

Equality and mental health: what the law means for your workplace



AN tÚDARÁS COMHIONANNAIS
THE EQUALITY AUTHORITY



The National Mental Health
Stigma Reduction Partnership

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This leaflet is for employers.

It is for information and is not a legal document. It explains the legal requirement under equality law for employers to provide reasonable accommodation for people with disabilities, and what that might mean for employees with mental health difficulties. Understanding reasonable accommodation, as it is defined in equality law, has benefits for employers and for employees with experience of mental health difficulties.

This leaflet explains:

- How reasonable accommodation practices can help both employers and employees
- Employers' obligations, under the Employment Equality Acts, to employees with experience of mental health difficulties
- What reasonable accommodation in the workplace means
- The role that reasonable accommodation can play in supporting employers to prevent discrimination in the workplace.

How can reasonable accommodation help everyone?

Reasonable accommodation practices which benefit employees with experience of mental health difficulties can have a positive outcome for all employees and for employers themselves. For example, reducing stress in the workplace is good for everyone's mental health. It is also good for business outcomes, as a stress-free workplace helps employers to maintain maximum productivity and to retain staff.

Reasonable accommodation practices help employers to:

- Enhance business outcomes by maximising the engagement and skills of employees in the workplace
- Create a positive working environment that is free from discrimination
- Retain skilled staff
- Promote equality
- Fulfil obligations set out in the Employment Equality Acts.

Often, the greatest barrier that employees and potential employees with experience of mental health difficulties encounter is the attitudes that others have towards mental health difficulties. If they lack knowledge or understanding about a disability or mental health condition, employers and co-workers may have fears and concerns. Unfortunately, that lack of knowledge or understanding can manifest as prejudice or bias against employees with disabilities, including employees with experience of mental health difficulties. The organisations listed at the back of this leaflet can provide information about mental health issues.

What does the law say?

The Employment Equality Acts 1998-2011 ban employment-related discrimination linked to any of the nine grounds named in the law. At the same time the Equal Status Acts 2000-2011 ban discrimination on any of the nine grounds when a person is buying goods or using services. This leaflet concentrates on employment-related issues.

Disability is one of the nine grounds included in equality law. The definition of disability includes physical, intellectual, learning, cognitive or emotional disabilities and a range of medical conditions. It covers people with experience of mental health difficulties. It applies if they are currently experiencing mental health difficulties or if their experience of mental health difficulties was in the past. For example, under the Employment Equality Acts, if a person applies for promotion you cannot discriminate against them because of either current or past experience of mental health difficulties.

The application of equality law to people with mental health difficulties is broad. For example, in one case the Equality Officer found that depression, stress and anxiety fall within the meaning of disability defined in equality legislation. The case reference is DEC-E2007-025. Full details are available from the Equality Tribunal website, www.equalitytribunal.ie

The aspects of employment which are covered under the Employment Equality Acts include:

- Advertising
- Equal pay
- Access to employment
- Vocational training and work experience
- Terms and conditions of employment
- Promotion or re-grading
- Classification of posts
- Dismissal
- Collective agreements.

How does the law define discrimination in the workplace?

Discrimination has a specific meaning in equality law. In the Employment Equality Acts the definition of discrimination focuses on whether a person has been treated less favourably in the workplace than another person in a similar situation on any of the nine grounds, including disability.

It is important to remember that discrimination can be direct or indirect. While direct discrimination is often more obvious, indirect discrimination has a similar impact on employees, including those with experience of mental health difficulties. Indirect discrimination can happen when organisations' policies and practices have negative consequences for some people. For example, indirect discrimination can occur if a policy or practice, which is applied to all employees, has the effect of putting an employee at a disadvantage because of his or her experience of mental health difficulties.

Depression, stress and anxiety fall within the meaning of disability defined in equality legislation

Case reference number - DEC-E2003-052 www.equalitytribunal.ie

In this case the Equality Officer found that an employer discriminated against an employee experiencing anxiety and depression by refusing him permission to return to work on a phased basis following a period of sick leave. The employer said it was not feasible to allow the employee to return to work on a phased basis because of the nature of the work and the size of the organisation. However, there was evidence that the employer had allowed a former employee time off on a daily basis to attend treatment for his condition.

The Equality Officer found that the employer had treated the current employee differently from someone with a different disability in a similar situation.

The employee was awarded €8,000 as compensation for the stress suffered as a result of the discrimination. The Equality Officer also ordered the employer to provide disability training to senior management personnel, with an emphasis on the requirements of the Employment Equality Acts.

Employers are obliged to make reasonable accommodation

What does the law say about reasonable accommodation and what does it mean in practice?

