



Neurodiversity and the Workplace: Your Key Questions Answered

This Neurodiversity Celebration Week we answer some key questions about neurodiversity in the workplace.

What is neurodiversity?

Neurodiversity is a term coined by Australian sociologist Judy Singer in the 1990s. It is the idea that people have unique brains, experiencing and interacting with the world in different ways. Neurodiverse individuals think and perceive the world differently.

Some non-exhaustive forms of neurodiversity include ADHD, Autism, Dyscalculia, Dyslexia, Dyspraxia and Tourette's Syndrome.

Why is it important for employers to be aware of neurodiversity?

It is estimated that 15-20% of the population (1 in 7 people) are neurodivergent. It is also more common for neurodivergence to be diagnosed in adults, so during their working careers.

Why is it important to avoid stereotypes and misconceptions?

Unfortunately, a number of stereotypes and misconceptions remain when it comes to neurodiversity, and which could consciously, or unconsciously, cloud someone's judgment and create bias in the workplace.

Whilst it is important to be aware of some of the traits associated with certain forms of neurodivergence, it is also important to appreciate that not every individual's neurodivergence will present itself in the same way.

Any employer who fails to look beyond these stereotypes and misconceptions not only risks missing out on potential talent but also faces the possibility of employment tribunal claims.

What legal obligations do employers have?

Whilst not all neurodivergent workers will have a disability, many may be classed as disabled under the Equality Act 2010 (the Equality Act) because of the way their neurodivergent traits impact them. The legal definition of disability covers any physical or mental impairment which has a substantial and long-term adverse effect on an individual's ability to carry out normal day-to-day activities.

Under the Equality Act it is unlawful to discriminate against anyone classed as disabled or perceived (assumed) to be disabled when deciding whether or not to employ them and on what terms, during their employment, when dismissing them or even after their employment has ended. It is also unlawful to discriminate against someone because of their association with someone who is disabled. For example, discriminating against an individual because they have a disabled child they care for.

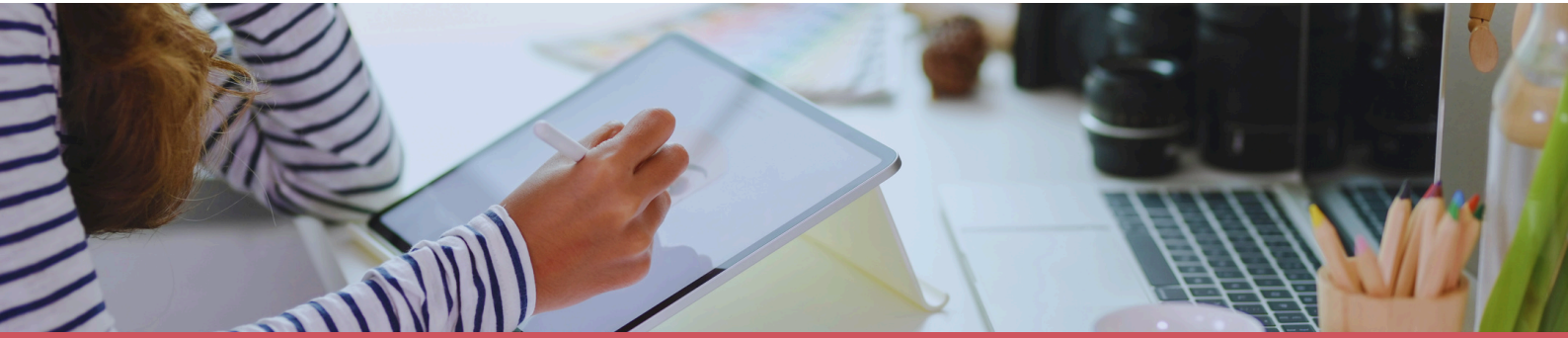
Discrimination can happen in a variety of ways, here are some examples:

- Not offering someone a position or withdrawing a job offer on discovering they are autistic;
- Ignoring a dyslexic employee's request for software or for written information to be provided in a different format that would help them digest the information and/or carry out their role;
- Dismissing an individual during their probation period for performance concerns, without checking if those concerns are linked to the individual's neurodiversity and providing additional appropriate support first;
- Unreasonably refusing an individual with ADHD's request for flexibility around start times;
- Colleagues commenting on or criticising a dyslexic colleague for their spelling or mathematical errors; or
- Colleagues shunning or otherwise treating an individual unfavourably who has raised concerns of discrimination with HR.

