

## **DEFINITION OF DISABILITY**

The Equality Act 2010 defines a disability as **a physical or mental impairment that has a substantial and long term adverse effect on a person's ability to carry out normal day to day activities.**

In addition HIV, Multiple Sclerosis and cancer are defined as disabilities even if they do not have an impact on a person's ability to carry out normal day to day activities.

## **DIRECT DISCRIMINATION**

Direct Disability Discrimination occurs where, because of a disability, a Force treats an officer less favourably than it treats another officer or would treat another officer. It also covers instances where the less favourable treatment is because of the officer's association with someone who has that characteristic (for example, he/she has a disabled son), or because the officer is wrongly thought (or perceived) to have a disability. Direct discrimination cannot be justified.

## **INDIRECT DISABILITY DISCRIMINATION**

Indirect disability discrimination occurs if a provision, criterion or a practice that the Force applies to everyone particularly disadvantages people with a particular disability compared with people who do not have that disability, and it cannot be shown to be justified as being a proportionate means of achieving a legitimate aim.

## **DISCRIMINATION ARISING FROM A DISABILITY**

Discrimination arising from disability occurs when a disabled officer is treated unfavourably because of something connected with his or her disability (not the disability itself) and the unfavourable treatment cannot be justified as being a proportionate means of achieving a legitimate aim. Discrimination arising from disability will not be unlawful if the Force can show that it did not know, and could not be reasonably expected to know, that the officer was disabled.

## **REASONABLE ADJUSTMENTS**

The duty to make reasonable adjustments arises where a provision, criterion, or practice applied by the Force, any physical feature of work premises (including fixtures, fittings and entrance points) or the absence of an auxiliary aid puts a disabled officer/job applicant at a substantial disadvantage when compared with those who are not disabled. The duty requires Forces to take positive steps to ensure that disabled people can access and progress in employment and allows the provision of better treatment (positive discrimination) for disabled officers to which non-disabled officers are not entitled.

When deciding what are reasonable steps for a Force to have to take, a Tribunal might take the following factors into account: the extent to which an adjustment would alleviate the disadvantage, the practicalities, the cost and potential disruption of making the adjustment, whether financial or other assistance may be externally available and the

nature, size and financial resources of the Force. Adjustments could include alterations to premises, equipment, duties or hours of work, permitting absence for treatment or rehabilitation and providing a supportive working environment including training.

The approach should be to fit the job around the officer, not the officer around the job.

A failure to make a reasonable adjustment cannot be justified by the Force, however the duty to make a reasonable adjustment will not apply if the Force did not know and could not reasonably be expected to know of the disability.

## **HEALTH AND SAFETY**

If making a particular adjustment would increase the risk to health and safety of any person (including the disabled worker in question) then this is a relevant factor in deciding whether it is reasonable to make that adjustment. Suitable and sufficient risk assessments should be used to help determine whether such risk is likely to arise.

## **SICK LEAVE**

If an officer suffers less favourable treatment because he or she has taken sick leave, this may be discrimination arising from a disability unless the Force can justify the treatment. The Force could consider excluding disability related sickness absence from selection criteria for SPPs, CRTPs, promotion or other similar procedures as a reasonable adjustment. They could also allow a period of Disability-Related Leave; for example, time off to undergo medical treatment related to a disability.

## SICK PAY

In most cases, an officer on sick leave is entitled to full pay for 6 months and then to half pay for 6 months. After a year's absence there is no entitlement to pay while on sick leave. A chief officer can exercise discretion to maintain an officer on full pay instead of half pay or full pay instead of half or no pay. Particular circumstances where this should apply are set out in PNB Circular 05/01:

- where the incapacity is directly attributable to an injury or illness that was sustained or contracted in the execution of his/her duty;
- the illness may prove to be terminal;
- the officer has been referred to a selected medical practitioner for consideration of permanent disablement.
- it would be a reasonable adjustment to extend sick pay to allow (further) reasonable adjustments to be made to enable the officer to return to work.

## RECUPERATIVE AND RESTRICTED DUTIES

A Force may consider providing an officer with recuperative or restricted duties as a reasonable adjustment to reduce the effects of their disability. Recuperative duties are usually for a set period. They could include a retraining programme, a period of physiotherapy or reduced hours working so that the officer can gradually return to full duties. Restricted duties can be a temporary or a permanent adjustment. They could include altered duties, a fixed shift pattern or reduced hours working. Recuperative or restricted duties should be arranged in consultation with the officer and the Force Occupational Health Department.

## MEDICAL RETIREMENT

Disablement under the Police Pension Regulations is different from the definition of disability under the Equality Act, and occurs if an officer is permanently unable to perform the ordinary duties of a member of the force as a result of a physical or mental condition. Medical retirements are the responsibility of the Police Authority after advice from a selected medical practitioner. They should retain officers who are able to make a valuable contribution and should not retire on medical grounds unless necessary. This principle is consistent with the Equality Act 2010, which places a duty on the force to make reasonable adjustments for disabled officers to continue performing duty.

## CAREER DEVELOPMENT

If an officer is disabled or on restricted or recuperative duties they should not be prevented from being appraised in their current role, applying for other roles, undertaking training or seeking promotion. There should be reasonable adjustments made for disabled officers going through the promotion processes.



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**POLICE FEDERATION**  
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Internet: [www.polfed.org](http://www.polfed.org)

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# Disability

**NOVEMBER 2010**

The Police Federation of England and Wales is the representative body for all Constables, Sergeants and Inspector ranks in the Police Forces of England and Wales. This leaflet sets out the law following the major changes to disability discrimination that came in on 1st October 2010 as a result of the Equality Act. Further advice can also be obtained from your Federation office or Representative.