

Frequently Asked Questions on the statistical monitoring of Public Service Staff– Part 5 Disability Act 2005

This document is for guidance only and does not purport to be a legal interpretation of the Disability Act 2005

Legal obligation on public bodies to employ staff with disabilities

Under the Disability Act 2005, public bodies are legally obliged

- in so far as is practicable, to take all reasonable measures to promote and support the employment of people with disabilities, e.g., written action plans on supporting staff with disabilities, adjustments or supports for staff with disabilities
- to reach a target proportion of employees with disabilities, currently 3%

The Frequently Asked Questions (FAQs) below have been prepared to offer guidance to nominated officials in public bodies on how to obtain, store and fairly process the information required under Part 5 of the Disability Act 2005. It does not purport to be a legal interpretation of the Disability Act 2005.

Information on an individual's disability status comes under the heading of "sensitive personal information" in the Data Protection Acts 1988 and 2003. There is a particular onus on public bodies to ensure this information is stored safely and securely; that only nominated officials have access to it; and that the information is only used for stated purposes of which the individual concerned has been made aware. Management and protection of this data would normally be a function for the Human Resources or Personnel Unit.

A positive action measure

The 3% target for the employment of people with disabilities in the public service is a positive action measure designed to ensure public service employers are proactive in providing employment and career opportunities for a group who face a higher than average risk of exclusion from employment. The 2006 Census

showed that just 35% of people with disabilities of working age (20-64) had a job, compared with 74% of non-disabled people.

This understanding of a group at significant risk of exclusion underlies the definition of disability that now applies to this target under the terms of the Disability Act 2005. This definition of disability covers a narrower group than the Equality legislation, so as to allow resources and positive measures to be focused on areas of most need.

Frequently asked questions

This section provides answers to issues that may arise in relation to the monitoring and reporting process for the 3% target in your organisation.

1. Why do we have to look for information on the disability status of our staff?

Every public body has a legal obligation under section. 48(2) of the Disability Act 2005 to report on how it is complying with the provisions of the Act on employment of people with disabilities in the public service, including whether it is meeting the 3% target. To do this, each public body needs to know and record how many employees it has with a disability (as defined in the Disability Act).

The National Disability Authority (NDA) advises that the disability status of all employees should be recorded at 31 December each year. The NDA has prepared a special form on which this information can be recorded. This information should be stored safely and securely, and only nominated officials should have access to it.

Once a comprehensive count of the disability status of current employees has been made, these figures can be maintained up to date by tracking the disability status of employees who leave, and by establishing the disability status (as per the Disability Act) of

- new employees
- employees who acquire a disability

2. Why is the National Disability Authority recommending data collection methods?

As the NDA reports annually to the Minister for Justice, Equality and Law Reform on compliance with the 3% target in the public service, it needs to ensure

that the data on which its report is based is collected in a uniform, efficient and accurate manner. This is why NDA recommends a single method of data collection for public bodies to report on compliance.

3. What if a member of staff has a query regarding this data collection process?

Refer them to the list of FAQs on disability status that is circulated with this document, as part of a package of guidance materials for staff members and data collectors. If an answer can't be found in those FAQs contact the Monitoring Committee in your parent Department. If they need help in answering the query the Monitoring Committee can contact the NDA.

4. What is the process once data has been received from employees

The NDA, in consultation with Ministers, has developed a statutory template for the reports which public bodies make to the Monitoring Committee of their parent Department (the civil service and public bodies staffed primarily by civil servants report to the Department of Finance). This statutory report comes in two parts: Part A is a Narrative Statement and Part B is a tabular statement. Both Parts must be completed. The Monitoring Committees in each Government Department in turn prepare a composite report on the bodies reporting in to them, which they send to the relevant Minister and to the NDA

5. Is there a timescale for compiling these reports?

Yes. There is a statutory timescale set out in Part 5 of the Disability Act. Public bodies must send their reports to the relevant Monitoring Committee by 31 March each year. The Monitoring Committees must send their reports to the relevant Minister and the NDA by 30 June each year.

6. Why are we being asked to only count employees on 31 December each year. Is it not for the entire year?

As referred to above NDA recommends that returns are made on the disability status of all employees.

To facilitate this challenging exercise the NDA recommends establishing the disability status of employees as of 31 December each year as it is easier to do this exercise with a single reference date.

7. What do you mean when you say ALL employees?

It means all staff employed directly by your organisation on 31 December each year. This covers all types of working patterns – including part-time and temporary. People on work experience should not be included in your employee

total but there is a separate line on your statutory report for people with disabilities on work experience. However, staff paid via a private recruitment agency should be excluded as they are employees of the agency rather than the public body in question.

8. What happens with those staff members who were employed on 31 December but have subsequently left the organisation?

For completeness of the figures in respect of each year, you should try and send them a staff census form to complete and return if they have not already done so.

9. What happens with those staff members who were employed on 31 December but were absent from work for medical reasons?

For completeness of the figures in respect of each year, you should try, where you deem it practicable and appropriate, to contact employees who were absent on this date.

