01. disability
   i. disability defined
   ii. social model of disability
   iii. equality act 2010
   iv. reasonable adjustments
   v. recruitment commitment
   vi. interviewing & selection
   vii. access to work
   viii. employee retention
   ix. mindful employer’s charter
   x. further information and advice
disability defined

Under the Equality Act 2010 disability is defined as a mental or physical impairment that has an adverse effect on your ability to carry out normal day-to-day activities\(^1\): where the adverse effect is substantial; and where the adverse effect is long-term\(^2\).

People who have had a disability in the past are also covered by the scope of the Act and there are additional provisions relating to people with progressive conditions.

\(^1\) Normal day-to-day activities include: mobility; manual dexterity; physical co-ordination; continence; the ability to lift, carry or move everyday objects; speech, hearing or eyesight; memory or the ability to concentrate, learn or understand; and understanding the risk of physical danger.

\(^2\) The effect of an impairment is long-term if it has lasted for at least twelve months, or if it is likely to last for at least twelve months, or for the rest of the life of the person affected.
social model of disability

The traditional view of disability is that it is a medical problem or condition that an individual suffers from, that affects their quality of life and may cause them disadvantage within society.

For disabled people, trying to get on with their lives as independently as possible, disability is perceived as a social issue caused by the way society is organised. This is the social model of disability³.

³ This social model highlights the problems and barriers that disabled people face such as access, travel, assumptions and stereotyping. It considers how to remove the barriers that restrict the life choices of those with a disability and their ability to be independent.
The Equality Act 2010 strengthens existing legislation under nine protected characteristics. Under these changes people with HIV, cancer and multiple sclerosis are deemed to be covered by disability discrimination protection, effectively from the point of diagnosis.

The Act brought in legal protection making it unlawful for employers to discriminate directly or indirectly against disabled people, for a reason related to their disability, or because of their association with a disabled person.

As an employer, Birkbeck has a duty of care to support the health, safety and wellbeing of all our staff and to make reasonable adjustments where appropriate.

The Equality Act 2010 replaces previous disability legislation, bringing the different strands of discrimination together under one Act.

The nine protected characteristics are: race; sex; disability; sexual orientation; gender reassignment; pregnancy and maternity; age; religion or belief; and marriage or civil partnerships.

Previously those with HIV, cancer and multiple sclerosis were considered disabled from the point when their condition had an adverse effect on their day-to-day activities.

Now employers must not make a decision that negatively impacts someone who shares a protected characteristic, unless it is objectively justifiable.

Substance misuse is excluded, however, if an addiction resulted in a medical condition, e.g. depression, this may then be covered by the Act.
reasonable adjustments

Under the Equality Act 2010 employers are required to make ‘reasonable’ changes to a job role or workplace environment for a disabled member of staff who has or will have problems carrying out their job or any element of work.

The changes will be specific to the needs of the employee and should be made as soon as practicable upon appointment, or when disability is disclosed during employment.

‘Reasonable adjustments’ can be easily implemented and inexpensive or free to implement. Changes will normally be identified through a discussion of the problems the person is experiencing. In some cases, specialist advice and a physical assessment may be needed, for example, if specialist equipment or changes to job design is required.

Examples of adjustments include:
- allocating work to others;
- transfer to another post or place;
- making adjustments to buildings;
- being flexible about hours;
- allowing you to be away from the office for assessment or treatment etc;
- providing training or re-training;
- providing modified equipment, for example an orthopaedic chair or voice activated software;
- making instructions more accessible;
- providing a reader or interpreter;
- allowing a phased return to work.

For advice on what is reasonable in terms of adjustments, contact HR in the first instance.
At all levels of qualification, the proportion of those with a disability who lack but want paid work, is much greater than that for their non-disabled counterparts.

In 2009, Birkbeck was awarded the ‘Two Ticks’ Positive About Disability symbol by Jobcentre Plus, identifying that we have agreed to meet five commitments regarding the employment, training, retention and career development of disabled employees.

Staff who are involved in recruitment should have attended the recruitment and selection, disability awareness training, which deals with reasonable adjustments and our commitment to the Positive About Disability scheme.

10 Positive About Disability commitments:

To interview all disabled applicants who meet the minimum criteria of a job vacancy and to consider them on their abilities.

To discuss with disabled employees, at any time, but at least once a year, what both parties can do to make sure disabled employees can develop and use their abilities.

To make every effort, when employees become disabled, to make sure they stay in employment.

To take action to ensure that all employees develop the appropriate level of disability awareness needed to make these commitments work.

