

# FASD AND YOUR EMPLOYMENT RIGHTS



## WHAT is this Factsheet about?

Individuals with FASD have many strengths, skills and abilities to bring to the workplace but the condition may also bring challenges.

This Factsheet explains:

- the employment rights of those who have FASD;
- where to get support;
- how to challenge and enforce those rights.

## KEY POINTS:

- Employment can help individuals with FASD to develop positive identities, self-esteem and self-worth as well as provide financial independence and connect to others socially.
- Individuals with FASD have many strengths, skills and abilities to contribute to the workplace.
- However, those with FASD can face challenges in obtaining and maintaining employment.
- You may find it difficult to disclose a FASD diagnosis to an employer because of stigma attached to the diagnosis.
- Individuals with FASD are likely to be protected in law from discrimination and may have a right to reasonable adjustments.

## UNDERSTAND your rights

The [Equality Act 2010 \(the Equality Act\)](#) protects disabled persons in the workplace.

You are not automatically 'disabled' if you have FASD but you may be defined as disabled if you meet the criteria under the Act.

The Equality Act defines being disabled as:

*"a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on your ability to carry out normal day-to-day activities"*

You do not need to have a diagnosis to have a disability under the Equality Act and you do not need to be in receipt of disability benefits to be protected.

See Factsheet – **FASD AND DISABILITY** for more information about when FASD is a disability.

### What is discrimination?

If you are a disabled person under the Equality Act you have a right not to be discriminated against because of your disability. There are different types of disability discrimination (direct, indirect, arising from, harassment and victimisation – see orange box on the next page).

It is discrimination when a person **puts you at a disadvantage** because of your disability. For example, this could happen:

- if people treat you **differently**,
- make decisions that **exclude** you; or
- **fail** to provide you with additional assistance.

It can sometimes be difficult to tell if it is discrimination because people may behave in a way that is not illegal but which still makes you feel uncomfortable.

### Reasonable Adjustments

Your employer must make '[reasonable adjustments](#)' (changes) for you to remove or reduce a disadvantage related to your disability.

Reasonable adjustments are specific to the individual and depend on what difficulties you experience but they might include:

- Giving you **more** time to complete a task or;
- Changing **how** instructions are communicated or;
- Providing a **different** work environment for example, if you struggle with loud noises or bright lights.

Whether an adjustment is reasonable will depend on things such as the size and resources of your employer. An [Access to Work](#) grant may help an employer pay for reasonable adjustments.

### Time off work

If you're an employee and cannot work because of your disability, you may be able to get [Statutory Sick Pay \(SSP\)](#). Some employers have their own sick pay scheme instead and you could ask HR for a copy of their procedures.

If you still cannot work after 28 weeks, or you cannot get Statutory Sick Pay, you can apply for [Universal Credit](#) or [Employment and Support Allowance](#).

Time off work should not be recorded as an 'absence from work' if you're waiting for your employer to put reasonable adjustments in place.

## UNDERSTAND your rights before, during and after employment

The Equality Act protects disabled persons when they apply for job, when they are working in job roles and when they leave.

### Applying for a Job

Employers must make reasonable adjustments to address any disadvantage as a result of a disability during the recruitment process.

In applying for a job role it is up to you whether you want to disclose that you have or may have FASD. You are not obliged to tell your employer. The Equality Act prevents employers from asking pre-employment health questions during the recruitment process save for in very limited circumstances.

However, if you do not disclose your condition to your prospective employer, they will not be able to consider any reasonable adjustments to the recruitment process which may help you to obtain the job role.

Once an offer of employment has been made an employer can then ask health questions to assess your ability to do the role and identify any support you need but the questions must be related to the role.

### Working in your Job

If you have a job then you might find you need support.

**DO...**make managers aware of your needs.

**DON'T...** struggle on if there is something you are not coping with as this could result in formal action without considering your condition or the effect it has on you.

**DO...**think about what adjustments your employer can make to help you.

**DON'T...**put up with harassment or bullying and report it to HR. If you are having difficulty socialising in work, you might want to share your diagnosis with your colleagues too so they can understand why and be more inclusive.

**DO...**remember that you have a valuable contribution to make to your workplace.

**DON'T...**try and manage your concerns alone. There is help out there:

➤ **Access to Work** can help you get or stay in work if

you have a physical or mental health condition or disability.

- **Scope** offers offers tailored employment support for disabled people.
- **Work choice** is a voluntary employment programme that provides support to disabled people facing complex barriers to getting and keeping a job.
- **Work and health programme** aims to help people find and keep a job if you're out of work.
- **Intensive personalised employment support** offers one-to-one support and training to help you into work if you have a disability.

### Leaving your Job

Your employer cannot dismiss you or make you redundant just because you are disabled.

If you think you have been discriminated against, you may have a claim in the Employment Tribunal for discrimination or unfair dismissal. You may wish to seek advice: [find a solicitor](#) or contact [Citizens Advice](#) or [ACAS](#).

#### Direct discrimination

A disabled person is treated unfairly because of an impairment or condition. For example: you don't get promoted because you have a disability.

#### Indirect discrimination

An organisation makes a rule that applies to everyone without considering disabled people and that puts you at a disadvantage. For example: requiring everyone to work different hours each week which negatively affects those who need routine due to their condition.

#### Discrimination arising from disability

An employee is treated unfavourably because of something arising from their disability. For example: an employee has difficulty concentrating as a result of their condition which results in lower work output, and they are given a performance warning as a result.

