BUILDING FOR SUCCESS IN RECRUITING AND SUPPORTING DISABLED PEOPLE IN THE WORKPLACE

A guide for senior executives and HR managers on disability-related disadvantage at work with a six-step road map to disability inclusion.
Disabled people tend to find it more difficult to gain and retain employment.

This is reflected in the disability employment gap (DEG) in the UK, the difference in employment rates between disabled (49.2%) and non-disabled (80.6%) people, of 31.4 percentage points. The DEG is the key indicator of disability disadvantage. In 2015, the UK Government pledged to halve the DEG. To do this will require looking beyond the contribution of government initiatives such as the Work and Health Programme and consider the role of business.

There is a requirement on employers to make reasonable adjustments to a feature of the workplace (for example, to make it more accessible) or to a practice (for example, the recruitment procedure) to enable disabled people to gain or retain employment. This unique feature of the law on disability and employment places a positive duty on the employer in favour of disabled employees or applicants and shifts the duty from equality of treatment to equality of opportunity. Failure to make reasonable adjustments counts as discrimination and is one of the most common breaches of the Equality Act (2010) in relation to disability.

Many organisations don’t know which of their employees or job applicants is disabled. As a result, simple low cost reasonable adjustments that might support their employment or job application are not considered. Managers under-estimate the prevalence of disability in the workplace and only a minority of workplaces adopt even basic disability equality practices.

Demographic trends such as population aging indicate that disability is likely to increase amongst the workforce requiring proactive and innovative strategies from firms to attract and manage increasing numbers of disabled people in work.

WHAT IS THE LAW?

Protected Groups

Disability is one of the nine protected characteristics listed at section 4 of the Equality Act (2010). The others are: age, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion of belief, sex and sexual orientation.

Legal obligation on recruitment

The law covers recruitment, employment and dismissal. Under Section 60 of the Equality Act (2010), an employer may not ask about an applicant’s health or disability (except for certain specific reasons) until the applicant has been offered the job or has been selected into the pool of applicants to be offered a job when a position arises. Care is therefore needed in using health/disability questions as part of the recruitment process. The specific reasons include establishing the ability to participate in the recruitment process; the need for a reasonable adjustment in the recruitment process; the ability to undertake a function that is specific to the job; for disability monitoring purposes; and for supporting positive action where there is an occupational requirement for a disability.
Positive action

In the case of disability, equality of opportunity is often not possible without different (favourable) treatment and the law provides for this. This is often misunderstood by employers who believe that treating a disabled person more favourably amounts to discrimination against non-disabled people. Section 158 of the Equality Act 2010 allows for taking positive action to alleviate disadvantage suffered by people who share a protected characteristic if they are under-represented in the workforce. This provision requires interpretation in accordance with EU Law and decisions of the European Court of Justice. Section 159 of the Equality Act (2010) deals with positive action in relation to recruitment and promotion.

WHAT IS THE EVIDENCE OF DISABILITY DISADVANTAGE?

In official surveys and in the law, a person is defined as disabled where they have a long-lasting condition which gives rise to reduced ability to undertake day-to-day activities. From the Labour Force Survey (April – June 2017), 17.6% of the working age population is disabled. However, only 11.4% of employees are disabled. Disability prevalence rates are broadly comparable between public and private sector workplaces.

Disabled people experience disadvantage relative to their non-disabled counterparts across a range of in-work outcomes including earnings, career progression and job satisfaction. ‘In-work’ disadvantage is important because it contributes towards the disability employment gap, with dissatisfied people more likely to leave the labour force and discouraged from returning. These in-work disability gaps are of particular relevance to employers who are seeking to improve employee motivation and performance and reduce labour turnover. The hourly pay gap averages around 10% with half associated with disability itself rather than other characteristics associated with disability.

There is a higher prevalence of part-time employment amongst disabled people. While this may reflect a preference for flexibility as a means of accommodating disability at work rather than a constrained opportunity, pay and career disadvantage are often consequences of part-time working. Disabled employees report lower job satisfaction (5-10%) even within comparable jobs. Job satisfaction is important in its own right but also because it is correlated with intention to leave, job quality and performance at work.
What can organisations do?

Measuring disability

Measuring disability in the organisation is important: an organisation that doesn’t measure disability, doesn’t find it and doesn’t manage it. Measuring disability in the workforce is part of good equality practice. It can answer the following questions and establish a base-line for monitoring and targets for progression.

- What proportion of the workforce is disabled?
- What proportion of newly recruited staff are disabled?
- What proportion of staff leave due to disability?
- What is the size of the disability pay gap?
- What is the disability gap in part-time work, in career progression, in wellbeing at work?
- What is the disability gap in job quality, skill under-utilisation, job satisfaction?
- How does the organisation compare with the sector or the locality?
- How many disabled people are involved in organisational decision-making?