To review these commitments each year, assess achievements, plan improvements and keep employees and Jobcentre Plus informed.
interviewing & selection

Employers are not allowed to ask any job applicant about their health or any disability, either as part of the application process or during an interview. This includes questions relating to previous sickness absence.\(^{11}\)

When interviewing a person with a disability, HR will contact candidates to ask whether any adjustments are needed for the interview, and to liaise with the recruiting manager about any such adjustments.\(^{12}\)

Where selection tests are used, the type of test should not substantially disadvantage a disabled candidate and adjustments should be made when needed.\(^{13}\)

\(^{11}\) Employers are only allowed to ask about applicants’ health or any disability in very restricted circumstances or for very restricted purposes and not until the person has been offered a job, either outright or on conditions, or included in a pool of successful candidates to be offered a job when a position becomes available.

\(^{12}\) Interview adjustments may include: ensuring the location is accessible; the seating or lighting is adjusted or other changes to the environment; ensuring the interviewer is well-positioned for lip-reading or arranging a signer; allowing the disabled candidate to be accompanied by a support worker, for example to assist with powerpoint presentations or slides.

\(^{13}\) Adjustments to selection tests could include: giving candidates a reader or scribe; allowing candidates a longer time period; accepting a lower pass rate; allowing the use of an adapted keyboard or other such adjustment.
access to work

If you appoint a candidate who has a disability or you have a member of staff who becomes disabled, they may be eligible to receive support through the Access to Work scheme, administered by Jobcentre Plus.14

Access to Work is a government funded scheme to provide support to disabled people at work; it helps with the financial costs towards adjustments that would not otherwise be reasonable. The financial support for the individual is ongoing and if further funding is needed after three years, a review of the individual’s support, needs and circumstances will be undertaken.15

14 The type of support available includes: adaptations to a vehicle; help with the cost of taxi fares/transport costs if the individual cannot use public transport due to their disability; new equipment or adaptations; alterations to premises or environment; assistance from support workers; a communicator at job interviews for applicants with a hearing impairment; a reader for an individual who has a visual impairment or is blind.

15 The disabled person must apply for Access to Work benefit, which is awarded following a personal needs assessment. Application requests should be made by telephone; Jobcentre Plus will enter the details onto a form and send the individual the form for them to sign and return. An adviser will contact the employee, normally by phone but may arrange a visit.
Staff are not obliged to disclose their disability and often choose not to unless they need adjustments to be made to their job or work environment. However, if the manager notices that performance or attendance has deteriorated, or there has been changes in behaviour, mood swings or other indications that someone is struggling with their job, they should seek to establish the cause.

Once a member of staff discloses their disability to their manager, the manager must seek their permission before discussing this with others.\(^{16}\)

\(^{16}\)To establish the needs of the disabled member of staff, the manager should liaise with HR and meet with the individual. An occupational health assessment at an early stage may be recommended where specialist occupational health advice is needed.
The key principles of the Mindful Employer’s Charter are: to increase awareness of mental health; to develop good practices that are sensible, achievable and realistic; to integrate and adapt ‘Mindful Employer’ principles into the College’s policies, structure and culture for the longer term benefit of staff; and to develop a supportive environment that will encourage disclosure of ill mental health without fear of rejection or prejudice or stigma. Birkbeck is a member of the Mindful Employer’s Charter scheme which aims to increase awareness of mental health and related issues at work, and providing ongoing support for employers, specifically in recruitment and retention of staff.
Further information and advice

Further information and advice on recruitment and retention of disabled staff is available from your HRO 0207 631 6000 or humanresources@bbk.ac.uk

For advice on assistive technology, contact IT Services 0207 079 0717 or disit@bbk.ac.uk

For advice on equality and diversity, contact the Equalities Manager 0207 380 3153 or diversity@bbk.ac.uk

For disability advice, contact the disability office 020 7631 6316 or email: disability@bbk.ac.uk

External Contacts

Access to Work Operational Support
gov.uk/access-to-work
0345 268 8489
atwosu.london@jobcentreplus.gsi.gov.uk

Mindful Employer’s Charter
mindfulemployer.net
0139 220 8833
info@mindfulemployer.net

Business Disability Forum
efd.org.uk
020 7403 3020
enquiries@businessdisabilityforum.org.uk

RNIB
rnib.org.uk
0303 123 9999
helpline@rnib.org.uk
Equality and Human Rights Commission
equalityhumanrights.com
0808 800 0082

Action on Hearing Loss (formerly RNID)
actiononhearingloss.org.uk
0207 296 8000
0207 296 8001 (textphone)
informationline@hearingloss.org.uk

MIND
mind.org.uk
0208 519 2922
contact@mind.org.uk

For further information on benefits and rights under the Equality Act, visit www.gov.uk/browse/disabilities
This publication is available in alternative formats, please contact: diversity@bbk.ac.uk

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