

## The Equality Act and epilepsy

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### Introduction

This information about the Equality Act is for people who live in England, Scotland and Wales. The Equality Act is a law that aims to protect all of us from unfair treatment in different areas of our life.

This fact sheet explains how the Equality Act can help you if you have epilepsy. It also explains how the Equality Act can help you if you care for somebody with epilepsy. At the end of the fact sheet, there are some suggestions about things you can do if you feel that you have been treated unfairly because of your epilepsy.

The Equality Act can help you for reasons other than having epilepsy. If you would like to find out more about these other reasons, contact the Equality and Human Rights Commission (EHRC). The contact details are at the end of this fact sheet.

If you live in Northern Ireland, you are covered by a different law called the Disability

Discrimination Act. Please contact Epilepsy Action for more information.

### About the Equality Act

The Equality Act brings together, replaces and strengthens a number of older laws, including the Disability Discrimination Act.

Most of the Equality Act came into force on 1 October 2010. Some extra parts were added on 5 April 2011. The Equality Act is a law that aims to protect people from discrimination on the grounds of disability, race, religion and belief, gender reassignment, marriage and civil partnership, pregnancy and maternity, sex, sexual orientation and age. Under the Act, these are called 'protected characteristics'. The message of the Equality Act is that everyone has the right to be treated fairly at work or when using services.

The Act also has extra rules for government and other public organisations. They must pay 'due regard' to the need to reduce discrimination. They should also pay 'due regard' to making sure people who are disabled, or who have another protected characteristic, are treated equally to other people.

To 'pay due regard to' means they should try to achieve the aims of the Equality Act, but they do not have a legal obligation to achieve them.

### Why the Equality Act protects you because you have epilepsy

Disabled people are protected by the Equality Act. The Act says that you are considered to be disabled if you have a physical or mental impairment. The Act considers how the impairment would affect you if you did not take medication to treat it. The impairment must have a substantial and long-term effect on your ability to carry out normal day-to-day activities.

A long-term effect is one that has lasted, or is likely to last, for at least 12 months. For these reasons, if you have epilepsy, you are considered to be a disabled person, under the Equality Act.

The Equality Act applies to you if you have epilepsy now, or if you have had epilepsy in the past. It applies to you even if you take medication that controls your seizures. It also applies to you if you do not currently have seizures or if you do not take medication. This is as long as your epilepsy is likely to come back and have a substantial effect on your life.

The Equality Act also protects your family and friends. They must not be harassed or treated unfairly by anybody else, because of the fact that you have epilepsy.

## **About disability discrimination and harassment under the Equality Act**

According to the Equality Act, there are three types of disability discrimination:

- direct discrimination
- indirect discrimination
- discrimination arising from a disability.

Here are explanations for how these types of discrimination may happen to you, if you have epilepsy.

### **Direct discrimination**

Direct discrimination happens when:

- somebody treats you less well than somebody else; and
- the treatment is because you have epilepsy, or care for somebody with epilepsy.

The law says that direct discrimination can never be justified and is automatically unlawful.

The Equality Act also aims to protect your friends and family from direct discrimination because of your epilepsy. This is called 'discrimination by association'.

### **Indirect discrimination**

Indirect discrimination happens when:

- having epilepsy means you are put at a disadvantage to other people, because of some general rules or practices that apply to everyone; and
- there isn't a fair explanation for that rule or practice.

This is a new type of protection for disabled people, introduced as part of the Equality Act.

### **Discrimination arising from a disability**

Discrimination arising from a disability happens when:

- somebody treats you unfavourably; and
- the treatment is because of something arising from your epilepsy; and
- they knew, or should have known, that you had the disability; and
- they can't give a fair reason for that unfair treatment.

This is also a new type of protection for disabled people, introduced as part of the Equality Act.

Discrimination arising from a disability has important differences when compared to direct and indirect discrimination.

