



COVID-19 Guidance For Employers

#InclusionByDefault

Introduction

Employers are facing unprecedented circumstances in responding to coronavirus (COVID-19). We know that many employers are proactive and innovative, putting inclusivity and the needs of their employees at the heart of their response.

We also appreciate that difficult decisions need to be made, including changing the ways employees work, choosing how to pay those self-isolating and making decisions around furloughing and redundancy.

As an employer, you are still under legal obligations to ensure the decisions you make in response to coronavirus (COVID-19) do not directly or indirectly discriminate against employees with protected characteristics.

In a time when you are facing demands to do things differently, we want to help you understand these obligations, so you can make inclusive decisions to support staff through these challenges.

Why this is important

Employers play an important role in ensuring the issues their employees face aren't made worse by discriminatory decisions regarding furlough, sick pay or redundancy.

This is especially important, as we know the coronavirus (COVID-19) pandemic is having a particular impact on people with certain protected characteristics.

If you make decisions that discriminate against an employee, you may be at risk of:

- having a claim brought against you at an employment tribunal
- costly compensation fees
- reputational damage.

But there are lots of reasons why following inclusive practices makes good business sense:

- three quarters of employers told us it attracts highly skilled talent and increases staff commitment and retention
- it builds organisational resilience and reputation as the future of work looks likely to change
- it removes barriers to employment often faced by those with protected characteristics and reduces absence and related costs
- employers with existing equality action plans have been able to respond quickly and positively to new challenges.

Essential things to know as an employer

It is against the law to discriminate against someone because of:

- age
- disability
- gender reassignment
- marriage and civil partnership

- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation.

These are called protected characteristics. There are different forms of discrimination:

- direct discrimination
- indirect discrimination
- discrimination because of something arising from a disability
- failure to make reasonable adjustments for disabled workers.

Important points to consider

We know that you are having to make quick and difficult decisions. To protect yourself from discrimination claims and make sure you're doing the best by your employees, think about the equality impacts before making decisions. This will help make sure you are not discriminating and reduce the impact a decision may have on people with protected characteristics.

1. Ensure the decisions you make, for example who gets extra hours or who is made redundant, are not based on protected characteristics, for example their age, sex, a disability or because they are pregnant.
2. Involve employees in decision making processes in a way that takes into account their protected characteristics, such as communicating to employees on maternity leave or communicating in accessible ways to disabled employees.
3. Set up working options in a way that does not disadvantage workers with different protected characteristics, such as those in particular age groups, disabled employees, women or pregnant workers. Make sure people selected for home working, reduced hours or furlough are chosen based on business requirements and not on a particular protected characteristic. For example, think about ways disabled people can work from home, either in their current or a different role, or work their usual shifts, through making reasonable adjustments. Where possible, it is best practice to consider what the employee wants to do.

If you're a public sector employer, you also have requirements under the public sector equality duty to consider the need to avoid discrimination, advance equality of opportunity and foster good relations.

Examples of different forms of discrimination

You must not **directly discriminate**, which means you must not treat a person worse than someone else because of a protected characteristic. Examples include:

- selecting a woman for redundancy or furloughing because she is pregnant, in order to avoid your obligations under health and safety legislation to make adaptations to her role, find her alternative work or suspend her on full pay as a result of risks to her health and safety.
- a manager asking a female employee who is working from home to check in with him more than he would ask a male employee, because of a stereotypical assumption that the woman is more likely to be distracted from work by her children.
- selecting a disabled worker for furlough without their agreement to avoid making reasonable adjustments for them.

You must not **indirectly discriminate**, which means you shouldn't equally apply a work policy or practice that puts people who share a protected characteristic at a disadvantage, unless you can show it's objectively justified - i.e. that you have a real need to apply the policy and act in a necessary and appropriate way. An example of indirect discrimination includes:

- requiring all employees to continue to work in front line, key worker roles. This would have a greater impact on those who need to self-isolate or follow the social distancing guidance more strictly, such as disabled, older or pregnant employees. If you cannot objectively justify this approach, it is likely to be unlawful indirect discrimination against those employees

You must not treat a **disabled person unfavourably because of something connected to their disability** where you cannot show that it's objectively justified. This only applies if you know or could reasonably have been expected to know that the person is a disabled person. An example includes:

- an employer rejects an employee's appeal against redundancy because it is submitted two days later than the time limit set by the employer. The employee missed the deadline because their learning disability meant that they needed extra help understanding the employer's decision and how to appeal against it, which they had difficulty getting. The employee has therefore been treated unfavourably because of something arising from their disability (rather than because of the disability itself). The employer would have to justify why it could not, for example, extend the deadline for the employee to make their appeal. If it cannot, then it will have unlawfully discriminated against the employee.

Brought to you by Asian Business Connexions

We are a not-for profit social enterprise that connects, supports and promotes the Asian and wider business community with a passion for inclusion & diversity – we believe we are the most inclusive member organisation in the North East.

#InclusionByDefault

Connecting, Supporting & Promoting the Asian and wider business community since 2009

www.abconnexions.org

We're Social – connect with us

 @abconnexions

 @ab.connexions

 asianbusinessconnexions

 info@abconnexions.org