Organisational change

With a measure of disability, organisations can start to monitor and understand their disability gaps, to identify and evaluate potential solutions and to have information to hand to conduct an equality impact assessment (EIA) of any organisational change. Organisational change which affects all employees may have unintended consequences for disabled workers but a ‘Provision Criterion or Practice’ must not substantially disadvantage disabled people. The best way to ensure fair treatment and compliance with the law is to include disabled people in organisational decision-making and the EIA process.

Equality practices

Basic disability equality practices include reviewing/monitoring recruitment and selection; reviewing/promoting promotion; reviewing pay; specialist recruitment procedures to encourage applications from disabled people; workplace accessibility assessments. Currently, only 10% of workplaces adopt three or more of these and the average number of practices is less than one. However, if effectively used, they may contribute towards a corporate culture that values diversity. The importance of such cultures is reflected in a US study where outcomes for disabled employees in terms of pay, training, job security, promotion and participation in decisions are found to be comparable to non-disabled employees among those firms rated by their employees as the most supportive, fair and responsive to the needs of all their employees. Proof it is possible to narrow and even eliminate disability gaps.

Requests for reasonable adjustments

Disabled people are entitled to changes to the work environment, practices or procedures that enable them to work productively and safely to the same level as non-disabled employees. Intentions to recruit and retain disabled employees can get deflected by concerns over the costs of workplace accommodations and of negative co-worker reactions. Adjustments vary according to individual need but are often inexpensive. Findings from US research indicate positive co-worker reactions.
It is good practice to ask the person what they need by way of reasonable adjustments and to provide it. The Government provide financial assistance towards meeting all or some of the costs of implementing reasonable adjustments through a scheme called ‘Access to Work’.

**REPORTING REQUIREMENTS**

Although currently there is no requirement for firms to report on the presence of disability in the workplace or on disability gaps or to monitor trends in those gaps, political inclination favours more information on and greater transparency in outcomes for protected groups. Reporting recommendations in *Improving Lives* (House of Commons Command Paper 1526 2017) is limited to the voluntary reporting of disability workplace action plans for firms with over 500 employees. A voluntary approach was rejected for gender pay gap reporting and best practice reporting on disability inclusion, including current civil service practice, goes well beyond this recommendation.

The benefits of disability data collection lie in openness, transparency and equality, in the identification of the drivers and barriers of disability disadvantage and the enablers and supports in reducing this disadvantage. As with gender pay gap reporting, it brings attention and focus to disability-related disadvantage and permits investigation of its causes and to those barriers and attitudes which may become institutionalised, normalised and hidden.

Requirements for large firms to measure and publish their gender pay gap will require processes to monitor information on pay through, for example, administrative records. Disability-related pay gaps could be monitored in the same way as gender pay gaps if employee disability is collected and recorded by employers. However, measuring disability is less straightforward and, without some additional planning and investment, is less likely to be collected on a standard and routine basis.

**RECRUITMENT**

In principal a well-designed and flexible recruitment competency test can evaluate an applicant’s abilities against a job analysis or person specification more objectively than can interviews which may be subject to unconscious negative bias towards disabled people. Potentially the test results can provide a basis for job adjustments to fit a disabled applicant’s abilities, thereby improving both the likelihood of recruitment and subsequent person-job fit. Without this flexibility, a standard competency test may fail to consider adjustments which will make it difficult for a disabled person to demonstrate their ability, with negative consequences on their opportunity to contribute to the organisation.

**STAFF DISCLOSURE**

A hidden characteristic like disability relies on disclosure but negative stigma associated with disability creates a fear around its disclosure. Removing reporting barriers requires reassurance and confidence-building among employees. Without disclosure, the organisation will be unable to identify disabled employees and monitor progress towards disability employment targets. Disabled people who do not disclose their identity will be unable to request the accommodation and support they are entitled to under the Equality Act (2010).
IMPORTANCE OF MEASURING DISABILITY

Disability is difficult to measure. It is often hidden, it is changing, it is subjective and it is associated with stigma. In contrast to some other protected characteristics, the measure of disability is sensitive to its definition and interpretation. The legal definition of disability is wide, requiring only a long term condition and a non-trivial activity-limitation. It is open to judicial re-interpretation with new interpretations feeding through into workplace practice and employee expectations. Disability is self-reported and people may not recognise that some conditions, for example depression, count and what counts as an activity-limitation may vary with age and expectation. Stigma around disability is a disincentive to disclosure. Disability is not a permanent characteristic so that historical employee records (such as disability status at application for, or on appointment to, the role) are unreliable. Rather, regular collection of information relating to disability among employees is required.

