

Disability Rights - Equal Status Acts and Reasonable Accommodation

About “Your Rights”

“Your Rights” is a service operated by the Irish Human Rights and Equality Commission (“IHREC”) to provide members of the public with information about their rights and the remedies that may be available to them if they believe they have suffered a breach of equality law and/or human rights law in Ireland. IHREC can provide information only through this service, and cannot provide legal advice or comment on individual cases.

This is not a legal document and it is not a substitute for legal advice.

The Equal Status Acts

The Equal Status Acts outlaw discrimination in the sale of goods and the services, the provision of accommodation and access to education. They also prohibit harassment and sexual harassment in the sale of goods and services, the receipt of accommodation and in access to education.

Discrimination

Discrimination occurs where one person is treated less favourably than another person in a comparable situation due to one or more protected grounds.

The protected grounds include religion, gender, age, disability, sexual orientation, civil status (single, married, divorced, separated), family status (pregnant, parent of a child, parent or a carer of a person with a disability), membership of the Traveller community, receipt of housing assistance, and victimisation.

If a person has been discriminated against in the provision of goods or services, or accommodation, or education they can bring a case to the Workplace Relations Commission. If a person has been discriminated against on, or at the point of entry to, licensed premises, they can bring a case to the District Court.

Some examples of discrimination and less favourable treatment

- If a business refuses to sell you a product because of your disability, this constitutes direct discrimination and less favourable treatment on the ground of disability.

- If you are blind and a business refuses you access to their premises because you have a guide dog, this constitutes direct discrimination and less favourable treatment on the ground of disability.
- If a landlord refuses to rent you accommodation because of your disability, this constitutes direct discrimination and less favourable treatment on the ground of disability.

Types of Discrimination

Discrimination can take many forms. These include:

- **Direct discrimination** occurs when a person with a disability receives different, less favourable treatment due to their disability.
 - For example, if you are refused a service due to your disability.
- **Indirect discrimination** occurs where a neutral provision puts a person at a particular disadvantage compared with other persons.
 - For example, if you are visually impaired and require a guide dog and an establishment bans the entry of all dogs.
- **Discrimination by imputation** occurs where a person is treated less favourably than another person would be treated in a comparable situation where a protected ground, such as a disability, is incorrectly attributed to a person.
 - For example, if a service provider incorrectly assumes you have a disability and treats you less favourably, this is discrimination by imputation, even if you do not have a disability.
- **Discrimination by association** occurs where a person is associated with another person with a protected characteristic and because of that association, is treated less favourably than a person who is not associated would be treated in a comparable situation.
 - For example, if a service-provider treats you less favourably because a member of your family has a disability, this is discrimination by association, even if you do not have a disability.

Harassment and Sexual Harassment

As well outlawing discrimination, the Equal Status Acts also prohibit harassment and sexual harassment in the provision of services.

- **Harassment** occurs when a person is subjected to unwanted conduct due to their disability, or for one of the other protected grounds. It is conduct which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.
- **Sexual harassment** is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature. It is conduct which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

Definition of Disability

In order to be discriminated against on the ground of disability, you must have a disability, or have a disability imputed to or associated with you, within the meaning of section 2(1) of the **Equal Status Acts**.

This defines disability as:

- the total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body,
- the presence in the body of organisms causing, or likely to cause, chronic disease or illness,
- the malfunction, malformation or disfigurement of a part of a person's body,
- a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
- a condition, disease or illness which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour.

This definition includes both physical conditions, as well as mental conditions, such as depression, anxiety and intellectual disabilities or other 'hidden disabilities'

This definition is guided by the definition of disability from the United Nations Convention on the Rights of Persons with Disabilities:

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Reasonable Accommodation

If you have a disability, the provider of a service is obliged to do all that is reasonable to accommodate your needs to access this service, such as providing special treatment or facilities.

A reasonable accommodation is where the service provider puts in place measures to enable you to avail of their service. For example, providing a sign language interpreter to understand their service.

Some examples of reasonable accommodation

- If you are deaf, providing an Irish Sign Language interpreter at an educational facility could constitute a reasonable accommodation.
- If you use a wheelchair, providing a ramp to access a business premise may constitute a reasonable accommodation.
- If you are physically impaired or blind, providing a member of staff to help guide you through a business premises could constitute a reasonable accommodation.

You can inform the business or service provider of your disability and that you believe you require reasonable accommodation. While there is no obligation to formally do so for the purposes of reasonable accommodation, and they may have been made otherwise aware of your disability, it may be wise to ensure they are informed of your disability where it may not be immediately apparent to them.

