



Factsheet:

Equality Act – new rights

What is the Equality Act?

Most parts of the Equality Act 2010 came into force on 1 October 2010. It replaces various pieces of equality legislation such as the Disability Discrimination Act 1995. Under the Equality Act, your rights remain more or less the same, and in some instances, you will be even better protected against unlawful discrimination and harassment. The Act mainly simplifies and brings equality law into one place.

This factsheet explains some of the key changes of the new act, which may be relevant to someone with epilepsy. For a full update on what has changed under the new act, please check out the Equality and Human Rights website at www.equalityhumanrights.com

Enquiries about health when looking for a job

An employer will no longer be allowed to ask questions about a job applicant's health, including previous sickness absence:

- until they have been offered a job, or
- until the job applicant has been included in a pool of successful candidates that will be offered a job when a suitable position arises.

There are however some exemptions to this. An employer, for example, would be allowed to ask these questions if:

- they need to find out whether a job applicant would be able to take part in an assessment/interview to test whether they are suitable for the work
- they need to make reasonable adjustments to allow the person with a disability to take part in the application and interview process
- they need to find out whether a job applicant would be able to undertake a function that is intrinsic to the job, with reasonable adjustments in place as required

For a full list of exemptions check the Equality and Human Rights Commission's website www.equalityhumanrights.com or phone them on 08456 045510.

What could this mean for you?

If you have epilepsy this may now give you a fairer and better chance to be interviewed and offered a job. Before the Equality Act came into force, an employer could ask you questions about health and sickness absence. This often forced a job seeker to disclose their epilepsy on an application form or during interview. A prospective employer may have taken this into account when deciding whether to offer you the job.

This change under the Equality Act should now ensure that a prospective employer will not find out (with some exemptions, see above) during the recruitment process that you have epilepsy. This means you may stand a better chance to be assessed on your skills and experience only, and not your epilepsy.

You may still have to disclose your epilepsy to a prospective employer if there is a health and safety risk to you or others. For example, having frequent and uncontrolled seizures would make you unsuitable to work at heights on a construction site.

An employer cannot use your epilepsy as a reason not to employ you though. They should be looking at making 'reasonable adjustments' to help you carry out your duties effectively and safely.

What can you do if you are being asked a question about your health during an interview?

This can, of course, make things awkward for you especially during an interview. You may find it difficult not to answer. The Equality Act now gives you a right to make a complaint to the Equality and Human Rights Commission if you are asked these health-related questions on your application or during the interview. Only the Equality and Human Rights Commission can enforce a breach of this provision.

If you are asked a health-related question during the application process, you can use this as evidence in a discrimination claim against an employer. You can contact their helpline on 08456 045510 for more information.

Discrimination by association

The Equality Act now protects anyone who is 'associated' with someone with a disability against direct discrimination and harassment.

What could this mean for you?

Protection existed previously against this kind of discrimination **at work** and this has now been recognised in the Equality Act.

An example of this could occur when you apply for a job. For example, a mother of a child who has epilepsy applies for a job which involves a lot of travelling. She has the best skills and experience but the company know she cares for her son. The company make an assumption that she cannot manage because she has a disabled

son and do not offer her the job. This is direct discrimination because she is associated with a disabled person.

The Equality Act also extends this protection against discrimination when you receive goods and services from others.

Discrimination arising from disability

The Equality Act has created a new provision to give even more protection to someone with a disability against discriminatory treatment. This new provision is called 'discrimination **arising** from a disability'.

This now makes it unlawful to treat someone differently because of something else which results from a disability. However, it is possible to justify such treatment if it can be shown to be 'a proportionate means of achieving a legitimate aim'.

What could this mean for you?

For example, your memory may be affected by your epilepsy, which may make it difficult for you to remember to do certain tasks at work. If your employer wants to dismiss you because they feel you are not able to do your job anymore because of your memory problem, this could be unlawful discrimination. However, this depends on whether or not the treatment could be justified.

Or, your child may need to wear a nappy or pad because of incontinence during seizures. Some nurseries require that a child needs to be toilet trained before they are offered a place. If a nursery tells you that your child can't join them because of the incontinence, this would probably be unlawful discrimination.

Harassment by third party

The Equality Act now makes your employer potentially liable for harassment by a third party. This third party could be a customer, service user or contractor.

What could this mean for you?

If you experience harassment from a third party while you are working, your employer will potentially be liable for this provided:

- the harassment has occurred on at least two previous occasions
- your employer is aware that the harassment has occurred
- and your employer has not taken reasonable steps to prevent this harassment from happening again

For example, if at work you have regular contact with the public, and one of the regular customers keeps calling you demeaning names because of your epilepsy, your employer would be potentially liable. However, they would only be liable if they were aware it has happened on at least two separate occasions and they have not taken any steps to prevent it from occurring again.

If you feel you may be affected by any of the changes under the Equality Act, please contact the Equality and Human Rights Commission on 08456 045510 for further advice.

**For more help and information
Call our helpline 0808 800 2200, text 07786 209 501
Or email us at enquiries@epilepsyscotland.org.uk**