disadvantage.

The reasonable adjustments duty clearly anticipates that employers might have to incur additional costs in order to alleviate disadvantages suffered by their disabled employees. However, an element of proportionality should be applied to the duty, and it is clear that what would be reasonable for a multinational corporation may not be reasonable for a small company. Large employers might well be expected to make costlier adjustments, given their resources.

Nevertheless, even an employer with substantial resources will not necessarily be required to make very expensive adjustments. Money is by no means limitless even in large organisations, and balancing a disabled person's need for adjustments against an employer's other spending priorities will always involve difficult judgments.

Spending

Guidance from the courts in reasonable adjustment cases has indicated that the cost of making the adjustments should be weighed against the company's other costs. These include the:

- salary of the disabled employee
- employer's total budget for dealing with disability
- highest amount paid for reasonable adjustments for any other employee
- general cost-effectiveness of the adjustments.

Taking these factors into account can help to put the cost of the proposed adjustment into the context of the employer's organisation and its available resources.

It is worth noting, however, that even very expensive adjustments may still be considered to be cost effective when weighed against the cost of recruiting and training a replacement member of staff.