The service provider is required to do what is reasonable to accommodate your needs as a person with a disability without which it would be impossible or unduly difficult to avail of the service.

Limitations on Obligation to Accommodate

A service provider is not obliged to provide the reasonable accommodation if it would cost more than a **nominal cost**. The context in which the reasonable accommodation arises is the critical factor for determining what is or is not a more than nominal cost. In determining if a cost is nominal or not, **regard should be had to the size of the business, the financial resources of the business, and the actual costs of the reasonable accommodation, among other factors.**

Some examples of nominal cost:

- If you are physically impaired or blind and you required a member of staff to help guide you through a business premises, this is likely to not cost more than a nominal cost as the staff member will be working in any event.
- If a person has a sight impairment, providing a brochure or other information in larger font is likely to not cost more than a nominal cost.
- If you are physically impaired and wish to access a business premises in an historic building, which would require a substantial refurbishment to make it accessible, this is likely to be more than a nominal cost.

There are also a number of examples of what **is more than a nominal cost**:

- The provision of an escort to a prisoner from the main prison to the training unit to visit his son constituted more than a nominal cost.
- Allowing a person free admission to GAA matches constituted more than nominal cost.

And some further examples of what **is not more than a nominal cost**:

- The failure of a school to allow a child's emergency medical kit on site and facilitate free training from a public health nurse and GP was not more than a nominal cost.
- The expenditure of €5 extra per week to transport a vision impaired person and his guide dog was a nominal cost.
- Moving the classes of a student who uses a wheelchair into an accessible part of the campus would be not more than a nominal cost.

In determining what constitutes more than a nominal cost, the Supreme Court in *Cahill v Minister for Education* has stated that it is necessary for the service provider to engage with the recipient of the service – i.e. the person with the disability. This means that if a service

provider wishes to accommodate you, they should consult with you and seek your opinion and input on what is most appropriate to accommodate your needs.

Policies on Reasonable Accommodation

It is good practice for businesses and service providers to maintain a policy on the provision of reasonable accommodation to persons with disabilities. This should set out how a person can disclose that they require accommodation to access a good or service and how they can engage with the business or service provider. For example, such a policy could be placed on a business's website in a number of accessible formats.

Bringing a Claim

Workplace Relations Commission

If a person has been discriminated against or harassed, they must bring a case to the Workplace Relations Commission.

They must write to the person or organisation they are complaining about within two months of the incident. They can do so via Form ES.1 available on workplacerelations.ie.

This must set out the nature of the complaint, and that they intend to seek redress at the Workplace Relations Commission if they do not receive a response or if they are not satisfied with the response. The person or organisation about whom the complaint is made can both respond on Form ES.2.

The Workplace Relations Commission can extend the two months by a further two months for "reasonable cause". The Workplace Commission can exceptionally also waive the two month period where it is "fair and reasonable" to do so.

If there is no reply within one month, or if the person is unhappy with the response, they can refer the complaint to the Workplace Relations Commission within six months of the last date of discrimination. This can be extended by the Workplace Relations Commission for another six months with "reasonable cause", although this is only in rare circumstances.

If you believe you have been discriminated against, you are advised to contact IHREC or seek legal advice as to what your options are. If you believe you have been discriminated against do not delay in seeking legal advice as the timeframe for bringing a complaint is very short.

For further information on what to expect at the Workplace Relations Commission, please see IHREC's Guide: [How you bring a case to the Workplace Relations Commission under the Employment Equality Acts and the Equal Status Acts.](#)

District Court – Licensed Premises

If a person has been discriminated against **in a licensed premises or at the point of entry to a licensed premises**, they must bring a case to the District Court. Such discrimination is contrary to the Intoxicating Liquor Act 2003.

A licensed premises is a premises, such as a bar, restaurant or hotel, where the sale of alcohol is lawfully permitted by license.

This must be done in the District Court area where the licensed premises is situated. It is necessary to show that discrimination occurred on a licensed premises. For example, a hotel may have a licensed premises, such as a bar, and a non-licensed area, such as its rooms. If the discrimination occurred in the licensed premises, the case must be taken in the District Court, and if in the non-licensed area, in the Workplace Relations Commission.

Contact details for the IHREC “Your Rights” service

Call us on 018583000

Email us on YourRights@ihrec.ie

You can also write to us at: Your Rights, Irish Human Rights and Equality Commission, 16-22 Green Street, Dublin 7.