#### Harassment

Someone talks about disability in an offensive way or picks on you because you are disabled. For example: an employee's manager makes fun of you because you get confused but you struggle to understand lots of verbal instructions because of your condition.

#### Victimisation

You complain about harassment and then you are treated negatively, that is victimisation. For example: if you raise a grievance about a manager making fun of you and the manager starts ignoring you round the office because you made a complaint.

## MYTHBUSTERS

### I have to apply for dozens of jobs a week or I get sanctioned, but I struggle with paperwork

There are organisations set out in this factsheet who can help you with paperwork. Ask your local Jobcentre for an interview with a work coach. This person is specially trained to help disabled people find suitable jobs.

### I am hyper-sensitive and I am worried about attending a job centre or workplace

If you have a disability, the job centre or workplace have a legal duty to make 'reasonable adjustments'. Explain that you have a disability and suggest adjustments that may help.

### Because I am not as fast as the other staff my boss makes fun of me in front of others

This behaviour is unacceptable in the workplace. If you have a disability this behaviour could amount to discrimination and/or harassment. You may want to make a formal complaint by raising a grievance, your employer should have a grievance policy which sets out how to complain and your employer is legally required

to respond. ACAS can also assist – see below.

### I cannot work due to my health. How can I get long term unemployment benefits, so I don't have to keep applying for jobs?

You may be entitled to **Universal Credit** to help with your living cost if you have a health condition or disability which prevents you from working or limits the amount of work you can do.

The **Employment and Support Allowance** may help with living costs if you are unable to work and support you in getting back into work.

### I am worried that if I tell my employer that I have FASD I am more likely to be discriminated against

You do not have to tell a prospective employer or your current employer that you have FASD. However, if your employer does not know and could not reasonably have known that you have a disability, they may not have a legal duty to consider reasonable adjustments and you may have limited protection against discrimination.

If you feel you have been discriminated against then you can raise a grievance with your employer by asking HR or your manager for a copy of your grievance policy. If this does not work, see below.

## HOW can I challenge my rights?

- Have an informal conversation with your manager or talk to HR. If you are a member of a trade union they may be able to help you.
- If that does not work you may wish to bring a formal grievance – ask HR or your manager for the grievance procedure.
- If your grievance is unsuccessful you can appeal the grievance outcome; ask HR or your manager for the grievance appeal procedure.
- If your appeal is unsuccessful, contact the Advisory, Conciliation and Arbitration Service **ACAS** for free and impartial advice.
- If you still feel you have been treated unlawfully you can make a claim in **the Employment Tribunal**. You will need to speak to ACAS first – see above.
- In certain circumstances you can appeal to the **Employment Appeal Tribunal** about a decision of the Employment Tribunal.

## KEY RESOURCES:

### GUIDANCE

- ACAS **step by step guide** to raising a grievance and ACAS' **template grievance letter**.
- Citizens advice: **dealing with grievances**.
- **How to make a claim to an employment tribunal and Claim form**.
- **National Careers Service** has resources and a helpline.

### HELPFUL ORGANISATIONS

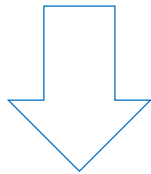
- **Scope** gives advice and support about disability and work-related matters.
- **Citizens Advice** has a range of resources on rights at work, disability at work and problems at work.
- **Disability Rights UK** can provide advocacy and support.
- **ACAS** (the Advisory, Conciliation and Arbitration Service) has valuable resources on workplace rights and they provide a free advice line.

### KEY LEGISLATION

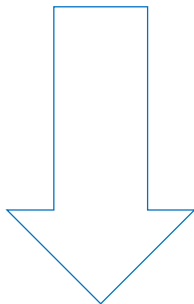
- **Equality Act 2010, section 6 – disability**.

## What to do if you think you are being discriminated against in work:

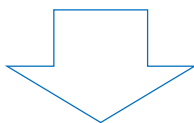
### Stage 1: Informal



### Stage 2: Formal



### Stage 3: Acas



### Employment Tribunal Claim

#### Stage 1: Raise your concerns informally

Whilst somebody may do something to upset you at work, this will not always be intentional. If appropriate, you could try to address your concerns directly with the person or informally with your manager or someone from HR to see if your concerns can be resolved quickly.

Often, an employer will expect you to try and resolve your issues informally before raising them formally.

#### Stage 2: Raise a formal grievance

If raising your issues informally has not worked or you do not think it is appropriate, for example because the issue is with your manager or because of the seriousness of the issue, you should raise your concerns formally.

Your employer should have a formal grievance process you can follow and this will normally be available in a company handbook or on your intranet.

You can raise a grievance even if they don't have a policy. Employers must respond to your grievance and carry out necessary investigations.

If your grievance is not successful you can appeal the decision, ask your employer for the grievance appeal procedure.

#### Stage 3: Speak to Acas

If you have raised a grievance and appealed and still not got the answer you wanted or you still feel like you are being treated unfairly, you may want to consider making an Employment Tribunal claim. Equally, if you have been dismissed and you think this was because of your disability you might want to raise a claim.

You **must** speak to Acas to see if your concerns can be resolved before lodging a Tribunal claim otherwise the Tribunal will not accept your claim.

#### Make an Employment Tribunal claim

If the steps above have not worked or if you have been dismissed and cannot reach an agreement with your employer, you may want to make a claim to the Employment Tribunal. You do not need a lawyer to bring a claim but it is always helpful to talk to ACAS, Citizens Advice or a solicitor for support.