Disability monitoring is therefore a more difficult and costly exercise than for some other equality characteristics but good measurement is essential. For Government, evaluating employers’ commitment to promoting a workforce which is diverse in disability requires comprehensive and accurate data on disability at the workplace level. For employers, identifying workplace policies and practices which may support or deter the recruitment and retention of disabled employees rely upon employees being willing to disclose, and employers to record, disability. Without such information employers and workplaces will be unable to identify or address disparities in the experience of work or to assess the equality impact of organisational change.

SIX STEPS TO DISABILITY DIVERSITY IN YOUR WORKPLACE

Designed to support employers in improving their approach to disability diversity and inclusion, this road map is adapted from The McGregor-Smith Review (2017) Race in the Workplace. It offers a set of inter-related practical recommendations to deliver on information transparency (to identify gaps and monitor progress), senior accountability for progress, workplace actions on equality practices in recruitment and retention and Government as a resource and a role model.
1. **Collect Disability Data and Monitor Progress on Targets**
   - Commit to setting targets and gathering and publishing statistics on disabled employment rates. Communicate this commitment.
   - Select an appropriate definition of disability for disability measures.
   - Collect, monitor and publish employee statistics on disability towards targets.

2. **Senior Executive Ownership and Communication**
   - Executive ownership and promotion of key disability targets and inclusivity messages.
   - Executive promotion of role models, mentoring schemes to raise awareness, share experience and improve opportunities.
   - Transparency. Communicate success and failure in annual reports.

3. **Workplace Actions**
   - Promote and facilitate employee disclosure on disability.
   - Workplace campaigns to promote disability disclosure and disability inclusion.
   - Set aspirational workplace targets against national, region and sector benchmarks.
   - Mandatory role-specific training in disability equality practice.
   - Mentoring and sponsorship for disabled employees.
   - Support an employee disability network.

4. **Target Recruitment**
   - HR directors must critically examine recruitment processes including collecting and monitoring applicant disability statistics and challenge sources of selection bias at all stages.
   - Draft inclusive flexible job specifications and recruitment tests.
   - Promote diverse shortlists and diverse interview panels.
   - Create work experience opportunities for disabled people.
   - Partner with disabled people-led organisations.
   - Support Access to Work applications.

5. **Manage Retention Through Inclusive Processes and Practices**
   - Seek to embed disability ambition into organisation policy and practice.
   - Monitor, review and publish recruitment, promotion and retention polices, practices, targets and outcomes.
   - Develop open and flexible career pathways.
   - Provide employee rights to one year employment retention following disability onset.
   - Provide training and facility time for specialist union representatives.
   - Support requests for reasonable adjustments (see Disability Talking for an introduction).

6. **Government Support and Scrutiny**
   - Support online resources: a guide to talking about disability at work, unconscious bias training, online portal of best practice, a top 100 disability employers list.
   - Activate public sector procurement lever to ensure that all public fund holders enforce disability representation down the supply chain of the companies they fund.
   - Monitor public sector employers on disability diversity practice, outcomes and progress.
   - Financial Reporting Council to include disability statistics in UK Corporate Governance code.
   - Prepare to legislate to make publishing disability diversity data mandatory.
The Driver & Vehicle Licencing Agency (DVLA)

Collection and analysis of staff disability information from employee records is undertaken by the HR team and is considered essential to ensuring that disadvantage is identified and targeted for action. Non-disclosure (26% passive + 5% active non-declaration) is recognized as a problem for both equality monitoring and for requests for reasonable adjustments. The team have run internal campaigns to boost declaration rates by explaining to staff how diversity data are an essential part of good equality practice. They seek to build trust and confidence by sharing results and taking action. The disability measure on the employee record is used to measure disability gaps against external criteria, for example, the disability prevalence rate in the local labour market, and internally in the areas of performance management, attendance management, talent management and learning and development.

The Civil Service People Survey provides additional data on in-work disability gaps, for example, there is a disability gap in staff engagement as measured on factors such as pride, advocacy, attachment, inspiration and motivation. The analysis is used to identify and understand areas of disadvantage and as benchmarks to set targets for improvement. Importantly the results and the targets are shared with staff.

Resources


Written and researched by Disability Rights UK and Disability@Work

We are willing to work with businesses that wish to respond to the opportunities described here. We offer bespoke advice on the next steps including: staff disclosure on disability, interviewing disabled candidates, selection tests, disabled staff networks, supporting newly disabled staff, and obtaining support through the Government’s Access to Work scheme.

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