- There is no need to compare the way that someone treats you with the way they treat somebody who doesn't have epilepsy.
- The person who treats you unfairly knows, or should know, that you have epilepsy.

### **Reasonable adjustments and epilepsy**

Sometimes, people or organisations may need to make a 'reasonable adjustment'. This is to make sure that you are not put at a substantial disadvantage to other people, just because you have epilepsy.

Reasonable adjustments can include:

- making changes to a rule, requirement or practice
- making changes to buildings or premises
- providing equipment that will help you.

The person or organisation that has the duty to make the adjustment is not allowed to pass any cost of making them on to you.

### **Harassment and epilepsy**

Harassment is when;

- somebody behaves towards you in a way you don't want, such as taunting or bullying.

The aim of the behaviour is to:

- violate your dignity (fail to treat you in a respectful way), or
- create an intimidating, hostile, degrading, humiliating or offensive environment for you.

The Equality Act gives you a right to protection from harassment because of your epilepsy.

At work, the Equality Act means that your employer has a duty to protect you from harassment by the people you work with. If your colleagues bully you because of your epilepsy, your employer will be considered responsible for this.

Your family and friends are also protected from being harassed because of the fact that you have epilepsy.

### **Areas of life where the Equality Act can help**

The Equality Act can help with:

- employment
- education
- access to goods, facilities, transport and services, including insurance
- buying, renting or managing land or property
- health and social care.

In all of these areas, people and organisations must not discriminate against you directly, indirectly or for reasons arising from your epilepsy. They must not discriminate directly against your family or friends because of your epilepsy. They must not harass you because of your epilepsy. They must also make reasonable adjustments, where appropriate, to help you.

### **Employment**

All employers have to consider you on an individual basis for your suitability to do a job. The only exceptions to this are jobs in the armed forces, which are not covered by the Equality Act.

The Equality Act covers all areas of employment, including the following:

- job advertisements
- application forms
- interviews
- job offers
- terms of employment
- training or promotion opportunities
- dismissal or redundancy.

#### **An example of direct discrimination**

You are not offered a job interview because you have epilepsy. But somebody else who has the same skills and qualifications as you, but does not have epilepsy, is offered a job interview.

#### **An example of indirect discrimination**

An employer says that all employees must have a driving licence, even though driving is not an essential part of every job. This discriminates against you indirectly if you can't drive because you have epilepsy.

#### **An example of discrimination arising from a disability**

You have a long absence from work because of your epilepsy. Your employer dismisses you because of that absence, even though they could have covered your work duties during your absence.

### **Examples of reasonable adjustments**

An employer could:

- allow you to start and finish work later than other employees, if you usually have seizures first thing in the morning (This is as long as the workplace is open during those hours.)
- allocate some of your work to someone else
- transfer you to another post or place of work
- provide training or retraining if you can no longer do your current job.

It's worth remembering that if you don't tell your employer about your epilepsy, they can't make any adjustment to help.

### **An example of harassment**

Your son has epilepsy and you take him to see an epilepsy specialist during work hours. Your colleagues make abusive and insulting comments about you and your son, because his epilepsy has caused you to have time off work.

### **An example of discrimination by association**

You need to make up some work hours that you missed when you took your son to a medical appointment for his epilepsy. Your employer is not flexible in the way you can make up the work hours. However, your colleague takes her son, who does not have epilepsy, to a doctor's appointment. Your employer is very flexible in the way she can make up her hours.

### **Education**

People who are involved in your education should make sure that you are treated fairly.

Education providers include:

- schools
- colleges
- universities
- providers of adult education.

### **An example of direct discrimination**

Your classmate, who sings no better than you, is allowed to join the school choir. She doesn't have epilepsy. You are not allowed to join the school choir, because you have epilepsy.

### **An example of indirect discrimination**

Anyone who wants to be in the school play has to come in to school an hour early every morning for rehearsals. This discriminates against you if your seizures usually happen early in the morning.

