

Employment Rights and MS

- *What does the law say and how can it protect you?*



Employment law

You're disabled under the Equality Act 2010 if you have a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on your ability to do normal daily activities.

'Substantial' is more than minor or trivial, for example it takes much longer than it usually would to complete a daily task like getting dressed

'Long-term' means 12 months or more, for example a breathing condition that develops as a result of a lung infection

Quite a few jumps, right?!





Are you
disabled?

MS

So, for those of you **WITH**
here, do you deem yourself
disabled under the law?



Automatic qualification

- **Answer? YES!!**
- You **automatically** meet the disability definition under the Equality Act 2010 from the day you're diagnosed with HIV, cancer or **Multiple Sclerosis**.
- There are no hoops to jump through – from formal diagnosis, you are covered by the Act and you are protected from discrimination.

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Employment Areas covered

It's **against the law** for employers to discriminate against you because of a disability. The Equality Act 2010 protects you from discrimination and covers areas including:

- application forms
 - interview arrangements
 - aptitude or proficiency tests
 - job offers
 - terms of employment, including pay
 - promotion, transfer and training opportunities
 - dismissal or redundancy
 - discipline and grievances
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‘Reasonable adjustments’

An employer has to make ‘*reasonable adjustments*’ to avoid you being put at a disadvantage compared to non-disabled people in the workplace.



What can 'reasonable adjustments' include?

- Changing a recruitment process so a candidate can be considered for a job
- Doing things another way, such as allowing someone with a physical disability to have their own desk instead of hot-desking
- Making physical changes to the workplace, like installing a ramp for a wheelchair user
- Letting a disabled person work somewhere else, such as on the ground floor for a wheelchair user
- Allocating some of the disabled person's duties to another person
- Changing equipment, for instance providing a special keyboard to assist
- Allowing employees who become disabled to make a phased return to work, including flexible hours or part-time working – pertinent for newly diagnosed experiencing issues

What is 'reasonable'?

- Size of the company – factors
- How practical to implement it?
- Is it 'reasonable' in the context of the role?
- Affordable?
- Could it harm others (duty of care to them too)?

NB: The hurdle **not** to implement 'reasonable adjustments' is fairly high.

Recruitment

An employer who's recruiting staff may make **limited** enquiries about your health or disability.

You can only be asked about your health or disability:

- to help decide if you can carry out a task that is an essential part of the work
- to help find out if you can take part in an interview
- to help decide if the interviewers need to make 'reasonable adjustments' for you in a selection process
- to help monitoring
- if they want to increase the number of disabled people they employ
- if they need to know for the purposes of national security checks (armed forces etc)

You may be asked whether you have a health condition or disability on an application form or in an interview. You need to think about whether the question is one that is allowed to be asked at that stage of recruitment (see above – do any of them apply?).

Redundancy and Retirement

- You cannot be chosen for redundancy just because you're disabled. The selection process for redundancy must be fair and balanced for **all** employees.
- Your employer cannot force you to retire if you become disabled.
- Early ill-health retirement is sometimes available but not always and it's not always welcome!

To disclose your MS to your Employer or not?

- A hard one, especially when you are newly diagnosed!
- There is **no obligation** to disclose health conditions to an employer.
- Pros and cons either way BUT unless your employer has been **made aware** of your diagnosis then your rights and protections under the Equality Act 2010 don't kick in automatically.
- Employers need to be **on notice** of your diagnosis. Then you are protected. Early disclosure can be helpful if followed up by appropriate accommodations and support.

To Resign or not to Resign?

- If work is getting too hard, please do not simply walk out and resign – you have rights!
- Try not to ask yourself “Why stay?” but instead, “Why go?”.
- From your employer’s point of view the question should be “Why not make adjustments?”, not “Why should we? / It’s too difficult”.

Help in my organisation

- Employers need to **know** to be able to help
- 'Reasonable adjustments'
- Line manager
- HR – are they CIPD qualified?
- Occupational Health
- Employee assistance programme
- Access to work (funds for 'reasonable adj')

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Help outside my organisation

- www.citizensadvice.org.uk (Citizens Advice Bureau)
 - www.acas.org.uk (ACAS)
 - www.cipd.co.uk (CIPD)
 - www.gov.uk (Government)
 - Trade Union (if you are a member)
 - MS websites (make sure UK based)
 - Employment lawyers/advisors
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Driving and the DVLA

- If you have a Driving Licence, you must tell the DVLA that you have been diagnosed with MS as it is a '**notifiable**' condition.
- The DVLA will send a questionnaire to assess any impact of MS on your driving performance, and may need to contact your doctor about your condition.
- If there is no medical reason to prevent driving, you will be allowed to keep your licence. Your licence may be changed to a short-term medical driving licence which will need to be renewed every 3-5 years.
- You should also inform the DVLA if the impact of your MS gets worse. If you've stopped driving and given up your licence because of your MS and your symptoms improve, to the point where you can start driving again, you can contact the DVLA and ask to have your licence reinstated.
- Vehicle adaptations are available and you can arrange to be seen by a driving assessor to decide which ones may be best for you.
- You will need to inform your car insurance of your diagnosis as well.

<https://www.gov.uk/driving-medical-conditions>