

Dyslexia Association of Ireland

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Dyslexia in the Workplace

- Irish Constitution, Article 40.1
- “All citizens equal before the law”
- “With due regard to differences of capacity, physical and moral, and of social function”
- Article 45.2.1 referring to equal right of men and women to earn a livelihood.

Disability Act 2005

The Disability Act 2005 section 2, defines a disability as:
A substantial restriction in the capacity of the person to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State by reason of an enduring physical, sensory, mental health or intellectual impairment.

Legislation

- Unfair Dismissals Act, 1977
- Disability Act, 2005
- Equal Status Act, 2000
- Employment Equality Act, 1998
- Terms of Employment (Information) Act, 1994

Employment Equality Act 1998

- The EEA prohibits direct or indirect discrimination (including victimisation) by employers on nine grounds including disability: includes physical, intellectual and emotional disabilities
- Victimisation is taken to occur where a person is penalised for having, in good faith, opposed by lawful means an act of discrimination.

Onus on the employer

- Employer has the burden to ensure that a positive enquiry is made
- Occupational physician
- Appropriate measures taken in the context of the situation
- Reactive approach by the employer is incorrect as in *A Computer Component Co.v A Worker* [ED 00/08 DET No 13]

Continued..

- List of defining criteria of disproportionate burden
- The new Act incorporates a list of defining criteria used to determine what a disproportionate burden is.
- These are:
 - * The financial and other costs involved
 - * The scale and financial resources of the employer's business
 - * The number of persons who would benefit from the measures.
 - * Any disruption that would be caused by them
 - * The nature of any benefit or detriment experienced by any person likely to be affected by them
 - * the possibility of obtaining public funding or other assistance, any benefit that would accrue to the employer.

Continued...

- *William Gorry v Manpower Ltd.*
- *Alzheimers Society v A Worker*
- No defence in cases of direct discrimination
- *Nevin, Murphy, Flood v Portroe Stevedores*
- *A Government Department v A Worker*
- The need to treat those with a disability differently in order for them to be treated equally

Employment Equality Act 1998

- **16.**—(1) Nothing in this Act shall be construed as requiring any person to recruit or promote an individual to a position, to retain an individual in a position, or to provide training or experience to an individual in relation to a position, if the individual—(a) will not undertake (or, as the case may be, continue to undertake) the duties attached to that position or will not accept (or, as the case may be, continue to accept) the conditions under which those duties are, or may be required to be, performed, or (b) is not (or, as the case may be, is no longer) fully competent and available to undertake, and fully capable of undertaking, the duties attached to that position, having regard to the conditions under which those duties are, or may be required to be, performed.(2) In relation to—(a) the provision by an employment agency of services or guidance to an individual in relation to employment in a position,(b) the offer to an individual of a course of vocational training or any related facility directed towards employment in a position, and(c) the admission of an individual to membership of a regulatory body or into a profession, vocation or occupation controlled by a regulatory body,*subsection (1)* shall apply, with any necessary modification, as it applies to the recruitment of an individual to a position.(3) (a) For the purposes of this Act, a person who has a disability shall not be regarded as other than fully competent to undertake, and fully capable of undertaking, any duties if, with the assistance of special treatment or facilities, such person would be fully competent to undertake, and be fully capable of undertaking, those duties.(b) An employer shall do all that is reasonable to accommodate the needs of a person who has a disability by providing special treatment or facilities to which *paragraph (a)* relates.(c) A refusal or failure to provide for special treatment or facilities to which *paragraph (a)* relates shall not be deemed reasonable unless such provision would give rise to a cost, other than a nominal cost, to the employer.

Disability Act 2005

- Complaints
- Any individual may make a complaint to the head of a public body in relation to the failure of the body to comply with sections 26, 27 and 28 of the Act. A public body may authorise one or more inquiry officers (section 39 of the Act) to investigate complaints and prepare reports. If the complainant is not satisfied with the inquiry officer's recommendations, he or she may take the case to the Ombudsman. The Ombudsman will investigate the complaint and determine validity of complaint and appropriate action.

Disability Act 2005

- Access Officers
- Each public body is required to have at least one 'access officer' so that people with disabilities can avail of their assistance and guidance in accessing the information and services they provide.

Niamh Humphries v Westwood Fitness Club

- Employer must look to the facts regarding capability
- If that person is not capable at the outset whether special equipment for example is necessary
- Information and consultation with the candidate or employee.

Statutory Code of Practice

- Statutory Code of Practice
(Statutory Instrument No. 163 of 2006).
The Code: - covers Sections of the Act relating to accessible information, services and procurement; - gives some practical, general guidance on ways in which all public bodies can meet the requirements of these sections of the Act

Terms of Employment (Information) Act, 1994

- **3.** —(1) An employer shall, not later than 2 months after the commencement of an employee's employment with the employer, give or cause to be given to the employee a statement in writing containing the following particulars of the terms of the employee's employment, that is to say—(*a*) the full names of the employer and the employee,(*b*) the address of the employer in the State or, where appropriate, the address of the principal place of the relevant business of the employer in the State or the registered office (within the meaning of the [Companies Act, 1963](#)),(*c*) the place of work or, where there is no fixed or main place of work, a statement specifying that the employee is required or permitted to work at various places,(*d*) the title of the job or nature of the work for which the employee is employed,(*e*) the date of commencement of the employee's contract of employment,(*f*) in the case of a temporary contract of employment, the expected duration thereof or, if the contract of employment is for a fixed term, the date on which the contract expires,(*g*) the rate or method of calculation of the employee's remuneration,(*h*) the length of the intervals between the times at which remuneration is paid, whether a week, a month or any other interval,(*i*) any terms or conditions relating to hours of work (including overtime),(*j*) any terms or conditions relating to paid leave (other than paid sick leave),(*k*) any terms or conditions relating to—(i) incapacity for work due to sickness or injury and paid sick leave, and(ii) pensions and pension schemes,(*l*) the period of notice which the employee is required to give and entitled to receive (whether by or under statute or under the terms of the employee's contract of employment) to determine the employee's contract of employment or, where this cannot be indicated when the information is given, the method for determining such periods of notice,(*m*) a reference to any collective agreements which directly affect the terms and conditions of the employee's employment including, where the employer is not a party to such agreements, particulars of the bodies or institutions by whom they were made

Conclusion

- Identify the barriers - the physical environment; policies, procedures and systems; staff; attitudes; information.
- Clear and accurate records should be kept
- Cogent evidence will need to be disclosed by the employer
- Inform the employee that medical evidence has been considered
- Allow an opportunity to address the point
- Then look at whether there is a disproportionate burden
- Develop plans to improve the accessibility of information provision
- Develop plans to improve the accessibility of infrastructure, buildings and equipment
- Develop plans to improve customer relations
- Plans to assist those with disabilities, when requested Disability Awareness Training for staff
- Develop an effective procedure for handling complaints about accessibility Monitor and evaluate accessibility initiatives