### **An example of discrimination arising from a disability**

A college refuses to admit you because you have epilepsy. They think that if you have a seizure it will disrupt lessons.

### **An example of a reasonable adjustment**

A teacher can give you written notes if you have a seizure during a lesson.

### **Access to goods, facilities, transport and services, including insurance**

People or organisations that provide any kind of goods, facilities or services (including free services) have to make sure that they do not treat you unfairly because of your epilepsy. Service providers must not refuse to provide you with a service, or provide the service to a worse standard, for a reason related to your epilepsy.

Service providers should make reasonable adjustments, and think ahead about the needs of people with epilepsy or other disabled people who may use their services. They should not wait until they are asked to make adjustments by individual service users.

Here are some examples of other service providers that must comply with the Equality Act:

- shops
- cafes/restaurants
- banks
- places of worship
- cinemas
- toddler groups
- transport companies, including trains, buses, coaches, trams and taxis.

**An example of direct discrimination**

A beauty salon will not pierce your ears because you have epilepsy. Your friend doesn't have epilepsy and they will pierce her ears.

**An example of indirect discrimination**

A night club will only accept a driving licence as a form of proof of age. This discriminates against you if you don't have a driving licence because of your epilepsy.

**An example of discrimination arising from a disability**

A restaurant owner refuses to serve you because they fear that it will upset the other customers if you have a seizure.

**An example of reasonable adjustments**

A restaurant gives you a table where there is less risk of injury if you have a seizure. For example, this could be at the edge of a room, out of the path of the people serving food.

**An example of discrimination by association**

A bank refuses to give your father a loan secured on his house, because you live with your parents and you have epilepsy. The bank thinks your epilepsy may make it difficult to evict you, if they seek to recover the loan by selling the house.

**Buying, renting or managing land or property**

There are rules for landlords and other people connected with selling, letting or managing land or property. They mustn't treat you unfairly for a reason relating to your epilepsy.

**An example of direct discrimination**

A landlord will not rent a flat to you because you have epilepsy. They will rent the flat to someone else who doesn't have epilepsy.

**An example of indirect discrimination**

A landlord insists that all tenants have a reference from an employer. This discriminates against you if you have been out of work because of your epilepsy, but you are still able to pay rent for the property.

**An example of discrimination arising from a disability**

A landlord refuses to rent you a property because he thinks you will cause damage to the property if you have a seizure.

**Health and social care**

Hospitals and NHS Trusts must actively look for ways of making sure that disabled people, including people with epilepsy, are treated fairly. They must also take steps to meet your needs. This is the case even if it means giving you more favourable treatment than someone who doesn't have epilepsy.

## The Public Sector Equality Duty

The Public Sector Equality Duty came into force on 5 April 2011. It applies to all public authorities or organisations that have a 'public function'. Some examples are central government, local authorities and health authorities. In all the roles they carry out, they should pay 'due regard to':

- stopping or preventing discrimination, harassment and victimisation
- encouraging good relations between people who are disabled (or who have another protected characteristic) and those who are not disabled
- working to enable people who are disabled (or who have another protected characteristic) to have equal opportunities to those who are not disabled
- removing or minimising disadvantages suffered by disabled people that are connected to their disability
- encouraging disabled people to participate in public life or in any other activity which they presently do not tend to take part in.

## Why treating someone differently because of their epilepsy could be justified

### Health and safety reasons

One reason why different treatment could be justified would be if your epilepsy posed a health and safety risk to you or somebody else.

### Example

An employer might not give you a job that involves climbing up ladders, if you have regular seizures. This would be dangerous. However, they could give the job to somebody who doesn't have seizures. This is an example of discrimination arising out of a disability. However, it would not be unlawful because the employer can justify his reasons.

### Unreasonable adjustments

Different treatment could be justified if the only way of avoiding it would be to make unreasonable changes.

### Example

A nightclub owner might not be expected to change the strobe lighting in the club, so that somebody with photosensitive epilepsy could go. An adjustment like that could change the whole atmosphere of the club, so may be considered unreasonable.