Employers also have a general duty of care to its employees, as well as specific duties to protect their health and safety under the Health and Safety at Work Act 1974. Failing to protect staff from discrimination in the workplace could also be a breach of these additional duties.

Please note discrimination is a complex area and legal advice should be sought where needed both by employers and employees. Our team at Lightfoots Solicitors are here to help as needed.





Why is it important for an employer to support its neurodivergent staff?

For those neurodivergent employees (or job applicants) classed as disabled under the Equality Act, employers have a duty to make reasonable adjustments where they know or ought reasonably to know they are or may be disabled and where that disability places them at a disadvantage in the workplace. Some individuals may be open that they are struggling, or this may be apparent when performance concerns arise. A failure to comply with this duty can lead to discrimination claims.

The duty to make reasonable adjustments is designed to help overcome barriers disabled individuals may otherwise face in the workplace due to their neurodiversity. The need to provide similar adjustments for neurodiverse job applicants should also not be overlooked.

Ultimately those adjustments will be determined by the needs of the individual and the job role. As just some examples they could include adapting standard induction or training processes to help neurodiverse individuals take in and retain the information being provided, the provision of software to help dyslexic individuals carry out their role or noise cancelling headphones to an individual with ADHD or adapting the office, so they have a quiet space to work.

Any employer unsure as to their duty to make reasonable adjustments generally or concerned as to whether an adjustment in a specific situation would be classed as reasonable should seek appropriate legal advice.

Even if the individual would not be classed as disabled reasonable adjustments should still be considered as there are benefits to both the employer and individual in doing so.

It will also be important for employers to get to know their employees individually and how they work. Employers should also consider whether an occupational health report may be helpful and have a discussion with the individual in question about what support they believe would benefit them and whether it is feasible.

Even if a formal diagnosis is awaited adjustments based on what is known should still be considered. Ultimately support and adjustments should be agreed, not imposed on the individual. It will also be important to keep any adjustments under regular review as traits could change over time, requiring differing support. It will also be important for employers to bear in mind that it can take some time for individuals seeking a formal diagnosis to receive it.

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Whilst for some receiving a diagnosis in adulthood may simply affirm what they already knew embracing their unique qualities, for others they may struggle to come to terms with it, completely knocking their confidence. Some individuals even leave their jobs as a result. Those individuals will need additional support during this time. If employers are able to offer it they should consider if some form of coaching from a service specialising in working with neurodivergent individuals could be offered as again this would potentially benefit the business, as well as the individual.

The above will naturally be subject to the employer's Data Protection obligations with it being important to agree with the neurodivergent individual who they are content can be told about their neurodivergence and what they can be told.

How else can employers make the workplace more inclusive for neurodivergent staff?

There are a variety of steps employers could take. Depending on the size of the organisation and its resources this could include some or all of the following:

- Reviewing current recruitment practices. Could they be adapted to support neurodiverse job applicants?
- Ensuring everyone has access to internal career and development opportunities.
- Educating staff on neurodiversity, the support on offer, as well as everyone's role in helping to make the workplace an inclusive one. Back this up with a neurodiversity policy.
- Ensure training is refreshed on a regular basis, with additional tailored training for managers.
- Offering support to all employees. This allows those who are neurodivergent to receive support without having to disclose their neurodivergence to colleagues.
- Sign up to the [Disability Confident employer scheme](#).





For further information on how to make a workplace more inclusive ACAS have published some helpful guidance which can be found [here](#).

The very real benefits of offering a neuroinclusive workplace should not be overlooked. Being inclusive makes everyone feels valued and respected, reducing internal grievances which take time and resources to resolve.

The more open and inclusive a workplace is the more comfortable staff will feel asking for support to help them perform at their best, whilst also ensuring employers comply with their legal duties. There will also be a positive impact on staff morale and well-being which can also help reduce employee absences and retain talent.

Employers will also find it easier to recruit with a wider talent pool to potentially chose from. Importantly employers limit their risk of legal claims and potential reputational harm!

Please note: You should seek legal advice before relying on the content of this article as every situation is different and is dependent on the specific circumstances of your situation and ever-changing law. If you require legal advice please do not hesitate to get in touch.

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