

alert

Property
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DISABILITY DISCRIMINATION

NEW CODE

Businesses risk the threat of legal action after October 2004 if they fail to take notice of a new Code of Practice issued by the Disability Rights Commission that comes into force on 27 May. The Code deals with the duties on 'service providers' under the Disability Discrimination Act 1995 to make reasonable physical adjustments to their premises in order to make them more accessible to disabled persons.

SERVICE PROVIDERS

A service provider means a person or organisation that provides goods, facilities or services to the public. Small businesses are not exempt from these duties. They catch the large retailer to a small business start-up run by one or two individuals. It also doesn't matter whether the services are provided for free or for payment. Therefore, the range of organisations affected include shops, churches, clinics, hospitals, hotels and sports halls. Only education is excluded for the time being.

EARLY ACTION

The new duty to make reasonable physical adjustments comes into effect on 1 October 2004 but the Commission has published the Code now to help businesses and organisations prepare for the new duty. The Code makes it clear that this intervening period is intended to be a transitional period when service providers should be carrying out audits and assessing what work they may need to

carry out. If legal action is brought against a service provider after October 2004, the court might take into account the time the service provider has had to prepare for the new duties.

The most practical step that service providers should take at this stage is an access audit to assess how well premises suit a wide range of users, including disabled users. Ideally, this should be carried out by an experienced access auditor. Details of accredited auditors are maintained by the National Register of Access Consultants. The Centre for Accessible Environments has published a guide and checklist for £20 that may assist service providers in appreciating what is involved in an access audit, but this is a specialist area.

It is also good practice to include disabled customers in the process of deciding what adjustments to make. There are access groups in many areas. They represent the access interests of disabled people and may be a useful source of advice and information. However, what is extremely important is that the service provider keeps careful written records of the access audit and all further work undertaken to comply with the duties. This will be vital evidence if a service provider is unfortunate enough to face legal action for failing to comply with its duties.

INCLUSIVE APPROACH

The popular perception is that disabled people are wheelchair bound but in fact only 5% of disabled people are wheelchair users. There are almost 9 million people in the UK with a current disability covered by the Disability Discrimination Act. Of these, 2.75 million have a significant hearing impairment and 2 million have a significant visual impairment. Some have more than one disability; some disabilities cannot be seen. The Commission is promoting an inclusive approach. This means that, wherever possible, disabled people should be able to use services or obtain goods in the same way as other customers.

OPTIONS

There are four options available to a service provider if there is a physical feature that impedes disabled access. They are to remove the feature, alter it, provide a means of avoiding it or provide a reasonable alternative method of making the service available. The Commission has made it clear that it prefers the first option wherever possible. The new Code of Practice lists a number of factors that might be taken into account when considering whether an adjustment is a reasonable one to make. One of those factors is the extent of the service provider's financial and other resources. It's fair to say that the greater the financial resources of the service provider, the more likely it will be considered reasonable for the service provider to have to make the adjustment, even if this may be expensive. The 1995 Act does deal with the situation where a service provider may be justified in not complying with the duty to make physical adjustments but the grounds are very limited.

Some improvements can be fairly easy to implement such as colour schemes to assist the visually impaired, clearer signs and suitably positioned hand rails. Once adjustments have been identified, it makes financial sense to include them in a shop-fit or maintenance programme. That also achieves a phasing of the works and spreads the cost.

LEGAL ACTION

If service providers fail to comply with their duties to make reasonable physical adjustments, they risk legal

action by a disabled person. One of the Commission's statutory powers is to supply assistance and support to disabled litigants under the Act. It also has a statutory power to carry out formal investigations. Service providers can expect the Commission to become increasingly active as October 2004 approaches. A court will be able to make a declaration about the carrying out of reasonable adjustments and also make an award of compensation for the disabled person. Add adverse publicity to this and service providers have compelling reasons for acting early to comply with the new duty.

LEASES

The new Code also deals with the linkage between the Disability Discrimination Act and building regulations and the impact on leases. These aspects are dealt with in Government regulations published in October last year and the Code explains how they work in more detail. With regard to leases, the Act overrides the terms of a lease so as to enable a service provider to make necessary alterations with the consent of his landlord. The landlord cannot unreasonably withhold consent but can impose reasonable conditions. The Code lists examples of conditions, for example, that the service provider must pay the landlord's reasonable costs in connection with the giving of consent. However, these provisions do not come into force until 1 October 2004. So if a service provider wants to carry out alterations to comply with the Act before then, but his lease prohibits the alterations and his landlord refuses consent, he will have to wait until the due date.

The Commission has published a range of leaflets to help service providers prepare for their new duties. Their Helpline number is 08457 622 633 or visit their web site at www.drc-gb.org. For the Centre for Accessible Environments, call 020 7357 8182 and for the National Register of Access Consultants, call 020 7234 0434. To find out if there is a local access group in your area, contact RADAR on 020 7250 3222 or at www.radar.org.uk.

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