

Disability discrimination considerations for workplaces landlords and tenants

Insights - 10/11/2020

Following an amendment to the Discrimination (Jersey) Law 2013 which came into force on 1 September 2020, Jersey's discrimination legislation has been extended so that businesses, service providers and those managing and letting premises are required to take reasonable steps to avoid disadvantaging people with disabilities in relation to the accessibility of their premises.

Avoiding indirect discrimination (for failure to make physical adjustments) involves anticipating, and not just reacting to, disadvantages that may be caused to disabled persons who use your premises.

Compliance with the law involves taking 'reasonable' steps to avoid that disadvantage. How a given space is accessed or otherwise used is dependent upon a range of factors that will differ between premises. For example, use may be impacted as a result of the nature of the business conducted at the site, the way in which the building was originally constructed and how the internal space has since been further designed or otherwise arranged.

In addition, those responsible for premises that are affected by the law may operate to different constraints, including bye laws and available financial and administrative resources. For these reasons, there is no 'one size fits all' regarding what would be a 'reasonable' approach to physical adjustments across different property and business types.

Physical adjustments can include removing a physical feature, altering it or providing a reasonable means of avoiding it. Physical features of premises include the design and construction of buildings, entrances and exits, fixtures, fittings and furnishings. Property managers and landlords might consider widening doorways, implementing access ramps and/or installing a stairlift.

Investigating these issues in the context of your business with professional support might lead to quick and cost-effective compliance. It might also provide the commercial rationale for

discounting certain measures that, objectively reviewed, are not considered 'reasonable'. In this regard, a person caught by the law must be able to evidence why certain steps were not taken. An audit is an ideal means of thinking holistically and creatively about improving user experience and also explaining why certain measures were not pursued for various reasons.

The lease governing the landlord and tenant relationship will demarcate the respective duties and obligations of the parties in this area. If there is uncertainty as to whether responsibility or authority to apply a particular adjustment falls to the landlord or tenant under the agreement then advice should be taken. Understanding the contractual position is an important part of the exercise to determine whether you have taken all reasonable steps to avoid disadvantaging disabled users. Prospective tenants of commercial premises may wish to enquire with the landlord whether an access audit has been undertaken. Likewise, prospective landlords may wish to consider whether investing in some form of audit of the building may be a good commercial decision. It is open to tenants to investigate undertaking an audit of the proposed demise (and the plans for the internal space) in advance of occupation.

This law change is for the benefit of employees, customers, clients and tenants, but it also means that your business or premises will be more accessible to the thousands of people in Jersey who have a disability, increasing the number of people who can use your services.

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