

Equality and mental health: how the law can help you



AN tÚDARÁS COMHIONANNAIS
THE EQUALITY AUTHORITY



The National Mental Health
Stigma Reduction Partnership

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This leaflet is for people with experience of mental health difficulties.

It is also for people who know others with experience of mental health difficulties. It explains:

- Why equality law in Ireland can help people with experience of mental health difficulties
- What equality law says
- How equality law protects people with experience of mental health difficulties
- How equality law works

Please note that this leaflet is not a legal document, it is for information.

Equality law covers you

Why is equality law important?

Equality law in Ireland aims to promote equality and prevent discrimination. This can help people who experience mental health difficulties because perceptions, stereotyping and attitudes about mental health can lead to prejudice and discrimination.

Know your rights, know equality law

Equality law aims to protect particular people against certain kinds of discrimination that can happen in employment, and also when they are buying goods and using everyday services.

There are two main equality laws:

- The Employment Equality Acts 1998-2011 protect people against certain kinds of discrimination in relation to employment. Examples include times when people are in employment, applying for a job, on work experience or doing vocational training.
- The Equal Status Acts 2000-2011 protect people against certain kinds of discrimination that can happen when people are buying goods or accessing services. Examples include when people are shopping, using services such as health services, going to school or college, socialising or looking for accommodation.

There are nine categories named in equality law. These are called the “nine grounds”. People are protected against certain kinds of discrimination in employment or when they are buying goods or accessing services, if the discrimination which is experienced is linked to any of the nine grounds.

Does equality law protect people experiencing mental health difficulties?

Disability is one of the nine grounds. The definition of disability under the Employment Equality Acts and the Equal Status Acts is broad. It includes physical, intellectual, learning, cognitive and emotional disabilities and a range of medical conditions.

People with experience of mental health difficulties are covered by the disability ground. For example, in a case which was brought to the Equality Tribunal, the Equality Officer found that depression, stress and anxiety fall within the meaning of disability defined in the equality legislation. You can find out more about this case is available on the Equality Tribunal website www.equalitytribunal.ie. The case reference number is DEC-E2007-025.

Equality law protects you against discrimination whether you are currently experiencing mental health difficulties or if your experience of mental health difficulties was in the past. For example, under the Employment Equality Acts, if you apply for promotion your employer

cannot discriminate against you because of your current or past experience of mental health difficulties. Similarly, under the Equal Status Acts, you cannot be refused access to an educational course because of your current or past experience of mental health difficulties.

What does discrimination mean?

“Discrimination” has a specific meaning in the Employment Equality Acts and the Equal Status Acts. It is important to understand this definition, so as to work out if equality law applies to a person’s specific experience of discrimination.

If you feel that someone has discriminated against you because of your experience of mental health difficulties, you need to ask yourself these important questions:

- Were you treated less favourably than someone else would have been treated in a similar situation?
- Did the experience of discrimination happen when you were in employment, applying for a job, on work experience or doing vocational training?
- Did the experience of discrimination happen in everyday living when you were shopping, using services, going to school or college, socialising or looking for accommodation?

People with experience of mental health difficulties are covered by the disability ground

Discrimination under the Employment Equality Acts

Case reference number - DEC-E2008-26 www.equalitytribunal.ie

In this case an employer dismissed an employee while he was on sick leave. The employer issued the dismissal letter after they became aware that the employee was experiencing depression.

The Equality Officer found that the employer discriminated against the employee on the disability ground.

The employee was awarded €17,500 in compensation for the distress suffered due to the discriminatory dismissal.

Discrimination under the Equal Status Acts

Case reference number - DEC-S2009-012 www.equalitytribunal.ie

In this case a person who was experiencing mental health difficulties arising from schizophrenia, agoraphobia and depression was unable to use public transport. He relied on two taxi drivers, who he was familiar with, to take him to out-patient services. He applied to the HSE for a mobility allowance but they refused to give it to him. Mobility allowance is a means-tested monthly payment for people who have a disability, are unable to walk or use public transport and who would benefit from a change of surroundings.

The Equality Officer found no evidence that the HSE had discriminated against the person in the way in which they had processed the assessment for mobility allowance. However, the Equality Officer found that the definition of disability used to decide if the person was eligible for mobility allowance was too narrow because it focused only on physical impairments.

The Equality Officer ordered the HSE to reassess the person's application for mobility allowance, taking into consideration the broad definition of disability included in the Equal Status Acts. The Equality Officer also ordered the HSE to pay the person €1,500 for the inconvenience caused.

Different treatment – does it always mean discrimination?

Different treatment of one person compared to another person does not always mean that it is discrimination from a legal point of view.

The law may not cover all forms of discrimination.

Equality law bans discrimination on nine grounds, including disability. However, equality legislation cannot be used if the different treatment of one person compared to another person does not fall into the category of any of the nine grounds. Fortunately, the broad definition of disability used in the equality legislation includes mental health difficulties (see page 4).

The equality legislation allows people to be treated differently in certain circumstances.

There are some situations where equality law allows people to be treated differently.

