

Looking into Neurodiveristy in the workplace





Welcome

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Thank you for downloading this HR Connect resource which looks at Neurodiversity in the workplace.

Following on from our successful March Breakfast Briefing where Hayley Titchner, Senior Legal Advisor of Legal Connect, HR Connect's very own internal legal division, spoke to delegates around disability discrimination, and specifically the duty to make reasonable adjustments, we have taken the opportunity to continue with that theme in light of Neurodiversity Celebration Week.

Neurodiversity Celebration week is from Monday 17th March - Sunday 23rd March 2025.

This article looks at:



Understanding Neurodiversity



Obligations under the Equality Act 2010



Public sector equality duty



Some practical steps for employers to consider

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Understanding Neurodiversity

Understanding neurodiversity is important for both employers and employees as part of creating a diverse, inclusive and supportive workplace. It is also important as part of ensuring an employer meets its legal obligations, for example to make reasonable adjustments for disabled job applicants and employees.

Neurodiversity refers to the different ways the brain can work and interpret information. Most people are neurotypical, meaning that their brain functions in the way that it functions for the majority of people. However, it is estimated that around 15% of people are neurodivergent which means that their brains function in a different way. Employers should therefore expect to encounter and be ready to understand and accommodate neurodivergent job applicants and employees.

Neurodivergent individuals are often referred to as having an 'invisible disability' because their condition is not visibly apparent. Conditions generally considered as falling within the concept of neurodiversity include:

- Attention deficit hyperactivity disorder or ADHD
- Autism
- Dyscalculia
- Dyslexia
- Dyspraxia
- Tourette Syndrome

These conditions are becoming increasingly diagnosed in adults, as well as in children. Employers should note that the effects of such conditions vary from person to person and may also vary over time.

It is important to understand the legal framework which also underpins an employer's obligations in respect of the employment of neurodivergent individuals, such as the requirements under the Equality Act 2010 (eg not to discriminate against a disabled person and to make reasonable adjustments), contractual considerations when changing terms and conditions of employment and obligations in respect of health and safety at work.

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Obligations under the Equality Act 2010

Neurodivergence is not itself a protected characteristic, but neurodivergent individuals will fall within the definition of a disabled person under the Equality Act 2010 if they have a mental or physical impairment which has a long term substantial adverse effect on their ability to carry out normal day to day activities.

Since it is the requirements of that statutory test that determine whether or not a neurodivergent person is considered to be a disabled person, not all persons with the same neurodivergent condition will necessarily all be disabled or all not be disabled, e.g. a person with mild dyslexia may not experience a substantial adverse effect on their ability to carry out normal day to day activities whereas someone with more severe dyslexia is likely to experience a substantial adverse effect and meet the definition.

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In respect of a neurodivergent job applicant or employee that falls within the definition of a disabled person, under the Equality Act 2010, employers:

Must not directly discriminate against them by treating them less favourably than others because of their disability

Must not treat them unfavourably because of something arising from, or in consequence of, their disability

Must not victimise them by subjecting them to a detriment because they have done a protected act (eg brought employment tribunal proceedings), or because the person believes they have done, or may do, a protected act.


Must not harass them by subjecting them to unwanted conduct which is related to disability, where the conduct has the purpose or effect of violating the victim's dignity or creating an environment that is intimidating (eg bullying), hostile, degrading, humiliating or offensive.

Must not indirectly discriminate against them by applying a provision, criterion or practice that puts, or would put, individuals with their disability at a particular disadvantage when compared with individuals who do not have it, and it puts, or would put, them at that disadvantage and it cannot be justified as a proportionate means of achieving a legitimate aim.

Have a duty to make reasonable adjustments for them if they are put at a substantial disadvantage in relation to a relevant matter (relative to those who are not disabled) where a provision, criterion or practice is applied or where the disadvantage is caused by a physical feature or where they would be put at such a disadvantage if an 'auxiliary aid' were not provided. This may mean, for example, altering recruitment procedures and/or making changes to the work environment if they have a more than minor adverse impact on those who are neurodivergent as compared with those who are not.

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It is also unlawful for employers to directly discriminate against, or harass, an employee because of their association with a neurodivergent person who falls within the definition of disability, eg as a parent or carer.

An employer is vicariously liable for unlawful discrimination carried out by any of its employees

Unless the employer can demonstrate that it took 'all reasonable steps' to prevent that unlawful conduct. Such reasonable steps might include implementing a policy which covers neurodiversity and establishing a training programme.

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Public Sector Equality Duty

It is also important to note public sector employers are required to have due regard to the need to:

Eliminate discrimination, harassment, and victimisation against disabled people

Advance equality of opportunity between disabled and non-disabled people

Foster good relations between disabled people and non-disabled people

There is also specific duties imposed on public sector employers to remove or minimise disadvantages faced by disabled workers, take steps to meet their needs, and encourage disabled workers to participate in public life or in any other activity in which their participation is disproportionately low.

