



The Rise in Disability Discrimination: What Employers Need to Know

Disability discrimination claims are on the rise...significantly so

Recent data from the Ministry of Justice shows a 40% increase in tribunal cases relating to disability discrimination, with many rooted in mental health conditions, stress-related absences, neurodivergence, and the menopause.

This isn't a distant corporate problem. These claims are happening in small businesses just like yours, and often, they're the result of misunderstanding rather than malice.

So what's going wrong? And what can employers do to avoid falling into the same traps?

What's driving the increase?

Disability, in legal terms, covers a far broader range of conditions than many employers realise. It's not just physical impairments, it includes long-term mental health conditions like depression, anxiety, ADHD, and more.

In fact, non-visible disabilities are behind a large share of recent tribunal activity. Common challenges include:

- Managers questioning absences or late timekeeping without considering underlying causes
- Poor handling of neurodiverse employees who need adjustments in communication or workload
- Menopause symptoms dismissed or misunderstood in performance reviews
- Mental health episodes treated as "just stress" rather than a medical condition

And in many cases, these missteps come down to lack of training, unclear policies, or fear of saying the wrong thing.

What does the law say?

Under the Equality Act 2010, employers must make reasonable adjustments for any employee who meets the legal definition of disability.

Failing to make adjustments, dismissing someone because of behaviours linked to their condition, or allowing inappropriate comments to go unchallenged can all lead to discrimination claims, even if unintentional.

Recent tribunal cases have awarded thousands in compensation for:

- Overly rigid sickness policies applied to staff with depression
- Dismissals linked to ADHD-related performance without proper support
- Managers expressing visible frustration or making comments dismissive of a diagnosis
- Failing to consult occupational health or take medical input seriously

Top risks for small businesses

Many SMEs believe these issues only affect larger companies, but in reality, lack of internal HR support and close working relationships can make the risk even greater. Key risk areas include:

- Inconsistent manager behaviour – some team members get flexibility, others don't
- Informal absence management – no documentation or audit trail
- No clear adjustment process – decisions made on the fly, not based on evidence
- Fear of conversations – managers avoid discussing health concerns altogether
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Even well-meaning businesses can fall foul of the law if processes aren't clear and managers aren't trained.



So what can employers do?

Here's what we recommend to stay protected and promote a genuinely supportive workplace:

1. Train your managers

This is the #1 step. Line managers need to understand:

- What counts as a disability under the law
- How to spot when someone might be struggling
- What reasonable adjustments can look like
- How to handle sensitive conversations confidently and legally

Even a 1-hour session can make a big difference.

2. Review your absence & performance processes. Make sure they:

- Allow for individual circumstances
- Include flexibility in how reviews are handled
- Flag when to seek input from HR, occupational health or a GP

Consistency is key—but that doesn't mean 'one size fits all'.

3. Start a conversation, not an investigation. Employees may not always disclose a condition. But if someone's behaviour changes, or attendance drops, open a dialogue.

4. Document everything — kindly

Keep a clear written record of what's discussed and agreed. This protects everyone involved, and avoids 'he said, she said' later.

5. Bring in support early

You don't need to do this alone. Whether it's occupational health input, HR advice, or a toolkit for adjustments, external support can reduce risk and improve outcomes.

The bottom line:

Disability discrimination isn't always about bad intent. More often, it's about missed opportunities to listen, adjust, and act early.

In a world where mental health awareness is growing, and tribunals are watching, employers must shift from reactive to proactive.

The good news? With the right training, clear policies, and supportive advice, you can build a culture where people feel safe to be themselves, and where legal risk is kept firmly in check.

Need help?

We can help you:

- Review and refresh your policies
- Train your managers
- Provide guidance on reasonable adjustments and occupational health referrals
- Support complex cases when you're not sure what to do

Let's make sure your business is equipped, protected, and a great place to work.

At Breedon, we help SMEs build smoother, more productive teams through:

- Real-world advice when tensions arise
- Manager training
- Conflict resolution
- HR toolkits and templates

To discuss our packages in more detail, please get in touch for a confidential chat.

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