10. Why are staff members asked to acknowledge they understand what will happen to the information they provide?

Under the Data Protection Acts, public bodies have an obligation to fairly obtain and process sensitive personal information. In order to do this it is essential that each staff member is made explicitly aware of what the information they provide will be used for.

11. Why are employees asked to include their name?

This is to facilitate regular updating of the number of employees with a disability through tracking inward and outward staff movements (as well as current employees acquiring a disability) without the need to conduct an annual census of all staff.

12. What happens if an individual completes the question on their disability status but does not either tick the box to indicate their understanding nor signs or dates the form?

The onus is on those collecting the data to ensure that employees are aware of the purpose for which the data is being used, in order that the data collection process satisfies data protection requirements. Employees should be encouraged to tick the box when completing the form.

It is not essential for fair processing of data that the individual signs their name or dates the form, providing they have been adequately informed of the uses to which the information is being put. However, it is more difficult to track and

update the number of employees with disabilities in the absence of some identification on the form.

13. Are employees legally obliged to answer the question on their disability status?

No. They are not legally obliged to answer the question on disability status. However, public bodies are legally obliged to determine, in some form, the disability status of their employees. The NDA form and question is a recommended method designed to facilitate public bodies in meeting their statutory obligation to report on compliance with the 3% target. The question is designed to provide a uniform set of data across the public sector.

It is reasonable for an employer to ask an employee to fill out a form as this facilitates the employer in carrying out a statutory duty, namely to report on the number of employees with disabilities.

The NDA has prepared model text for inclusion in Personnel Manuals on the topic of recording disability status for the purposes of making the statutory report.

14. How can a public body get ALL staff to participate if they are not legally obliged to disclose their disability status?

How the data collection exercise is managed is a matter for each individual public body. It may be found useful to remind staff or contact them individually to check if they have submitted a return.

Some organisations may find it useful to use the opportunity of contacting staff about their disability status to ascertain at the same time if staff have any special needs which require to be accommodated.

15. How can a public body expect to achieve full disclosure ?

Domestic and international studies point to the fact that it will always be very difficult to obtain full disclosure of disability status from employees. It is up to each public body to create, where, practicable, a workplace environment where as many staff as possible feel secure enough to disclose the fact that they have a disability. This is particularly important for people with mental health impairments

16. How can new staff be made feel secure about disclosing a disability?

Public bodies might like to consider approaching new employees again about their disability status on completion of their probation

17. How should the information on disability status be stored?

Disability status files should be stored separately and securely from the mainstream personnel files. They should be accessible only to a minimum number of nominated officials and records kept electronically should be made electronically secure in line with best practice.

In line with what is stated on the disability status staff form prepared by the NDA, the NDA would recommend that these records on disability status be kept separately from mainstream personnel files. The information disclosed by individuals for the purposes of facilitating reports on the 3% target should have no bearing on decisions such as training or promotion for those individuals.

It is allowable under Data Protection legislation to transfer relevant information from a mainstream personnel file to a disability status record, for example information on staff departures from the organisation, in order to keep the disability statistics up to date.

When an employee with a disability leaves the particular employment their disability status record should be closed and disposed of in line with best practice. New employees should be asked at entry to fill in a disability status form.

An individual has the right to see and to amend the details on his/her file in line with your organisation's data protection policy.

18. Can the information on disability status (as per the Act) be linked with other information on disability status in connection with other statutory obligations to employees?

It is possible to have a shared database where details of an individual's disability status under the Disability Act, details of any requirements for reasonable accommodation, and details of any health and safety requirements, such as a Personal Emergency Egress Plan are maintained alongside one another, provided this data has been obtained, and processed fairly for one or more specified, explicit and legitimate purposes. Fair processing means that staff should be aware of how the data is to be used. It should be noted that different definitions and concepts of disability apply to the different legal obligations of employers, and that entitlement to reasonable accommodation under the Equality Acts need not equate with disability status under the Act.

19. How about employees who acquire a disability?

Where it comes to the attention of an employer that an employee may have acquired a disability or long-term condition, the employee concerned could be invited to complete a form to indicate whether or not the individual has a disability in the terms of the Disability Act 2005.

20. What next?

The NDA recommends that each public body maintains a record or register of employees with disabilities which is updated regularly as employees leave or new employees start work, and when existing staff acquire a disability (as per Disability Act).

21. How can we best track changes in disability status among our staff?

It is recommended that each public body establish an appropriate system whereby staff members can alert the nominated officials of a change in their disability status during the course of the calendar year.

HR managers may wish to set up a system whereby employees who for the first time ask for an accommodation of a disability, or who prima facie appear from sick leave records to have acquired a disability, are provided with the Staff Form relating to their disability status per the Disability Act 2005, to be returned to the nominated official.

It is also recommended that each public body include a question on disability status in their induction and exit interviews. All of this information will have to be obtained, processed and stored fairly with the full awareness and understanding of the staff member in question.