Under the Employment Equality Acts employers are obliged to make reasonable accommodation so that employees who have a disability, including people with experience of mental health difficulties, can:

- Have access to employment
- Participate or advance in employment
- Undertake training.

Under the Employment Equality Acts reasonable accommodation is known as appropriate measures, which means the same thing. Appropriate measures include putting in place supports and special facilities for an employee who has a disability, including someone with experience of mental health difficulties. This must take into account the specific disability-related needs of an employee.

Many employers are familiar with taking appropriate measures to accommodate the needs of employees with physical disabilities, such as adapting equipment or premises. However, employers also need to consider whether there are appropriate measures which they could take to support an employee with experience of mental health difficulties.

**Under the Employment Equality Acts
reasonable accommodation is known
as appropriate measures**

Reasonable accommodation in practice can include:

- Time off to attend medical appointments
- Mentoring and peer support within the workplace
- Consulting with an employee in order to accommodate their return to work
- Adjusting an employee's attendance hours or allowing them to work at home
- Relieving an employee of certain tasks, and substituting other equivalent duties, in consultation with the employee
- Provision of relevant training to support the employee to carry out their duties.

It may be useful to get additional advice, with the agreement of the employee, from the employee's doctor, an occupational health specialist, a mental health service or a mental health support group.

For more information see:

Line Managers' Resource: A practical guide to managing and supporting people with mental health problems in the workplace
www.shift.org.uk/employers/lmr/

Reasonable accommodation does not mean that an employer has to recruit, promote, retain or provide training to a person who does not have the capacity to do a particular job. However, an employer cannot decide that a person with a disability is incapable of doing a particular job without considering whether there are appropriate measures which they could take to support the person to carry out the required duties.

**Reasonable accommodation practices
can have a positive outcome for
everyone –employees and employers**

Case reference number - EE-D037 2003 www.labourcourt.ie

In its judgment on this case the Labour Court highlighted that an employer must make enquiries to establish the full facts about the capacity of an employee by:

- Considering medical evidence available from the employee's doctors, or obtaining independent medical advice
- Considering if any special treatment or facilities can support the employee to become fully capable
- Ensuring that the employee is allowed a full opportunity to participate at each stage of the assessment, and is allowed to present medical evidence.

The employer does not have to put in place appropriate measures which would impose a disproportionate burden on the organisation. The particular circumstances of an employer are taken into account, including the cost of putting in place appropriate measures, the resources available to the employer and the possibility of obtaining funding.

What about disclosure?

In order to know which appropriate measures to put in place, employers need to understand the practical needs of people with disabilities, including people with experience of mental health difficulties.

Equality legislation does not require a person to disclose that they have a disability. Mental health difficulties are not always visible and people are often reluctant to disclose. There may already be employees with experience of mental health difficulties in your workplace, so it is important to consider policies and practices in relation to all employees.

Employees are more likely to disclose that they have experience of mental health difficulties if they are confident that they will not be discriminated against if they do so. Employers can make it easier for employees to disclose by:

- Creating trust with employees
- Putting in place clear policies and practices related to assessing the needs of employees and making reasonable accommodation, and making employees aware that these exist
- Ensuring that application forms and medical assessment processes do not discriminate.

Before requesting information about disability employers should think about:

- Why they need the information
- What they will do with the information
- What information they need
- When they need the information
- Who needs to know the information
- How they need to be informed
- How they will store the information.

An employer may need to know about functional issues, such as whether someone is on medication that may make them drowsy, but may not need to know a person's diagnosis.

Information about an employee's experience of mental health difficulties is sensitive personal data. Data protection law provides guidance on who needs to know certain information and how to store it securely. See www.dataprotection.ie

Where can I get more information?

Further information on the equality legislation is available on the Equality Authority website www.equality.ie

Useful information to start with is:

“Your Employment Rights Explained: Plain English Guide to the Employment Equality Acts 1998-2011”.

“Your Equal Status Rights Explained: Plain English Guide to the Equal Status Acts 2000-2011”.

The National Disability Authority has produced a useful guide on retaining employees who acquire a disability, which is available on their website www.nda.ie

See Change is also a useful contact for further information.

See Change is a national programme and campaign which aims to reduce the stigma and discrimination associated with mental health difficulties in Ireland. It includes many organisations working together to bring about positive change in society for people with experience of mental health difficulties.

See Change can provide contact details for organisations with information and examples of good practice about how to support people with experience of mental health difficulties in employment. *See Change* can also help to provide information about organisations which support people with experience of mental health difficulties. The *See Change* website address is www.seechange.ie

Contact details for the Equality Authority and *See Change* are provided at the back of this leaflet.

**Contact the Equality Authority or
See Change for more information**

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