### Jobs in the armed forces

Jobs in the armed forces are not covered by the Equality Act. This means that the armed forces can refuse to employ you because you have epilepsy or a history of epilepsy.

### Insurance

The law allows insurers to treat disabled people differently to other people, as long as they can justify their reasons for doing so. For example, a travel insurance company may charge you more for an insurance policy because you have epilepsy. In some cases they can refuse to insure you. To do this, they have to prove that you are more likely to make a claim than somebody who doesn't have epilepsy.

*More information about the Equality Act and insurance is available from Epilepsy Action.*

## What to do if you think you've been treated unfairly under the Equality Act

If you feel that you've been treated unfairly because you have epilepsy, there are a number of things you can do. First, you could talk to the person or organisation concerned to try and sort out the situation. This might be your employer, your teacher, a restaurant manager or a landlord, for example. It's a good idea to keep a note of attempts you have made to try and sort the situation out. This can be useful information if you later decide to take legal action.

If the unfair treatment is taking place at work and you're a member of a union, you could ask them to support you when you are talking to your employer.

You might want to make a legal complaint about unfair treatment by an employer or service provider. Or, you might think that a public authority is not making an effort to carry out its duties under the Public Sector Equality Duty. In this case, you need to seek legal advice as soon as possible. This is because there are strict time limits for bringing cases to Employment Tribunals and courts.

The Equality and Human Rights Commission (EHRC) can offer advice and support if you feel you've been treated unfairly in any area of life.

- EHRC Helpline 0845 604 6610 (England)  
0845 604 5510 (Scotland)  
0845 604 8810 (Wales)
- EHRC website [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

If you feel that you have been treated unfairly at work, the Advisory, Conciliation and Arbitration Service (ACAS) will try to help you.

- ACAS Helpline 0845 747 4747
- ACAS website [www.acas.org.uk](http://www.acas.org.uk)

## **How to take legal action against someone who has treated you unfairly under the Equality Act**

Be aware that taking legal action can be expensive. However, depending on your financial circumstances and the issues involved, you may be eligible for the Legal Aid scheme, to cover some or all of the costs.

There are a number of non-profit organisations such as law centres, as well as firms of solicitors, who specialise in helping disabled people with discrimination issues. If you choose to employ a solicitor, it is important to check at the beginning how they will expect to be paid. You should also find out whether they have a contract to provide advice and representation through the Legal Aid scheme. It is also a good idea to find out how much experience they have in dealing with discrimination cases.

The Community Legal Service website has information about legal aid. There is also a 'find a solicitor' option that you can search by name, postcode and type of legal case.

- Community Legal Service Helpline  
0845 345 4345
- Community Legal Service website  
[www.legalservices.gov.uk](http://www.legalservices.gov.uk)

Law Centres also provide some free and independent professional legal services.

- Law Centre Helpline 020 7387 8570
- Law Centre website [www.lawcentres.org.uk](http://www.lawcentres.org.uk)

## **Where to get more information about the Equality Act**

Directgov is a website supported by the government. It has information about public services all in one place. It includes lots of information about the Equality Act and your rights.

- Directgov website [www.direct.gov.uk](http://www.direct.gov.uk)  
(click on the section for disabled people.)

### **About this publication**

This fact sheet is written by Epilepsy Action's advice and information team, with guidance and input from people living with epilepsy, and legal experts. If you would like to know where our information is from, or there is anything you would like to say about the fact sheet, please contact us.

Epilepsy Action makes every effort to ensure the accuracy of information in its publications but cannot be held liable for any actions taken based on this information.

Date: October 2011; Due for review: October 2013; Code: F072.01

### **Acknowledgements**

Epilepsy Action would like to thank Kate Whittaker, solicitor, Irwin Mitchell LLP, for her contribution. Kate Whittaker has declared no conflict of interest.

### **Epilepsy Helpline**

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