

Property Implications of the Disability Discrimination Act 1995

The Disability Discrimination Act 1995 (DDA) was passed to tackle the discrimination that many disabled people face. Disability is interpreted widely and is not confined to handicaps of an obvious physical nature. It aims to protect people in areas such as: employment; access to goods, facilities and services; management, purchase and rental of property; and education. With effect from 1st October 2004 the Disability Discrimination Act (Amendment) Regulations 2003 took effect. This provided a major series of revisions to the DDA and contained a wide range of property implications for employers, trade organisations, service providers and landlords. There has also been a further act in 2005 aimed at discrimination in the public sector.

Employers

It is unlawful to discriminate against a disabled person in the employment context simply because of their disability. Where any physical feature of premises occupied by the employer places the disabled person at a substantial disadvantage compared with persons who are not disabled, it is the duty of the employer to take such steps as are reasonable in all the circumstances for him to take to prevent the arrangement or feature of the premises having that effect. Physical features can be both temporary and permanent and include not only the building itself but also the approach to or exit from or other means of access to the building.

In the face of a complaint regarding an employer's premises, there are four possible options available - to remove the feature that causes the problem, to alter the feature so that it ceases to have a disadvantageous effect, to provide a means of avoiding the feature or to do nothing.

The test is what is reasonable in the circumstances. It is not reasonable to require someone to alter a physical feature of the property that has been provided to comply with building regulations or to make an alteration which would make an employer, who happens to be a lessee of the property, breach their lease (but see below under landlords).

Trade Organisations

A trade organisation is an organisation of workers or of employers or any other organisation whose members carry out a professional trade for the purposes of which the organisation exists. Trade organisations are bound by similar rules to those which bind employers and employees. However, it should not be assumed that similar facts with regard to a building and a disability will give the same results. The test again is what is reasonable in all the circumstances.

Service Provider

A service provider is one who provides goods, facilities or services. They may not discriminate against the disabled in the terms on which those goods etc are provided. Discrimination includes problems of access to any premises within which the goods etc are provided.

This has implications for access to and use of any place where members of the public are permitted or invited to enter. This would include hotels, boarding houses, premises offering facilities for entertainment, recreation or refreshment or premises where the services of a professional trader local or public authority are obtainable. The test as to whether there is a breach of the law is whether the disabled person has been placed at a "substantial disadvantage".

Landlords

A landlord has a duty under the DDA to respond to a request from a tenant seeking to comply with the duty under the DDA. A landlord, who is a tenant of a superior landlord, cannot be compelled to do anything to breach the superior lease but must pass his obligations on up the chain to the next landlord. The landlord may in some cases also be a service provider in respect of common areas of the building.

If a tenant applies for approval to carry out works stated to be necessary for compliance with the DDA, the landlord (assuming the claim is well founded) must consent provided his reasonable costs for reviewing and supervising any works that are carried out are met by the tenant. He is expected to respond within 21 days. If the landlord has to seek consent from a superior landlord he does not have to commit himself until the superior landlord has in turn dealt with the matter. There are, however, consequences for unjustifiable delay.

Conclusions

There are no finite steps which an employer, trade organisation or service provider is specifically required to take to comply with the DDA.

Employers, trade organisations and service providers must do what is reasonable in the circumstances which involves making a subjective judgement as to what is required.

Decisions regarding the measures to be adopted must be taken on the basis of a balanced overall view of all the relevant circumstances.

In any case involving a lease it is of paramount importance to establish the extent of the demise in order to see where the duty to meet the DDA responsibilities lies.

Failure to Comply

Complaints may be made to the Courts and in appropriate cases to an Employment Tribunal. If the complaint is substantiated not only can compensation be awarded but in cases where a feature of a building is involved a direction can sometimes be made requiring the carrying out of specified works to remove the source of the complaint or the modification of the building.

Note:

This information sheet is provided for your general information only, and does not seek to set out the legislation in this area in detail or to provide specific advice.

If you have any queries, or wish to discuss specific circumstances, please contact a member of the commercial property team based at Guildford or Woking.

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