In relation to neurodivergent employees who are classed as disabled this means, in practical terms, that:

There is a duty on public sector employers to proactively remove barriers faced by neurodivergent employees. It is not enough for the employer simply to react as concerns are raised

Public sector employers must prove that it has taken the needs of neurodivergent employees into account when making decisions. For example, if an employer introduces a new policy that negatively and specifically affects neurodivergent employees, then the employer may be acting unlawfully

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Some practical steps for employers to consider

Recruitment:

The recruitment process itself can be particularly difficult for individuals who are neurodivergent. For example those with autism may have difficulty in standard interviews in answering open-ended questions, making eye contact or interpreting voice tones and facial expressions. It is sensible for employers to consider making appropriate adjustments right from the beginning of a recruitment process.

Suitable adjustments may include

Holding interviews or assessments in suitable, quiet spaces away from other distractions

Presenting materials in easy to read formats

Avoiding ambiguous or subjective language in job descriptions

Clearly explaining interview formats, in particular, informing applicants in advance if they will have to complete tests at interview

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Making the workplace an inclusive environment:

Employers should ensure that the workplace is an inclusive environment so that people feel comfortable stating that they are neurodivergent.

Employers should ask existing neurodivergent employees what, if any, challenges they face and for suggestions as to how these can be overcome. The response of employers should be tailored to the particular circumstances of the individual and, where the particular needs or solutions are not obvious, input from an Occupational Health (OH) advisor may be beneficial in identifying the adjustments required.

In its guidance 'Reasonable adjustments at work—Adjustments for neurodiversity', ACAS gives examples of adjustments that could help neurodivergent employees, depending on their needs:

Adjustments to help with concentration might include noise-cancelling headphones, fidget toys, a standing desk, regular breaks throughout the day and a quiet place to work away from distractions

Adjustments to help with written communication might include software to support with reading or writing (eg a screen reader or a speech-to-text programme), talking through written information, breaking down instructions into clear steps, using different coloured backgrounds for documents and signs and extra time to read information and complete tasks

Adjustments to help with organisation and time management might include regular check-ins, visually highlighted planners, extra reminders, breaking work up into smaller tasks and extra time to plan work

Adjustments for sensory overload might include a private, quiet space to go to, changes to dress codes or uniforms (eg to allow for softer materials or calmer colours), noise-cancelling headphones, computer screen filters to reduce brightness and having early warning of changes at work and extra time to process them

Adjustments for poor balance and co-ordination might include specialist equipment (eg a different keyboard or mouse that's easier to use), organising spaces carefully (eg avoiding clutter) and signs giving clear directions around the workplace

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Individual assessments:

The assessment of neurodivergent employees should be undertaken on an individually tailored basis. This may consist of:

A diagnostic assessment. This will be directed towards establishing more information about an individual's particular type of neurodivergence and evaluating, for example, the employee's abilities and skills by conducting a number of tests. Many neurodivergent employees will have received a diagnosis during their childhood or adolescence, for example in a Statement of Special Educational Need, an educational psychologist's report, or an Education, Health and Care Plan. It may be possible to obtain a diagnostic assessment through an appropriate organisation, eg the NHS for autism, or the British Dyslexia Association for dyslexia. Your Occupational Health Adviser will be able to guide you as to whether such assessment may be needed.

A workplace needs assessment. This will be solely focused on their role at work and what they need to perform it

It should be remembered that a neurodivergent employee's abilities and workplace needs may change over time and so such assessments should be regularly reviewed, eg particularly if there is a change in job role or tasks. In addition it should be recalled that not all employees with the same condition will have the same abilities and needs to perform their role.

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Training and Support:

Training (and understanding) is key for employers. An employer can have the best policy, but without training of, and understanding by, managers, it will fail in its implementation. Training should include, as a minimum, the common challenges shared by neurodivergent employees, such as difficulty some autistic people have in interpreting non-verbal prompts. It should also include the benefit in altering the physical layout of office space, for example to minimise high volumes of noise, as well as other sensory stimuli such as lighting.



It is important that managers focus on identifying what they can do to provide a neurodivergent employee with the particular support and guidance they need to perform at their best

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Conduct issues:

In the same way as with all employees, managers should ensure that neurodivergent employees are treated fairly if any issues arise due to their conduct. However, employers should be aware, in particular, of the possibility of claims for unfavourable treatment because of something arising from, or in consequence of, a person's neurodivergent disability.

Employers who are aware that an employee is neurodivergent should consider whether that employee's behaviour may be due to their condition and/or any medication that they may be taking as a result.



We hope you found this helpful, if you having any queries regarding any of the above please do not hesitate to contact your HR Consultant, or Hayley will be able to help where that may be needed.