For example:

- Employers can offer jobs to people who have the right qualifications. They can refuse to give a job to someone who is not capable of doing it. However, if the reason someone is not offered a job is because they have a disability and they could do the job if given reasonable accommodation, this is discrimination.
- An employer or service provider is allowed to treat someone differently on any of the nine grounds, including disability, if it means that this will support the person in their employment or to access a service. This is called “positive action” (see page 9).

**Equality law protects you
in the workplace**

Disability and reasonable accommodation

“Reasonable accommodation” is a very important concept in equality law. Reasonable accommodation is about meeting the needs of people with disabilities, including people with experience of mental health difficulties, so that they can participate in employment, and access and use everyday services. It involves putting in place supports or special facilities to help a person with a disability, including a person with experience of mental health difficulties, to do these things. For example, in employment this could include allowing flexible working hours, providing peer support from other colleagues or returning to work on a phased basis. In the Employment Equality Acts reasonable accommodation is called “appropriate measures”, but it means the same thing.

There are limits on what employers and service providers have to do. The law says that making reasonable accommodation to meet the needs of people with disabilities cannot place a “disproportionate burden” on an employer and must cost a service provider no more than a “nominal cost”. In other words, a big employer or service provider who has more resources is expected to do more than a small employer or service provider with less resources.

What about disclosure?

It can be difficult to know when to disclose information about a disability, including mental health difficulties. Equality law does not say that people must disclose that they have a disability. On the other hand, it may be difficult for a service provider or employer to make reasonable accommodation to meet your needs if they are not aware that such supports are necessary.

**Equality law protects
you when you are using
everyday services**

You have a choice about disclosing a disability, including experience of mental health difficulties. Before disclosing it is important to think about:

- Why you need to disclose
- What you need to disclose
- When you need to disclose
- How you need to disclose
- Who you need to disclose to
- What they will do with the information.

You can download a useful booklet called “Disclosure” from www.ahead.ie

What else does equality law include?

The Employment Equality Acts and the Equal Status Acts aim to promote equality as well as to protect against discrimination. Employers and services providers can take positive action which promotes equality for people on any of the nine grounds who may be at a disadvantage compared to others. Positive action includes doing something to meet the special needs of people who may need extra help. There is an obligation to take positive action in the form of reasonable accommodation on the disability ground.

Harassment and sexual harassment are not allowed in employment or when services are being provided. This applies to all the nine grounds, including disability.

Victimisation is also not allowed. For example, employers and service providers cannot treat a person unfairly because they made a complaint of discrimination or because they were a witness in a case taken under the equality legislation.

Making a complaint of discrimination

Information on making a complaint of discrimination to the Equality Tribunal is available on the Equality Tribunal's website, www.equalitytribunal.ie or on the Equality Authority's website, www.equality.ie

If you are thinking about making a complaint of discrimination to the Equality Tribunal it is important to know:

- The Equality Tribunal can appoint a mediator, with the agreement of both parties.
- Individuals can represent themselves at a tribunal hearing, or they can ask a lawyer, a trade union official or another person to represent them.
- In some cases the Equality Authority can give legal assistance to people who want to make a claim of discrimination.
- A parent or guardian can make a complaint of discrimination on behalf of a person who is unable to make a complaint effectively because of an intellectual or a psychological disability.
- Under the Employment Equality Acts you must make a complaint of discrimination within 6 months of the event taking place. See the Equality Tribunals website for specific guidelines, www.equalitytribunal.ie
- Under the Equal Status Acts you must tell a service provider about a complaint of discrimination within 2 months of the event taking place. The complaint must be made to the Equality Tribunal within 6 months of the event taking place.
- In general, the maximum compensation awarded under the Employment Equality Acts is 2 years' pay or €40,000 whichever is the larger, or €13,000 if the person is not an employee. The maximum compensation awarded under the Equal Status Acts is €6,350.
- The Equality Tribunal can make other orders apart from compensation, such as requiring employers or service providers to change their systems or procedures.

Where can I get more information?

You can find more detailed information about equality law on the Equality Authority's website www.equality.ie

Useful information to start with is:

"Your Employment Rights Explained: Plain English Guide to the Employment Equality Acts 1998-2011"

"Your Equal Status Rights Explained: Plain English Guide to the Equal Status Acts 2000-2011".

See Change is also a useful contact for further information. *See Change* is a national programme and campaign which aims to reduce the stigma and discrimination associated with mental health difficulties in Ireland. It brings together many organisations which are working for positive change in society for people with experience of mental health difficulties.

See Change can give you information about organisations which support people with experience of mental health difficulties.

See Change can also help to put you in touch with organisations which have information and examples of good practice about how to support people with experience of mental health difficulties in employment or when accessing services. The *See Change* website address is www.seechange.ie

Contact details for the Equality Authority and *See Change* are provided at the back of this leaflet.

**Contact the Equality
Authority or See Change
for more information**

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The Equality Authority and See Change would like to thank Amnesty International, Mental Health Reform, the National Disability Authority and Shine for their help in developing this leaflet. The Shine national information helpline for people experiencing mental health difficulties is available on 1890 621 631.